

# OPUS2

Birmingham City Council v Persons Unknown

Day 11A1

May 18, 2026

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1 Monday, 18 May 2026  
 2 (10.30 am)  
 3 (Proceedings delayed)  
 4 (10.45 am)  
 5 APPLICATION  
 6 Submissions by MR CARR  
 7 MR JUSTICE CHOUDHURY: Good morning.  
 8 MR CARR: Good morning, my Lord, I appear with Ms Greenley  
 9 for Birmingham City Council. Unlike the last occasion  
 10 when this matter was before the court, it is the  
 11 Birmingham team only today, nobody on the other side,  
 12 and no members of the public. We do have transcribers,  
 13 because at the end of the hearing it was proposed to  
 14 publicise the transcript so that anybody who is  
 15 interested in what happened today but was unable to  
 16 attend will have access to the course of the proceedings  
 17 today.  
 18 MR JUSTICE CHOUDHURY: Yes.  
 19 MR CARR: My Lord, I hope you have had a chance to read into  
 20 the case, you will have seen that this matter was last  
 21 substantively before the court back in February,  
 22 Mr Justice Pepperall by an order of 20 February 2026  
 23 issued a three-month injunction, in broad terms  
 24 restraining protesters from blocking the access of  
 25 Birmingham City Council vehicles which were attempting

1

1 to collect waste from within the city.  
 2 MR JUSTICE CHOUDHURY: Yes.  
 3 MR CARR: We were due to be heard a couple of weeks ago but  
 4 unfortunately the judge was taken ill and therefore the  
 5 matter didn't get on. The current injunction expires on  
 6 Wednesday. The position is that, as far as the dispute  
 7 with Unite is concerned --- and I'll go to it in more  
 8 detail in due course --- there is no immediate prospect  
 9 of any settlement of that dispute. You may have picked  
 10 up from the papers that there was, shortly before the  
 11 local elections, a statement by the leader of the Labour  
 12 council to the effect that --- sorry ---  
 13 MR JUSTICE CHOUDHURY: The Labour Group.  
 14 MR CARR: The leader of the Labour Group with his Labour hat  
 15 on, rather than as it were with his council leader hat  
 16 on, stating that he felt that a deal was within sight,  
 17 whether or not that was the case is to some extent  
 18 academic now because the results of the election have  
 19 left, let's say, the city in a state of uncertainty as  
 20 to what the ---  
 21 MR JUSTICE CHOUDHURY: That councillor has lost his seat, in  
 22 fact.  
 23 MR CARR: That councillor has lost his seat and there's ---  
 24 as things today we haven't even got a council, never  
 25 mind a leader, and still less a deal with Unite that

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1 might bring an end to proceedings.  
 2 My Lord, I was proposing to take you briefly through  
 3 the judgment of Mr Justice Pepperall on the last  
 4 occasion so you can see the approach that he took and  
 5 the conclusions that he reached.  
 6 MR JUSTICE CHOUDHURY: Yes.  
 7 MR CARR: I was then proposing to outline the approach that  
 8 we say the court should be taking on this application.  
 9 Broadly speaking our case is that on the basis of the  
 10 authorities you are not required or expected to  
 11 undertake the same exercise that Mr Justice Pepperall  
 12 went through, so that initial process of weighing the  
 13 Convention rights of protesters against the claims  
 14 brought by Birmingham City Council in nuisance and  
 15 trespass. He has done that balancing act, so  
 16 essentially the question for you is whether there's  
 17 anything different about today which would warrant  
 18 either --- anything different about today which would  
 19 warrant a termination of the protection, which we say is  
 20 currently in place and enabling waste to be collected  
 21 within the city.  
 22 The key findings --- my Lord, I should also just  
 23 check that you've got the latest version of our outline  
 24 submissions ---  
 25 MR JUSTICE CHOUDHURY: Yes.

3

1 MR CARR: --- for the purposes of today, slightly updated  
 2 from the previous version that was lodged with the  
 3 court. You should hopefully also have a bundle that ---  
 4 a bundle of authorities, and also a bundle of documents  
 5 which now runs to some 554 pages, and which has within  
 6 it witness statements which have been lodged since the  
 7 matter was last before the court at the end of April.  
 8 MR JUSTICE CHOUDHURY: Give me a second. The screen is not  
 9 working, I am just going to (inaudible).  
 10 (Pause)  
 11 (Inaudible) screens which (inaudible).  
 12 MR CARR: Yes, always useful to have a second screen, less  
 13 useful if the second screen isn't working, that's  
 14 certainly my experience, and I suspect it's  
 15 your Lordship's as well.  
 16 MR JUSTICE CHOUDHURY: I should say I have read everything  
 17 on the list of essential reading, so the judgment, the  
 18 statements of Ms Carter-Hughes and Mr Cox, so you  
 19 can ...  
 20 MR CARR: Apologies for interrupting the court, I am just  
 21 conscious of the fact that when we did a test with the  
 22 transcribers, I was told I needed to keep my voice up,  
 23 and I'm just conscious of the fact that they may not be  
 24 able quite to pick up what your Lordship says, but  
 25 perhaps if they can put on the chat whether that's

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1 causing any problem. I should also say by reference to  
 2 the transcribers that if it was possible to give them  
 3 a break after perhaps an hour and a bit ---  
 4 MR JUSTICE CHOUDHURY: Absolutely. If I forget, someone  
 5 should raise their hand and I will ---  
 6 MR CARR: Yes, I am very good at forgetting that point,  
 7 my Lord, but hopefully someone will keep an eye on the  
 8 clock and give me a nudge.  
 9 MR JUSTICE CHOUDHURY: We will aim to stop at around  
 10 12 o'clock unless a break is needed before then.  
 11 MR CARR: My Lord, obviously given the fact that you have  
 12 gone through the reading list that we suggested ... ah,  
 13 here we go, "Can't hear the judge" was the message that  
 14 came through. I'm not sure whether that microphone has  
 15 anything to do with --- I think we're just reliant on  
 16 this single microphone here.  
 17 (Pause)  
 18 MR JUSTICE CHOUDHURY: Yes, please carry on.  
 19 MR CARR: I hope we don't descend into a situation where it  
 20 seems like we are both shouting at each other but  
 21 hopefully it won't come to that in any event.  
 22 Conscious of the fact that you have done the  
 23 reading, my Lord, I am not sure the extent to which  
 24 I need to trouble you with going through in any detail  
 25 what was in the judgment. I was just going to pick out

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1 what I thought might be the most significant parts of  
 2 it.  
 3 MR JUSTICE CHOUDHURY: Yes, if you do that, if you just  
 4 highlight the ---  
 5 MR CARR: Yes.  
 6 MR JUSTICE CHOUDHURY: --- main points that you wish to  
 7 make.  
 8 MR CARR: Yes, unfortunately these desks are built for  
 9 people of less stature than myself, so forgive me if it  
 10 takes a little while to ... yes.  
 11 So the judgment begins at page 51 of the bundle.  
 12 I was going to take you to paragraph 24, first of all,  
 13 where, after the judge had gone through the question of  
 14 service, he indicated that he was prepared to make  
 15 orders pursuant to CPR 6.15 and 6.27, and deemed the  
 16 steps taken by Birmingham City Council to draw the  
 17 attention of Persons Unknown to the fact of the  
 18 application of the claim. He was satisfied that those  
 19 steps were sufficient. That's paragraph 24, my Lord, on  
 20 page 59 of the bundle.  
 21 MR JUSTICE CHOUDHURY: Just pause one minute, Mr Carr.  
 22 (Pause)  
 23 Paragraph 24?  
 24 MR CARR: At 24 he deals with the issue of service, and my  
 25 Lord once one deals with that procedural component of

