Neutral Citation Number: [2026] EWHC 633 (KB)

Case No: KB-2025-001839

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17th March 2026

Before :

MRS JUSTICE JEFFORD

- -

Between :

BIRMINGHAM CITY COUNCIL **Claimant**

- and -

UNITE THE UNION **Defendant**

- -
- -

Bruce Carr KC and Anna Greenley (instructed by **DLA Piper UK LLP**) for the Claimant
Oliver Segal KC and Madeline Stanley (instructed by **Thompsons Solicitors LLP**) for the Defendant

Hearing dates: 14 October 2025

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Approved Judgment

This judgment was handed down remotely at 10.30am on 17th March 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MRS JUSTICE JEFFORD DBE

MRS JUSTICE JEFFORD:

The application

1. These committal proceedings are concerned with the penalty that should be imposed on the defendant ("Unite") for breach of a prohibitory injunction granted by Mrs Justice Dias on 23 May 2025. There is no dispute that Unite has acted in breach of that injunction and the only issue is that of the appropriate penalty. It is also common ground that the penalty should be a financial one.

Background

2. The background to these proceedings is a long running strike called by Unite and relating to rubbish collection in Birmingham. Birmingham City Council ("BCC") owns and operates 3 depots (Atlas, Lifford Lane and Perry Barr) and employs 401 permanent staff and 348 agency staff to carry out the collection of domestic, trade/ commercial and clinical waste in Birmingham.

3. On 23 May 2025, BCC obtained an interim injunction against Unite which restrained or imposed conditions on picketing and protesting. In support of the application for an injunction BCC relied on a number of witness statements including the witness statement of Richard Brooks who is employed by BCC as Executive Director, Corporate Service and chairs the Strategic Group responsible for BCC's response to the strike and much of the factual background below is taken from his statement and its exhibits. For the avoidance of doubt, this is set out as background and no findings of fact in respect of Mr Brooks' evidence are made.

4. A dispute involving Unite members arose after BCC took the decision in 2024 to remove the role of Grade 3 Waste Recycling Collection Officer ("WRCO") from its operations. Unite balloted its members in November 2024 and 95% voted in favour of industrial action. Discontinuous strike action began in January 2025, alongside a ban on overtime and a work to rule.

5. Picketing of the 3 depots took place between 6 January and 25 February 2025 without significant incident. A further ballot was held on 24 February 2025. It was and is BCC's case that there was a marked change in picketing from that point onwards. Pickets blockaded the gates, there was slow walking on exit roads, and there was interference with deployment of trucks for waste collection.

6. From 1 March 2025, the strike action took place 5 days a week and slow walking in front of trucks continued.

7. Between 11 March and 4 April 2025. the volume of uncollected waste in Birmingham had reached 22,000 tonnes which led to the declaration of a Major Incident in accordance with the Civil Contingencies Act 2004 as a result of public health concerns.

8. On 21 March 2025, BCC's solicitors, DLA Piper, wrote to Unite (Annmarie Kilcline) setting out what were alleged to be examples of unlawful picketing between 25 February and 17 March 2025 and requiring Unite to "cease and desist". Thompsons replied on behalf of Unite on 27 March 2025. Whilst not accepting the allegations

made, Thompsons said that, as a result of the allegations, they were discussing with their client its obligations under the relevant legislation and the Code of Practice on Picketing 2024 and that guidance had been issued by Unite to all those involved in organising and supervising picketing and protesting activities.

9. DLA Piper responded on 3 April 2025. In that letter, they maintained that unlawful conduct had taken place. Amongst the matters complained of were that excessive numbers had attended the pickets and that Unite's picket supervisors had co-ordinated efforts to obstruct the public highway and interfere with BCC's staff and vehicles. Further:

"… there are also legitimate concerns regarding pickets being undertaken away from picketers' normal place of work, including obstructions along the public highway …"

10. DLA Piper wrote again on 9 April 2025 identifying a particular incident, on 29 March 2025, of picketing away from an employee's normal place of work and, on 3 April 2025, of obstruction of vehicles trying to leave the Lifford Lane depot.

11. Thompsons responded to both these letters (by letters dated 9 and 11 April) maintaining their client's legal rights and disputing the versions of events put forward by BCC.

12. In any event, for a short period from 4 to 10 April 2025, BCC deployed its vehicles without interruption. That followed the intention of West Midlands Police to issue a notice under section 14 of the Public Order Act 1986 imposing conditions on public assembly. No notice was in fact issued. Further, after a short period of disruption, pickets complied with police requests to allow the vehicles to be deployed and that continued until 23 April 2025. On 24 April there was further slow walking in front of vehicles.

13. On 25 April 2025, DLA Piper wrote in response to Thompsons letters of 9 and 11 April. They said that BCC was considering its position in respect of injunctive relief and asked for an undertaking, within 7 days, that Unite and its members would comply with the Code of Practice on Picketing. Thompsons responded on 2 May 2025 disputing BCC's version of events, maintaining that Unite had not acted unlawfully, and declining to offer any undertaking.