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1 the judgment, I can summarise the position before taking  
 2 you to further particular paragraphs in the judgment.  
 3 The basis of the application made before  
 4 Mr Justice Pepperall was broadly this: that Birmingham  
 5 City Council had obtained an injunction against Unite,  
 6 granted by Mrs Justice Dias in May of last year. The  
 7 effect of that injunction was to prevent vehicles being  
 8 blocked from exiting the various depots operated by  
 9 the council and, indeed, blocking them away from the  
 10 depots on the streets of Birmingham.  
 11 What effectively happened was that once Unite and  
 12 its members were injuncted from carrying out what we say  
 13 were unlawful protesting activities rather than  
 14 picketing activities, once they were injuncted, Persons  
 15 Unknown effectively simply stepped in to fill the  
 16 protesting breach that had been created by the order of  
 17 Mrs Justice Dias, and that led to disruption on a number  
 18 of occasions, which are dealt with starting at  
 19 paragraph 35 of the judgment, at page 60.  
 20 We probably should pick it up at paragraph 33  
 21 because there's a useful paragraph effectively  
 22 summarising the point that I've just put to you,  
 23 my Lord ---  
 24 MR JUSTICE CHOUDHURY: Yes.  
 25 MR CARR: --- where you can see the judge accepted

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1 the council's position was that once Unite had been  
 2 restrained, protesters picked up where the union had  
 3 left off.  
 4 He then deals at paragraphs 35 onwards with  
 5 occasions on which there was disruption caused by  
 6 protesters, effectively of an identical nature to that  
 7 which had been committed by Unite and its members, and  
 8 he relied on evidence relating to blockades carried out  
 9 on 17 September, that's paragraph 35, further blockading  
 10 in October and November, paragraph 37, then further  
 11 blockading in December 2025, paragraph 39, and then you  
 12 will see at paragraph 40 after a break over Christmas  
 13 the direct action protesting resumed on 8 January 2026.  
 14 So there were multiple occasions on which the  
 15 judge --- in relation to which the judge had evidence of  
 16 blockading having been conducted.  
 17 Then, as far as the impact on the council is  
 18 concerned, if one looks at paragraph 44, you will see  
 19 that he summarises the evidence of the council in  
 20 relation to the impact in January, and its ultimate  
 21 impact in January was summarised at paragraph 47 of the  
 22 judgment. The combined effect of the direct action that  
 23 week was 67,000 households, 19% of the total within the  
 24 city were not receiving waste collection service. So  
 25 there is --- that's aspect number one of the impact.

8

1 Then aspect number two is the cost of remedying that  
2 position, which you will see the judge summarised at  
3 paragraph 48.

4 So the judge received and accepted the evidence of  
5 disruption occurring on multiple occasions, and also  
6 accepted the evidence that the council had put before  
7 him as to the consequences of the protest action carried  
8 out by the defendants.

9 If we then scroll down to paragraph 67, you will see  
10 that this is where the judge summarises his ultimate  
11 conclusions in relation to the application brought by  
12 the council, and you will see from paragraphs 67.1 to  
13 67.3 that there were potentially three claims being  
14 brought by the council. The first one, trespass, albeit  
15 relating to only one occasion on which there had been  
16 encroaching on to one of the council's depots. That's  
17 dealt with at paragraph 67. He then deals with the tort  
18 of private nuisance, ie in this instance blocking the  
19 egress of council vehicles from the depots, and he says  
20 at 67.2(b):

21 "There is, in my judgment, clear evidence that  
22 protesters have interfered with the council's peaceful  
23 enjoyment of its land in that their direct action has  
24 prevented the council from having free access to and  
25 egress from its depots."

9

1 And then deals with the issue of public nuisance in  
2 paragraph 67.3, where he recognises that the fact of  
3 unlawful obstruction of the highway has a special damage  
4 component in relation to the claimant, because it's its  
5 vehicles that are being blocked by protesters.

6 He then addresses the competing Convention rights  
7 that the protesters have from paragraph 68 onwards, and  
8 he reaches conclusions which begin at paragraph 71,  
9 where he records that:

10 "The right to protest is ... no answer to the claim  
11 in trespass."

12 And he records that:

13 "Effective protest neither requires nor can justify  
14 the trespass on to ... Land."

15 There is then a more detailed discussion relating to  
16 the right to protest, insofar as it interacts with the  
17 nuisance torts, public and private nuisance.

18 At paragraph 74, he drew a distinction between what  
19 he recorded as:

20 "... inconvenience incidentally caused by the  
21 exercise of the right of peaceful protest and that  
22 caused deliberately by taking direct action, albeit  
23 peacefully, to obstruct the waste collection ~..."

24 He says:

25 "There is nothing incidental about the inconvenience

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1 in this case~..."

2 And he records that it's not necessarily the case  
3 that deliberate action will always fall outside  
4 Article 11, but he records that it is a factor that he  
5 takes into account.

6 He then, at paragraph 75, goes through a number of  
7 factors identified by Lord Neuberger and sets out those  
8 various conclusions. My Lord, rather than me read those  
9 out to you, perhaps I could just let you remind yourself  
10 of the factors that were found to feature in favour of  
11 granting the order sought, which are listed from (a) to  
12 (g) in paragraph 75.

13 MR JUSTICE CHOUDHURY: Yes.

14 (Pause)

15 Yes.

16 MR CARR: All of that took him to the conclusion set out at  
17 paragraph 76, where the judge says:

18 "Balancing all of those factors, I consider that the  
19 city council has established that it is more likely than  
20 not that the court at trial would find that the  
21 proportionality assessment clearly favours injunctive  
22 relief to restrain the excesses of direct action and to  
23 limit the protesters ~..."

24 And he also concluded that:

25 "... the council has established a compelling need

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1 for relief in order to protect its enjoyment of its land  
2 and its ability to deliver an effective waste collection  
3 service ~..."

4 Then paragraph 77 records that it's just and  
5 convenient to grant relief.

6 Then at paragraph 79, I do have to draw this to your  
7 attention, for reasons that will become clear in  
8 a moment, my Lord, you will see that he records that the  
9 draft that I sought was described as interim relief for  
10 a period of six months, but he observed that a claim for  
11 six months covered the entire relief sought in the claim  
12 form and therefore could not properly be described as  
13 interim.

14 He said:

15 "... I therefore grant relief until trial or further  
16 order but in any event for not more than an initial  
17 period of [three] months."

18 So he was proceeding on the basis of a claim form  
19 which had a six-month limitation in it in terms of the  
20 protection sought, he quite properly took the view that,  
21 well, to give interim relief it's effectively giving you  
22 all the relief you seek in your claim form and for that  
23 reason took the view that he would only give us  
24 three months.

25 The six-month period sought in the claim was,

12

1 without wishing to — unintentional pleading, it was  
 2 inadvertently carried over from the terms of the order  
 3 sought by way of interim relief, and was transposed into  
 4 the claim form, and having recognised and acknowledged  
 5 that default in the pleadings, an application was made  
 6 to amend the claim form, which was granted by Her Honour  
 7 Judge Kelly sitting as a High Court judge, and if one  
 8 looks at page 7 of the bundle~...

9 Sorry, it's not 7, it's 87. Yes, 87, apologies.  
 10 You will see that the judge granted leave to amend  
 11 the claim form. Then if one drops back to page 7 of the  
 12 bundle, you will see there in red that an injunction is  
 13 sought until — in the claim form — 1 January 2028.

14 If I then take you from page 7 to page 92 of the  
 15 bundle, you will see that the extension application —

16 MR JUSTICE CHOUDHURY: Sorry, what page was that?

17 MR CARR: Page 92, my Lord.

18 MR JUSTICE CHOUDHURY: Yes, I have the statement of truth of

19 Ms Carter—Hughes on that page.

20 MR CARR: On page 92?

21 (Pause)

22 MR JUSTICE CHOUDHURY: Yes.

23 MR CARR: Well~...

24 MR JUSTICE CHOUDHURY: I think the application notice starts

25 at page 89.

1 MR CARR: Ah, can I just check how many pages are in the  
 2 bundle that your Lordship's working from? Because there  
 3 should be 554 pages in the latest version, because that  
 4 includes a couple of additional witness statements  
 5 designed to bring you fully up to speed with where we  
 6 are in terms of notification and in terms of the current  
 7 constitution, or lack of, of Birmingham City Council.

8 MR JUSTICE CHOUDHURY: This bundle goes up to 348.

9 MR CARR: Yes. Well, we can work from this version,  
 10 my Lord. I think you'll find it at — it should be  
 11 three pages earlier, then. If you try page 84,  
 12 hopefully you will find it. Because what's happened is  
 13 that, as the bundle has expanded, the index page has  
 14 expanded and that's thrown the numbering out by a factor  
 15 of three. So what is on page 87 of the latest version  
 16 of the bundle, I hope you will find at page 84 of the  
 17 version that you've got, and certainly the paper  
 18 version.

19 MR JUSTICE CHOUDHURY: Are you looking for the application  
 20 notice?

21 MR CARR: Yes, I am.

22 MR JUSTICE CHOUDHURY: I think it's on page 89.

23 MR CARR: Ah, okay. Well ...

24 MR JUSTICE CHOUDHURY: This is the application notice.

25 MR CARR: Yes, yes, and you will see from that application

1 notice that it essentially falls into the same trap that  
 2 Mr Justice Pepperall recognised on the last occasion,  
 3 which was it seeks relief which is coterminous with the  
 4 maximum amount of relief sought under the terms of the  
 5 claim form, and for that reason I'm not going to ask  
 6 your Lordship to grant an order until 1 January 2028.  
 7 What I am going to ask your Lordship to do is grant  
 8 an extension for six months, and I do that for two  
 9 reasons.

10 Firstly, for the reason I've just mentioned, and  
 11 secondly, because — actually, no, three reasons. The  
 12 second reason is that the current mandate for industrial  
 13 action that Unite has runs until August of this year.  
 14 The third reason to ask for a period of six months is  
 15 that it does at least allow for a reasonable period  
 16 within which one hopes that a solution is found to the  
 17 underlying industrial dispute, once the new council is  
 18 established.

19 Linked with that point, my Lord, is that we also  
 20 suggest that included within the terms of any order that  
 21 you grant today is an undertaking from Birmingham City  
 22 Council to bring the matter back to court in the event  
 23 that there's a solution to the industrial dispute that's  
 24 found within that period of six months.

25 MR JUSTICE CHOUDHURY: Yes. Of course, one would hope

1 the council would do that even in the absence of an  
 2 undertaking.

3 MR CARR: Of course, yes. Well, that would not merely be  
 4 a hope, it's what would happen, but it seemed to me  
 5 appropriate in the circumstances to include it as part  
 6 of the order, because your Lordship is right to the  
 7 extent of suggesting it's something that — a hope that  
 8 Birmingham City Council would do. We go a step further  
 9 and say it is something we would do, but bearing in mind  
 10 that this is an order being made against Persons  
 11 Unknown, we equally take the view that it's right that  
 12 an undertaking is recorded to — so that anybody looking  
 13 at the terms of the order will know, without having been  
 14 party to the discussion that we've just had, that  
 15 Birmingham City Council have committed to bringing the  
 16 matter back to court in the event that a solution has  
 17 been found.

18 Of course, this type of protest case is different  
 19 from, for example, those who are protesting about the  
 20 use of oil, because unlike — well, I say this with  
 21 fingers slightly crossed, but I'll say it anyway —  
 22 unlike the situation with the use of oil, there is at  
 23 least the possibility that the underlying problem is  
 24 resolved, so that those protesting against Shell's use  
 25 of oil, for example, will be protesting, one suspects,

1 for many years, or potentially protesting for many years  
2 before any solution is found to the problem as they  
3 perceive it. But this case, because it's linked to what  
4 one hopes is a finite period of dispute, it's  
5 appropriate in those circumstances to both limit it to  
6 six months and also have that express undertaking  
7 contained within the terms of the order.

8 MR JUSTICE CHOUDHURY: Yes, thank you very much.  
9 MR CARR: So we limit our application to six months from  
10 20 May, which is when the current order expires.

11 My Lord, can I then take you to section 6 of our  
12 skeleton argument. I should actually also have made  
13 this point, my Lord, which is I took you to the  
14 provisions in — or the parts of Mr Justice Pepperall's  
15 judgment where he dealt with how service was to be  
16 effected in relation to the application that he heard  
17 and in relation to informing Persons Unknown of the  
18 order that he'd made, and in terms of this application,  
19 what we have done is simply replicate those steps.

20 So the statements — I think it's 3, 4, 5 and  
21 a little bit of 6, from Ms Carter—Hughes, record the  
22 replicated steps where we have done — in relation to  
23 this application and any other steps taken in the court  
24 process, we've done the same as was effectively approved  
25 and ordered by Mr Justice Pepperall on the last

1 occasion.

2 So I was going to then take you to — sorry, I said  
3 section 6, I cannot even read my own writing. Section 6  
4 of our skeleton argument, legal framework.

5 MR JUSTICE CHOUDHURY: Yes.

6 MR CARR: It was just to hopefully give your Lordship some  
7 assistance as to the approach that we say should be  
8 taken in relation to a review application rather than  
9 a first —time—round substantive application. Our case is  
10 that the right approach has been recorded by  
11 Mr Justice Garnham in Rochdale Metropolitan Borough  
12 Council v Persons Unknown, which we have cited, we've  
13 put in the relevant extract at paragraph 36, where he  
14 gives a list of matters which should form the focus of  
15 the court's consideration of an extension application:

16 "... (i) how effective the order has been; (ii)  
17 whether any reasons or grounds for its discharge have  
18 emerged; (iii) whether there is any proper justification  
19 for its continuance; and (iv) whether and on what basis  
20 a further order ought to be made ... full disclosure ...  
21 appropriate evidence, directed towards those questions."

22 We have got that case in the authorities bundle,  
23 my Lord, and if you would turn to page 387 of the  
24 authorities bundle.

25 MR JUSTICE CHOUDHURY: Yes.

1 MR CARR: Just so you have it for your note, my Lord, the  
2 judgment itself begins at page 382, but the extract that  
3 we've just taken you to is at 387. Paragraph 29 is  
4 where he starts a discussion of the relevant legal  
5 principles before — and unless your Lordship wants me  
6 to go through them, I wasn't proposing to go through all  
7 of the authorities that he looks at; I was proposing  
8 just to take you to his conclusions where, at  
9 paragraph 42, under the heading, "The test to be applied  
10 to renewed applications", he considers the authorities  
11 relevant to that point. I'll just flag up paragraph 44  
12 where he cites part of the judgment of  
13 Mr Justice Ritchie in another Persons Unknown case in  
14 which Mr Justice Ritchie had said:

15 "The judges who have previously made the interim  
16 injunctions have made findings justifying the interim  
17 injunctions. It is not the task of the Court on review  
18 to query or undermine those. However, it is vital to  
19 understand why they were made, to read and assimilate  
20 the findings, to understand the sub—strata of the quia  
21 timet, the reasons for the fear of unlawful direct  
22 action."