14. From 25 April to 12 May there were some difficulties with the deployment of vehicles as a consequence of pickets holding lengthy conversations with drivers. That continued until the police again threatened the use of section 14 powers.

15. On 15 May 2025, pickets prevented the deployment of vehicles from the Atlas and Lifford Lane depots. On 16 and 19 May, BCC was unable to deploy wagons from any of the 3 depots. On 19 May 2025, DLA Piper, therefore, wrote again to Thompsons setting out the incidents they said had occurred from 29 March to the present and stating that BCC had been unable to deploy vehicles from any of the depots since 14 May 2025. They made a "final request" for an undertaking, in terms included with the letter, in order to avoid litigation. In summary, the Undertaking included:

    (i) Compliance with the Code of Practice.

(ii) Limiting picketing to defined "Assembly Areas" – these were identified and illustrated for the Atlas, Lifford Lane and Perry Barr depots and were variously to the left and right of, or opposite, the entrances.

(iii) Limiting the number of pickets at each depot to six.

(iv) *"D In respect of any strike action or other industrial action in respect of the Disputes, Unite shall refrain from undertaking any obstruction of the public highways both upon the immediate exit from the depots and along any of the access roads to and from the depots, in particular by slow walking in front of Council vehicles and/or any other harassment or intimidation of Council drivers."*

(v) Refraining from interfering with entry to or egress from the depots and refraining from any intimidation or abuse of agency staff or working employees.

16. On 20 and 21 May, Unite indicated that it would allow a small number of vehicles, driven by particular drivers, to collect waste from specified types of locations such as care homes and schools.

17. By letter dated 21 May 2025, Thompsons maintained that Unite's conduct was lawful. They did not offer the undertaking from Unite that BCC had sought but they offered "assurances" intended to address both picketing and protesting and to avoid recourse to litigation. They said that Unite had taken advice from leading counsel on the relief sought by BCC. No disclosure has been made of that advice which remains privileged. In summary, the assurances were to the effect that picketing would be limited to 6 individuals in hi-vis clothing at the site entrances; they would not seek to blockade the site entrances; and any additional protesting would be confined to the specific "assembly areas" identified in the proposed Undertaking sent on 19 May 2025. The assurances were offered on the basis that they would be implemented by 6.00am on 27 May 2025.

18. DLA Piper responded on 22 May 2025 accepting the assurances in principle but asking for an assurance by 8.00pm on 22 May that Unite would immediately instruct its picket supervisors and members to allow BCC trucks and other vehicles to exit the depots. Thompsons responded the same evening to the effect that Unite would put into effect by 6.00am on 23 May 2025 the assurances relating to the six pickets at the entrances offered in the letter of 21 May. However, they explained why Unite said that it was impracticable to give effect to the assurance as to protesting offered in that letter earlier than 6.00am on 27 May 2025. The same day, DLA Piper accepted the proposal. DLA Piper's letter included the following:

"We therefore require that, as you have indicated, vehicles will be able to pass through the site entrance at each of the three depots where picketing activities have been taking place without interference or delay."

19. In fact, on 23 May 2025, no vehicles were able to be deployed from any of the depots. They were obstructed from leaving the sites by picketers and/or protesters.

20. BCC, therefore, made its application for an injunction and did so in terms that the assurances already offered and accepted should take effect immediately.

The injunction

21. The injunction was granted initially until the return date of 29 May 2025. It was subsequently extended, by consent, until trial or further Order. Additionally, on 24 June 2025, the injunction was amended to include BCC's Smithfields depot which was by then being used as an additional base for collection services. No variation to the terms of the injunction was proposed by the defendant at the time of that amendment.

22. For present purposes, the material terms of the injunction were as follows:

*"**IT IS ORDERED** that .....*

(1) the Defendant whether by itself or by its employees, officers, agents or otherwise howsoever, will take all reasonable steps to ensure that its members or relevant officials:

a. will refrain from picketing activities in connection with its current campaign of industrial action other than at the site entrances to the:
[names of depots]
*(together "**the Depots**")*
And will do so solely for the purpose of peacefully persuading any person to work or abstain from working; and only at the pickets' own place of work .... in accordance with the provisions of section 220 Trade Union & Labour Relations Act 1992

*b. Will, at any one time, have no more than 6 pickets at the entrance to the respective work place(s) of such person or persons picketing ("the **Designated Pickets**") each of whom will wear High-Vis vests or other clothing enabling their identification as one of the Designated Pickets. The Designated Pickets:*

i. Will refrain from seeking to prevent any vehicle from passing through the site entrance to each of the Depots, including by forming a blockade, sitting in the road or slow walking in front of the entrances to or the road leading to each of the Depots;

ii. will limit their activities to explaining their case to those entering and leaving the Depots and peacefully seeking to persuade or asking them not to do so in accordance with the provisions of the Code of Practice on Picketing dated March 2024.

c. refrain from carrying out any protesting activities outside the designated Assembly Areas ("the Assembly Areas") identified in Schedule 3 to this order.