23 It's for that reason, my Lord, that I need to spend  
24 a little bit of time taking you through the evidence  
25 Mr Justice Pepperall had before him so that you can

1 understand the basis on which he'd reached the  
2 conclusion that he had.

3 MR JUSTICE CHOUDHURY: Sorry, what's — do they need a  
4 break?

5 CLERK OF THE COURT: The transcriber can't hear you clearly  
6 when reading.

7 (Pause)

8 MR CARR: I think it's because the distance between me and  
9 the desk is quite large, so you are probably losing my  
10 voice when I'm bending down, so apologies for that. My  
11 assumption is that you can hear me now, and I was just  
12 taking his Lordship to extracts from the judgment of  
13 Mr Justice Garnham in High Speed Two v Persons Unknown,  
14 and I am about to turn to paragraph 49, because in his  
15 review of the authorities, my Lord, Mr Justice Garnham  
16 found one case that suggested that perhaps a de novo  
17 approach was appropriate, and he introduces it at  
18 paragraph 49 of his judgment. Do you have that,  
19 my Lord?

20 MR JUSTICE CHOUDHURY: Yes.

21 MR CARR: Yes, and you will see he introduces it with the  
22 words, "Perhaps surprisingly [sic]".

23 MR JUSTICE CHOUDHURY: "Unsurprisingly".

24 MR CARR: "Perhaps unsurprisingly", sorry. Yes.  
25 He records there should be:

1 " ... 'close scrutiny of whether there remained  
2 a compelling need for the granting of a further  
3 injunction' and 'in these circumstances, I consider the  
4 case should be heard de novo and so invited submissions  
5 in line with it being a de novo hearing'."

6 He then goes on to conclude, he makes a further  
7 reference to another Persons Unknown case, Test Valley,  
8 in which Her Honour Judge Richardson sitting as a deputy  
9 again went down the route of considering whether there  
10 has been essentially a material change in circumstances  
11 which might justify a discharge (inaudible) might  
12 justify not continuing the order that had previously  
13 been made before he reaches the final conclusions at  
14 paragraph 51, which are the points I have just made that  
15 are included in our skeleton argument.

16 Then he says:  
17 "There will be cases such as Basingstoke [which is  
18 the Kirsty Brimelow decision], where an issue has  
19 emerged, whether at the original hearing or in  
20 preparation for the renewed hearing, which needs to be  
21 addressed expressly at that renewal hearing. Whether  
22 that necessitates an expanded renewal hearing or what  
23 Ms Brimelow calls a de novo hearing will depend on the  
24 facts."

25 What we say is that there might have been an issue

1 which might have required the court to scrutinise with  
2 greater care the question of whether the circumstances  
3 justified a continuation of the current order, and those  
4 were brought to the court's attention in part of the  
5 witness statement of Ms Carter—Hughes that I'll take you  
6 to in a moment, and also the witness statement of  
7 Mr Anthony Cox, the council's solicitor.

8 Because we accept that if we had been on the point  
9 of a deal being concluded which resolved the industrial  
10 dispute, that might justify this court in saying either  
11 you are not going to get the extension at all or that it  
12 should be a very short finite period in order for that  
13 matter to reach its conclusion.

14 But the reality, we say, even before the council  
15 elections came out, the reality is that we are  
16 unfortunately still a long way away from a resolution of  
17 the underlying industrial dispute. I'll come back to  
18 that in a moment, if I can, my Lord, but what I was  
19 proposing to do now was take you to the principal  
20 evidence that was relied on for the purpose of the  
21 ineffective hearing in relation to which  
22 Mr Justice Pepperall was unwell.

23 MR JUSTICE CHOUDHURY: Yes.  
24 MR CARR: That is principally to be found in  
25 Ms Carter—Hughes' third witness statement, which

1 I suspect you may have beginning at page 115.

2 MR JUSTICE CHOUDHURY: Yes, 115, yes.

3 MR CARR: My Lord, I know you have read that statement,  
4 because you told me you had managed to read the list of  
5 documents that we suggested at the beginning of our  
6 outline submissions. But just to summarise essentially  
7 what the points are that we say justify, or in part  
8 justify the continuation of the order.

9 The first point to make, my Lord, is that on  
10 13 February 2026, which was the very day on which we  
11 appeared in front of Mr Justice Pepperall, which led to  
12 him granting the order on 20 February, but on  
13 13 February there was disruption at two of the council's  
14 depots, Perry Barr and Smithfield.

15 My Lord, if you look first of all at page 138 of the  
16 same bundle ...

17 MR JUSTICE CHOUDHURY: Yes.

18 MR CARR: You have got — hopefully you've got a document  
19 that's headed, "Daily operational Sit Rep", the  
20 situation report for 13 February.

21 MR JUSTICE CHOUDHURY: That's right, yes.

22 MR CARR: You will see there that the Smithfield and  
23 Perry Barr depots were both significantly impacted by  
24 the actions of protesters. You will see Smithfield, 70  
25 to 80 protesters and activists pigeon walking in front

1 of the three exits, stopping vehicles from deploying,  
2 and although deployment was effected by 10.10, it's  
3 delayed.

4 Then a similar story, albeit with slightly fewer  
5 protesters at Perry Barr. It's difficult to describe  
6 those actions as anything other than a last hurrah, or  
7 what was thought to be a last hurrah by the protesters.  
8 That point I would suggest is made good if you look at  
9 the video that is included in Ms Carter—Hughes' — as  
10 an exhibit to Ms Carter—Hughes' witness statement.  
11 My Lord, can I just see whether you have had a chance to  
12 look at that video?

13 MR JUSTICE CHOUDHURY: I have looked at some of the still  
14 photographs, but not the video. What page is it on?

15 MR CARR: It's in a separate folder, because it's  
16 an electronic video file. It's in a separate folder  
17 that has hopefully been filed with the court.

18 MR JUSTICE CHOUDHURY: Let me just check.

19 (Pause)

20 Was it uploaded to CE—file?

21 MR CARR: It was sent via a OneDrive link but is available  
22 on a USB, if that's easier for your Lordship to access.

23 (Pause)

24 MR JUSTICE CHOUDHURY: (Inaudible) OneDrive link  
25 (inaudible). It's not recognising my email address.

1 MR CARR: I think the options are to try and persist with  
2 that, option one. Option two is a USB, which  
3 I understand we have, or option three is that one of the  
4 laptops from my team ...

5 MR JUSTICE CHOUDHURY: It's probably easiest just to have a  
6 look at that.

7 (Pause)

8 MR CARR: So, my Lord, hopefully you were able to access the  
9 first of those videos, which is at tab 16, DCH3,  
10 exhibit 04.

11 MR JUSTICE CHOUDHURY: Yes.

12 MR CARR: My Lord, it's a two-minute video, and I think in  
13 the context of understanding the interactions between --  
14 well, the interactions involving the same individuals on  
15 a number of occasions, it does warrant two minutes of  
16 court time to play that.

17 MR JUSTICE CHOUDHURY: Yes, well, I'm doing that.

18 MR CARR: Oh, you are. Right.

19 It says, "On the eve of the injunction", my Lord;  
20 it's actually on the morning, very early in the morning,  
21 and you will see there's a gentleman with a grey mask  
22 around his face, who is the one who is doing the  
23 talking, who is a familiar face in these proceedings.

24 (Pause)

25 My Lord, at approximately 1 minute 9 seconds into

25

1 that video, you may have seen or you may be about to get  
2 to a short exchange between the man with the grey  
3 covering around his face and a truck driver, and the man  
4 with the covered face says:

5 "This may very well be the last time you see us  
6 because there's a High Court hearing today and we expect  
7 the court will probably take a dim view of what we've  
8 been doing and tell us to stop, so this might be the  
9 last time you see us doing this kind of thing again."

10 MR JUSTICE CHOUDHURY: Yes, I have watched that video.

11 MR CARR: Yes. Whilst you have got the laptop there,  
12 my Lord, it's probably worth looking at the other two  
13 short videos. The next one is tab 18, which is  
14 disruption at Coventry on 13 March.

15 MR JUSTICE CHOUDHURY: This is at the Tom White site, isn't  
16 it?

17 MR CARR: Yes, and the significance of that, my Lord, is  
18 Tom White is a separate organisation not covered by the  
19 terms of the order, so we are not suggesting that the  
20 protesters who blocked vehicles on that day were acting  
21 in breach of the terms of Mr Justice Pepperall's order,  
22 but what it demonstrates is that where they can find  
23 a way round the terms of the order, they will do so,  
24 which we say justifies the order being continued in  
25 relation to Birmingham City Council.

26

1 So I'll let your Lordship read that -- read; I'll  
2 let your Lordship watch that, again it's a video of  
3 about 2 minutes and 12 seconds long.

4 (Pause)

5 My Lord, you will have seen from about 22 seconds  
6 into the video, the same individual, he seems to be the  
7 spokesman for the protesters, he approaches the  
8 Tom White driver, he's the one explaining what he's  
9 doing and why.

10 (Pause)

11 Again, it's obviously not directly on point as far  
12 as Birmingham City Council is concerned, but the extent  
13 of the disruption you can see at 1 minute and 8 seconds  
14 into the video where the protesters indicate that all of  
15 Tom White's vehicles are to be stopped, irrespective of  
16 whether they are engaged in waste collection, because  
17 immediately before that comment on the video you will  
18 see there's an articulated vehicle, plainly not a refuse  
19 vehicle, which is stopped and in respect of which the  
20 man with the grey face covering again speaks to the  
21 driver.

22 (Pause)

23 MR JUSTICE CHOUDHURY: Yes.

24 MR CARR: Then one other video, the last video, my Lord,  
25 again back at Coventry on 1 April, and again Tom White's

27

1 was targeted and shut down.

2 (Pause)

3 Again, the same individual with the grey face  
4 covering.

5 (Pause)

6 MR JUSTICE CHOUDHURY: Yes, thank you very much. I have  
7 watched that video as well.

8 MR CARR: Thank you. My Lord, in addition to the gentleman  
9 with the grey face covering, there are at least two  
10 other individuals who are identified by Ms Carter--Hughes  
11 as being regular attenders at these events, there's  
12 a gentleman with a cane, which is dealt with at  
13 paragraph 24.1 of Ms Carter--Hughes' witness statement,  
14 and then there's a gentleman called -- who was given the  
15 name Mr Camouflage, who is seen at two different  
16 locations.

17 The significance of the Coventry evidence, my Lord,  
18 and the evidence of what happened on the morning of the  
19 hearing before Mr Justice Pepperall, the significance of  
20 that evidence is that we say it clearly demonstrates  
21 that if the protesters have an opportunity to resume  
22 blockading activities, it is highly likely that they  
23 will take that opportunity, and that if the court were  
24 to effectively discharge the order, or technically  
25 speaking not renew the order which is due to expire on

28

1 Wednesday, it is, we say, almost inevitable that the  
2 protesters will resume the activities which we have seen  
3 them conducting in Coventry on the two occasions that  
4 we've taken you to in March and April, and the same  
5 activity that was carried out on the morning of the  
6 hearing back on 13 February.

7 So just thinking ahead to the submission that we  
8 will make in a moment, when considering the  
9 effectiveness of the order, we will be saying that the  
10 order has been very effective in terms of its terms, but  
11 where it is capable of being got round by the  
12 protesters, that which they've done at Coventry and that  
13 which they did on 13 February in Birmingham shows the  
14 need for continuing protection from the court.

15 Can I then take you back to Ms Carter—Hughes' third  
16 witness statement, paragraph 32. I have dealt with the  
17 disruption primarily through the exhibits rather than  
18 through the statement itself, my Lord, but for your  
19 note, paragraphs 11 to 16 is where she deals with the  
20 interruption that took place on the day of the hearing  
21 before Mr Justice Pepperall.

22 At paragraphs 17 to 24, she deals with the  
23 disruption in Coventry on 13 March, and paragraph 25  
24 deals with disruption at Coventry City Council in  
25 respect of which I can't place any significance for the

1 purposes of this application, because that was a protest  
2 that took place at council offices rather than  
3 Tom White's vehicles being blocked. But she does cover  
4 the point at paragraph 25.

5 Then at paragraph 26 she deals with the Coventry  
6 disruption on 1 April, before saying at paragraph 30:

7 "The injunction has been effective in Birmingham.  
8 However, the strike action is ongoing with the current  
9 mandate until 9 August ... Unite the Union remain under  
10 the injunction until trial or further order and it is  
11 considered that ... injunction against Persons Unknown  
12 is needed to prevent the Defendants returning to their  
13 previous strategy of standing in for Unite and causing  
14 serious disruption ~..."

15 Just so that your Lordship is aware of the current  
16 state of play in terms of the underlying action against  
17 Unite, the position as far as that's concerned is that  
18 we've recently had a CCMC in front of Mrs Justice Eady  
19 and a trial of that matter is in the process of being  
20 fixed for the early part of next year.

21 The trial window, I do not think the dates have  
22 actually been put in yet, but it's going to be in the  
23 early part of 2027.

24 Ms Greenley tells me the beginning of February is  
25 the likely date of that trial.

1 MR JUSTICE CHOUDHURY: Yes.

2 MR CARR: Just reverting back to Ms Carter—Hughes, you have  
3 probably got it at page 121, my Lord, at paragraph 32  
4 onwards she deals with the procedural matters in terms  
5 of — effectively following the template that  
6 Mr Justice Pepperall set for effecting deemed service.

7 My Lord, unless you want me to, I wasn't proposing  
8 to go through all those paragraphs.

9 MR JUSTICE CHOUDHURY: No, I've read those paragraphs.

10 MR CARR: Right.

11 MR JUSTICE CHOUDHURY: I have read some of the supporting  
12 material about service and so on.

13 MR CARR: You have?

14 MR JUSTICE CHOUDHURY: Yes.

15 MR CARR: In which case I'm right not to trouble you by  
16 going through them now.

17 I then need to take you to the fourth witness  
18 statement of Ms Carter—Hughes, which you've probably got  
19 at page 349.

20 MR JUSTICE CHOUDHURY: I've got it electronically at the  
21 moment.

22 MR CARR: If you've got the latest electronic bundle, you  
23 will have it at 352. If you have the slightly earlier  
24 version, because the index was shorter, you've probably  
25 got it at 349.

1 (Pause)

2 Or if you've got it electronically, my Lord, I don't  
3 know whether you have the tabs open on the right—hand  
4 side, that might be another quicker way of locating it.

5 (Pause)

6 Item 102.

7 (Pause)

8 MR JUSTICE CHOUDHURY: Yes. What paragraph would you like  
9 me to read?

10 MR CARR: Well, again, I'm going to, to some extent, take it  
11 as read, my Lord, in terms of the notification steps,  
12 but I draw it to your attention just to make good the  
13 point I made before, which is about replicating the  
14 service mechanisms that had been approved by  
15 Mr Justice Pepperall, which runs from paragraph 11 right  
16 through to paragraph 28.

17 But the relevant — perhaps the more important  
18 paragraphs for our purposes are paragraphs 29 and 30,  
19 where Ms Carter—Hughes deals in brief with the statement  
20 that the then council leader, Mr Cotton, in his capacity  
21 as leader of the local Labour Group had made indicating  
22 that there was a deal in sight.

23 That was brought to the court's attention, we say,  
24 by the council properly discharging its duty of full and  
25 frank disclosure, because that's plainly a matter which

1 was potentially relevant to the grant of the order, and  
 2 the statement is dated 28 April, Councillor Cotton's  
 3 statement was 27 April, and so we responded quickly by  
 4 including that in Ms Carter—Hughes' statement, and then  
 5 added to it with a more detailed account of where the  
 6 matter sat, in terms of Mr Cox's first statement, which  
 7 is item 106, page 400 in the latest version of the  
 8 electronic bundle, in all probability page 397 of the  
 9 previous electronic version. Again, I'm not sure which  
 10 one your Lordship's working from, I'm going to take you  
 11 to the —

12 MR JUSTICE CHOUDHURY: This is Mr Cox's statement?

13 MR CARR: Mr Cox's first statement, 29 April. My Lord, that  
 14 I think was also on our reading list, and —

15 MR JUSTICE CHOUDHURY: Yes.

16 MR CARR: — again, unless your Lordship wants me to,  
 17 I wasn't proposing to take you through that in any  
 18 detail, and was proposing to summarise it in this way:  
 19 that the essential message to take from Mr Cox's first  
 20 witness statement is, first of all, council elections  
 21 were due on 7 May; secondly, wouldn't know what the  
 22 constitution would be post—7 May; thirdly, even if the  
 23 electorate in Birmingham had returned another Labour  
 24 council, there would still have been a process that was  
 25 required to be executed or gone through before one got

1 to the stage of a deal being done, and at paragraph 17  
 2 he makes this point:

3 "Even if the newly formed Cabinet decided to support  
 4 ... the current proposal made by the Labour Group, it  
 5 could take up to six months for the Council to be in  
 6 a position to make an offer to settle ~... "

7 But nevertheless Mr Cox records the point that  
 8 I made earlier about an undertaking. At paragraph 19,  
 9 he says:

10 "In the light of the uncertainty ... the Council  
 11 would be prepared to provide an undertaking to the Court  
 12 that, if a resolution were reached ... the Council would  
 13 take steps to bring this to the attention of the Court  
 14 with a view to such potential order being discharged."

15 What I propose to do, my Lord, is take you to one  
 16 more witness statement, that's Mr Cox's second witness  
 17 statement, because that brings you up to date in terms  
 18 of where we are on the elections, and with  
 19 your Lordship's permission we would then take a break so  
 20 that the transcribers can step away from their machines  
 21 for a moment.

22 So Mr Cox's second statement —

23 MR JUSTICE CHOUDHURY: Yes.

24 MR CARR: — page 544 of the latest version of the bundle.  
 25 Does your Lordship have that?

1 MR JUSTICE CHOUDHURY: I have got it, not at that page  
 2 number, but —

3 MR CARR: You've got it somewhere.

4 Well, the important section really is "Election  
 5 update", which begins at paragraph 8, and your Lordship  
 6 will have seen from the numbers at paragraph 10 that the  
 7 way forward in terms of forming a new council is far  
 8 from obvious. One looks at the division of the seats  
 9 amongst eight different entities, perhaps seven if you  
 10 count Labour and Co—operative as part of Labour. No  
 11 party is anywhere near having a majority, and Mr Cox  
 12 makes the point in paragraph 11 that even two parties  
 13 combined would not make — would not get you anywhere  
 14 near the 51 required to take control of the council.

15 So we continue in a state of some uncertainty as to  
 16 what will happen in relation to the constitution of the  
 17 council, and the prospect of a resolution of the dispute  
 18 or even a step towards the resolution of the dispute at  
 19 this stage is remote.

20 My Lord, there is a sixth witness statement from  
 21 Ms Carter—Hughes, but again that is one that deals with  
 22 the mechanics of service again, and I don't propose to  
 23 take up any of your time in going to that statement,  
 24 unless you want me to, but it's essentially showing how  
 25 at every stage, right up to today, we have taken similar

1 steps to those which had been outlined by  
 2 Mr Justice Pepperall in order to ensure that Persons  
 3 Unknown as far as possible were made aware of this  
 4 application and the basis on which it's made.

5 That would lead me, after a short break, my Lord, to  
 6 take you to paragraph 36 in our submissions, and the  
 7 reasons why we say that order should be made in the  
 8 terms that I've outlined today, which is an order in  
 9 terms of the application but limited to a period of  
 10 six months.

11 MR JUSTICE CHOUDHURY: Yes. All right, we'll take a short  
 12 break there, and let's resume at 12.10.

13 MR CARR: Thank you.  
 14 (11.58 am)

(A short break)

15 (12.12 pm)

16 MR JUSTICE CHOUDHURY: Yes.

17 MR CARR: My Lord, I was going to take you to paragraph 39  
 18 of our submissions where we are picking up on the points  
 19 made by Mr Justice Garnham as to matters that were  
 20 properly brought for consideration on a renewal  
 21 application.

22 You will see first of all we say the basis for the  
 23 February order remains unchanged. We say that the —  
 24 still have a compelling need for relief and that the  
 25

1 actions of the defendants on the day of the application  
2 served to demonstrate further why it is appropriate to  
3 continue.

4 The relevant circumstances are, first, that the  
5 underlying dispute has not been resolved, and I have  
6 already made submissions about the difficulty for that.  
7 It's the difficulty with regard to finding a solution,  
8 given the current state of play in the council. Unite  
9 mandate to August, blocking at Coventry, then point (c),  
10 has proved effective, which is another one of the points  
11 that Mr Justice Garnham pointed to as being relevant to  
12 your Lordship's considerations.

13 And we say the continuance of the February order is  
14 justified on the basis that as long as the underlying  
15 dispute continues and the May order remains in place,  
16 that's Mrs Justice Dias' order, Unite will be blocked.  
17 Unite has also had a fine of £265,000 imposed on it by  
18 Mrs Justice Jefford and we say that whilst the May 2025  
19 order would prevent disruption by Unite, in the absence  
20 of a parallel order in respect of Persons Unknown, we  
21 will be back in the situation we were in the latter part  
22 of last year, the early part of this year, where the  
23 defendants in these proceedings simply take the place of  
24 the Unite members who are constrained by  
25 Mrs Justice Dias' order and who have already been on the

1 receiving end of a contempt application which was  
2 successful from the council's point of view in front of  
3 Mrs Justice Jefford.

4 At point (e) we say no grounds for discharge have  
5 emerged. Then at (f), the basis of the further order  
6 sought is essentially the same as that which applied,  
7 sought in like terms. And the point I conceded at the  
8 beginning was whilst it may not be appropriate to run to  
9 January 2028, I put a period of six months, my Lord,  
10 I'm not going to ask for that. Again, I'm going to  
11 stick with what I said at the beginning of the hearing,  
12 which is six months, in the hope that we won't need  
13 another review and that the only need to trouble the  
14 court would be potentially to pick up on the undertaking  
15 that Mr Cox has offered, which is in the event of a deal  
16 we would bring the matter back to court with a view to  
17 discharge.

18 We have dealt with the issue of full and frank  
19 disclosure which of course applies as much to renewal  
20 applications as it did to the original application, and  
21 beyond the potential for settlement of the underlying  
22 dispute, which is addressed by Ms Carter—Hughes and  
23 Mr Cox, we have — I don't believe that there are any  
24 matters which, in compliance with our duty of full and  
25 frank disclosure, that we should be bringing to this

1 court which would impact on the issue of whether or not  
2 the order of Mr Justice Pepperall should in fact be  
3 extended as a result of a further order by your Lordship  
4 today.

5 The terms of the order that we sought are pretty  
6 much identical to those which applied when  
7 Mr Justice Pepperall granted his order, save for the  
8 addition of the undertaking that I have been talking  
9 about this morning.

10 There's one further matter, my Lord, which is you  
11 will be aware that essentially at the prompting of  
12 Mr Justice Pepperall, we have also issued an order that  
13 the claim proceed under Part 8, and you will recall from  
14 the last few words of Mr Justice Pepperall's judgment  
15 that he took the view that a case of this sort was  
16 better dealt with under Part 8, given that there would  
17 appear to be no substantive dispute on the facts.

18 My Lord, obviously at the time that we issued  
19 proceedings we couldn't be sure as to what position the  
20 Persons Unknown may take, certainly we took the view our  
21 evidence was strong enough to justify both the issuing  
22 of proceedings and seeking an order, but we did take the  
23 view that it was appropriate to issue under CPR 7. We  
24 don't have any difficulty with the suggestion that it  
25 should more properly proceed under Part 8, save for one

1 point which, again, I — the basis of my duty to the  
2 court, I need to raise with your Lordship, and that is  
3 this: if one looks at Part 8 of the CPR, if  
4 your Lordship has access to a White Book ...

(Pause)

6 MR JUSTICE CHOUDHURY: Yes. Which paragraph?

7 MR CARR: Part 8.1(4). Rule 8.1(4), my Lord, says this:

8 "The court may at any stage order the claim [ie the  
9 Part 8 claim] to continue as if the claimant had not  
10 used the Part 8 procedure and, if it does so, the court  
11 may give any directions it considers appropriate."

12 So, one can imagine circumstances in which that  
13 might be appropriate, my Lord, which is if a party  
14 issues under Part 8, it turns out there is a dispute on  
15 the facts and the court takes a view or the parties take  
16 a view that it should proceed under Part 7.

17 Now, the reason I draw that to your attention,  
18 my Lord, is that, that is something that allows a case  
19 to move from Part 8 to Part 7. Ms Greenley and I have  
20 not been able to identify in the rules a parallel  
21 provision which says a case that's begun under Part 7  
22 may move into Part 8, and our concern was that, given  
23 that the rules have an express provision for moving  
24 a claim — or treating a claim under — treating a claim  
25 as if it's been issued under Part 7 when it's been

1 started under Part 8, that is rule 8.1(4), the absence  
 2 of a parallel rule saying that a Part 7 claim may be  
 3 treated as if it had not been used under Part 7, might  
 4 suggest that there isn't anything in the rules which  
 5 allows the court to do what Mr Justice Pepperall  
 6 suggested.  
 7 We've also looked to see whether there's any  
 8 authority on the point, and the only case that --- and  
 9 it's credit to Ms Greenley, not me, she found the case,  
 10 I didn't --- we managed to find a first instance decision  
 11 by Kelyn Bacon QC sitting as a deputy judge, in which  
 12 a Part 7 claim was allowed to continue as if it had been  
 13 commenced under Part 8. That's the only authority we  
 14 could find, and that case, my Lord --- and it's [2019]  
 15 EWHC 2471 Chancery ---  
 16 MR JUSTICE CHOUDHURY: Sorry, can you give me that reference  
 17 again?  
 18 MR CARR: Yes, [2019] EWHC 2471. We can arrange for a copy  
 19 to be sent to the court, my Lord, if that's the quickest  
 20 way to get it to you. Apologies, it's not in the  
 21 authorities bundle, but we only found it quite recently.  
 22 I say we, Ms Greenley only found it quite recently.  
 23 That was a case which was one under which a firm of  
 24 solicitors sought payment of their fees from their  
 25 client, with whom they had entered into a conditional

1 fee agreement. They began that as a Part 7 claim, and  
 2 the issue turned on the interpretation of a particular  
 3 paragraph of the 1974 Solicitors Act, and Ms Bacon  
 4 reached the conclusion that paragraph 61 --- sorry,  
 5 section 61 of the Solicitors Act 1974 was to be  
 6 construed in such a way that you were not able to bring  
 7 a claim for outstanding fees based on a contentious  
 8 business agreement as a Part 7 claim.  
 9 So they'd, as it were, started from the wrong base,  
 10 and in those circumstances, having looked at  
 11 CPR 67.3(2), the judge accepted that the sort of claim  
 12 that was being brought by (inaudible) against their  
 13 former client was one that must be made under a Part 8  
 14 claim form. In those circumstances she ordered that the  
 15 claim that had been started under Part 7 should continue  
 16 as a Part 8 claim.  
 17 Now, that's obviously a very different factual and  
 18 indeed legal position to ours because there's no legal  
 19 barrier to us starting these proceedings under Part 7,  
 20 but the other point about that first instance judgment  
 21 is that it doesn't pick up on the point that I've made  
 22 to your Lordship, which is there is express provision to  
 23 go from Part 8 to Part 7 contained in CPR 8.1(4), but  
 24 there's no express provision which entitles you to go  
 25 the other way.

1 So (inaudible) may stand as some authority for the  
 2 proposition that you can --- the court does have power,  
 3 sorry, to treat a Part 7 claim as falling --- as being ---  
 4 as if it had been commenced as Part 8, but there's no  
 5 rule that one can point to that says that that is so.  
 6 So from our perspective, my Lord, we are --- and no  
 7 disrespect intended to Mr Justice Pepperall --- we are  
 8 relaxed about whether the case continues under Part 7 or  
 9 under Part 8, and one of the requirements obviously of  
 10 Part 7 that doesn't apply in relation to Part 8 is  
 11 particulars of claim are not required in a Part 8 claim.  
 12 But we've now issued our particulars of claim, so  
 13 there's no particular advantage from that perspective  
 14 about treating it from Part 8 going forward.  
 15 The other rationale that Mr Justice Pepperall  
 16 suggested might warrant the case moving to Part 8 was  
 17 that in his judgment he suggested that the alternative  
 18 to Part 8 was a speedy trial, but that appears to be  
 19 predicated on the basis of the original claim form in  
 20 respect of which the remedy sought was only six months.  
 21 So that rationale has gone.  
 22 As I say, if your Lordship were of the same opinion  
 23 as Mr Justice Pepperall and was satisfied that you did  
 24 have power to treat the claim as if it had been  
 25 commenced as a Part 8 claim, then we don't have

1 difficulty with that. But if your Lordship took the  
 2 view that at least some of the basis upon which  
 3 Mr Justice Pepperall thought a move to Part 8 were  
 4 appropriate has gone away, and/or that there doesn't  
 5 appear to be any power to allow a Part 7 claim to  
 6 continue as a Part 8 claim, then we are content to  
 7 continue within the scope of Part 7.  
 8 On the question of whether or not there should be  
 9 a speedy trial, we would suggest that in circumstances  
 10 in which we are seeking a remedy to 1 January 2028,  
 11 a speedy trial is not required or appropriate.  
 12 Secondly, we would say that, given that there is at  
 13 least some prospect of a resolution of the industrial  
 14 dispute being found at some point, then the matter need  
 15 not be taken to a full trial, if peace and harmony  
 16 breaks out across both Unite and the protesters who are  
 17 identified as defendants in this case.  
 18 So we are --- it sounds like a slightly odd position  
 19 to take in circumstances where we have made  
 20 an application, but we are essentially agnostic about  
 21 whether we proceed under Part 7 or Part 8, but we took  
 22 the view, particularly given that the matter was due to  
 23 go back before Mr Justice Pepperall, that we ought to at  
 24 least take the step of making the application that he  
 25 was urging us to make, but we do it with a degree of

1 agnosticism.  
 2 MR JUSTICE CHOUDHURY: Well, one of the other concerns  
 3 raised by Pepperall J was the possibility of summary  
 4 judgment being entered for the Part 7 procedure. That's  
 5 not of concern?  
 6 MR CARR: No. Is it summary judgment or default judgment?  
 7 MR JUSTICE CHOUDHURY: Default judgment, sorry.  
 8 MR CARR: I think if we turned up on an application for  
 9 default judgment ---  
 10 MR JUSTICE CHOUDHURY: It would be given pretty short  
 11 shrift .  
 12 MR CARR: Exactly, yes.  
 13 So, my Lord, unless there are any additional matters  
 14 I can help you with, those are my submissions in support  
 15 of the application that the order made by  
 16 Mr Justice Pepperall should be extended for a further  
 17 period of six months.  
 18 MR JUSTICE CHOUDHURY: Yes, thank you very much.  
 19 It 's 12.30. I will give my judgment at 2 o'clock on  
 20 this . When we come back, perhaps the microphone could  
 21 be positioned nearer to me, if that's helpful.  
 22 (12.30 pm)  
 23 (The short adjournment)  
 24 (2.00 pm)  
 25 (Proceedings delayed)

1 (2.22 pm)  
 2 MR CARR: My Lord, just before you start giving judgment,  
 3 may I mention one thing.  
 4 MR JUSTICE CHOUDHURY: Yes.  
 5 MR CARR: The transcribers were proposing to transcribe your  
 6 judgment and send it, obviously it's not an approved  
 7 judgment, but it could then be sent to you to make your  
 8 life a little bit more straightforward.  
 9 MR JUSTICE CHOUDHURY: Yes, that would be helpful.  
 10 MR CARR: Thank you.  
 11 DRAFT JUDGMENT – sent for approval  
 12 Housekeeping  
 13 MR JUSTICE CHOUDHURY: Mr Carr, is there anything else you  
 14 want me to deal with at this stage?  
 15 MR CARR: No.  
 16 MR JUSTICE CHOUDHURY: We should just check the terms of the  
 17 order.  
 18 MR CARR: Yes, do that, and add into it --- just we can  
 19 update the order and send it through to the court.  
 20 MR JUSTICE CHOUDHURY: Yes.  
 21 MR CARR: In terms of the undertaking, Ms Greenley has  
 22 drafted the following, which seems to me to do what's  
 23 required: as soon as reasonably practicable to apply to  
 24 the court for further review in the event that agreement  
 25 is reached between the claimant and Unite the Union in

1 respect of the underlying trade dispute.  
 2 MR JUSTICE CHOUDHURY: Yes, that seems to cover it. I think  
 3 that's appropriate.  
 4 MR CARR: So that would be written into the draft order.  
 5 MR JUSTICE CHOUDHURY: Yes.  
 6 MR CARR: In terms of the remaining terms of the draft  
 7 order, we've got to update the schedule 3 witness  
 8 statements, because (inaudible) now ---  
 9 MR JUSTICE CHOUDHURY: Yes.  
 10 MR CARR: --- than we started with.  
 11 Beyond that, my Lord, it ---  
 12 MR JUSTICE CHOUDHURY: Just a change of date.  
 13 MR CARR: Yes, there's some dates to change, but in  
 14 substance it mirrors the order ---  
 15 MR JUSTICE CHOUDHURY: Yes.  
 16 MR CARR: --- and says it can identify provisions set apart  
 17 for dates and what is being served, obviously it 's  
 18 different depending on what stage of the litigation  
 19 you're at, but in terms of the process by which service  
 20 is effected, it 's the same process as had been  
 21 identified by Mr Justice Pepperall.  
 22 MR JUSTICE CHOUDHURY: Yes. The recital (inaudible) upon  
 23 hearing representations from X, that could be removed.  
 24 MR CARR: Yes.  
 25 MR JUSTICE CHOUDHURY: Then injunction, all of the

1 references until 1 January 2028 should be until ---  
 2 MR CARR: Yes.  
 3 MR JUSTICE CHOUDHURY: --- 20 November 2027.  
 4 MR CARR: My Lord, there's perhaps just one other thing  
 5 I ought to mention, and that is this: what we've done,  
 6 when serving the various documents that we have been  
 7 required to do so, is effectively we've built up a huge  
 8 number of notices that are up and running and we were  
 9 proposing, going forward, to limit it to the original  
 10 order and judgment and the additional documents that are  
 11 required under the order that you are making now.  
 12 So, for example, where we have given notification of  
 13 a hearing being listed and that hearing has now taken  
 14 place, there doesn't seem to be much point in keeping  
 15 notices of that ---  
 16 MR JUSTICE CHOUDHURY: Yes.  
 17 MR CARR: --- expired hearing on display, and it makes the  
 18 whole process of monitoring what's in place more  
 19 complicated if you're looking at 20 different notices,  
 20 most of which are now redundant.  
 21 So I'm not sure that that requires any further order  
 22 from the court ---  
 23 MR JUSTICE CHOUDHURY: No.  
 24 MR CARR: --- but I thought that we ought to make it clear  
 25 that that's our position, and that would obviously be on

1 the transcript of today's hearing, if anybody wanted to  
 2 understand what was going on.  
 3 MR JUSTICE CHOUDHURY: Yes. I think it may be helpful,  
 4 rather than deleting them entirely from the council's  
 5 relevant webpage ---  
 6 MR CARR: Oh, we would leave them on the webpage, it's the  
 7 physical documents at the various sites, my Lord, that  
 8 is becoming ---  
 9 MR JUSTICE CHOUDHURY: I think we ---  
 10 MR CARR: Yes, there's no intention to take anything off the  
 11 website, that all remains accessible online if anybody  
 12 wants to see it .  
 13 MR JUSTICE CHOUDHURY: Yes, that makes sense. Actually it  
 14 doesn't require an order from me, but ---  
 15 MR CARR: No. I thought it appropriate to make our position  
 16 clear .  
 17 Then we will perfect that draft in the terms that  
 18 your Lordship's just indicated, changing the date,  
 19 adding in the undertaking, and we will forward that to  
 20 the court this afternoon.  
 21 MR JUSTICE CHOUDHURY: Yes, send that to my clerk, to me.  
 22 You may also have my direct email address.  
 23 MR CARR: I'm sorry?  
 24 MR JUSTICE CHOUDHURY: You may also have my direct email  
 25 address.

1 MR CARR: I'm sure I can find it.  
 2 MR JUSTICE CHOUDHURY: My clerk will give it to you.  
 3 MR CARR: Yes, thank you.  
 4 MR JUSTICE CHOUDHURY: It may speed things up. I will be  
 5 travelling for part of this afternoon, but I'll try and  
 6 deal with it as soon as I can.  
 7 MR CARR: Thank you very much.  
 8 MR JUSTICE CHOUDHURY: Anything else?  
 9 MR CARR: My Lord, no.  
 10 MR JUSTICE CHOUDHURY: Thank you very much to all of you and  
 11 to your team.  
 12 (3.02 pm)  
 13 (The court adjourned)

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