(2) In order to comply with the provisions of paragraph (1) of this Order, the Defendant will take steps including but not limited to:

a. as soon as is reasonably practicable take such steps as are reasonably necessary to ensure that its members are aware of the terms of this order and are informed that they should comply with its terms;

b. taking reasonable steps to inform its members present at the Depots of the requirement to remain within the Assembly Areas."

23. As in the proposed Undertaking, the Assembly Areas were shown on photographs of the Depots in Schedule 3 and were relatively small areas to the left and right of, or opposite, the site entrances.

24. The Order was to be served on the defendant by 24 May 2025.

Breach of the injunction

25. It was and is BCC's case that within days of the granting of the injunction it was breached by the defendant. This led to the making, on 24 July 2025, of the application for the defendant to be found in contempt. The application was supported by the affidavits of Christoper Smiles and Robert Edmondson.

26. In the first instance, BCC's evidence was that very soon after the granting of the injunction, there were actual or threatened breaches of the Order, including but not limited to obstruction of or delaying of vehicles leaving the depots. Letters addressing these issues were sent by DLA Piper to Thompsons on 28 May, 29 May, 3 June, 13 June, 23 June, 24 June, 25 June and 3 July 2025.

27. Additionally, from about 8 July 2025, union members disrupted collections by slow walking in streets in the vicinity of, but away from, the depots and otherwise blocking the passage of the wagons in such locations. It is these later breaches from 8 July 2025 to 21 July 2025 that are expressly relied upon and itemised in BCC's contempt application. They are set out in the First Affidavit of Mr Smiles as follows:

    (i) 8 July 2025 – named agents of Unite (including two Unite organisers) and Unite members engaged in picketing and protesting activities by obstructing the passage of the Council's waste vehicles on roads out of the Atlas and Perry Barr depots.
    (ii) 9 and 10 July 2025 – Unite protestors (including a Unite organiser on 10 July) engaged in picketing and protesting activities by obstructing the passage of the Council's waste vehicles on roads out of the Atlas and Perry Barr depots.
    (iii) 11 July 2025 - Unite protestors (including a named Unite agent) engaged in picketing and protesting activities by obstructing the passage of the Council's waste vehicles in the road out of the Perry Barr depot.
    (iv) 14 July 2025 - Unite protestors (including named agents of Unite and a Unite organiser) engaged in picketing and protesting activities by obstructing the Council's waste vehicles in roads to Perry Barr and Lifford Lane depots and abused Council employees who were travelling in vans.
    (v) 15, 16 and 17 July 2025 – Unite protestors (including named agents of Unite) obstructed the passage of waste vehicles at locations close to the Perry Barr and Atlas depots.
    (vi) 18 July 2025 – Unite protestors (including named agents of Unite and a Unite organiser) engaged in picketing and protesting activities by obstructing the Council's waste vehicles near the Atlas depot and on the road to the Atlas depot where two named Unite agents (including a Unite organiser) were arrested for obstructing the highway. In addition, Unite agents and a Unite employee engaged in picketing and protesting activities by obstructing waste vehicles on Perry Barr depot waste collection routes in Wilford Grove, near Perry Barr, and Rocky Lane including assaulting and/or abusing refuse workers.
    (vii) 21 July 2025 – Unite protestors engaged in picketing and protesting activities by obstructing the Council's waste vehicles in the roads to the Atlas depot.

28. Mr Smiles said further that on each occasion Council employees or agents have been subjected to verbal abuse or intimidation. In his affidavit, he then set out in some detail

what was alleged to have happened in each of these incidents much of this supported by photographic and video evidence from CCTV. Mr Smiles stated that his evidence was derived from his own personal knowledge and from situation reports or emails from Robert Edmondson and the Service Managers. In his oral evidence, he said that if there was an issue, a driver would usually speak to the Service Manager who would relay the information to him. He had refreshed his memory from these sources but not exhibited them.

29. In a letter dated 9 July 2025, DLA Piper repeated the allegations of previous breaches of the injunction. They then set out in detail what was said to have happened on 8 and 9 July. On each day protestors had stood outside the Assembly Areas. They then walked slowly in front of vehicles that had been deployed from the depots and did the same in neighbouring roads. Cars with blue badges were also parked on double yellow lines outside the depots obstructing manoeuvres out of the depots and facilitating the slow walking. It was estimated that the delays had meant that on each day 20% of collection rounds could not be completed.

30. Thompsons replied on 15 July 2025. In respect of the incidents on 8 and 9 July 2025, Thompsons said that they had had difficulty in taking instructions because of the Unite policy conference that had taken place the previous week and that their investigations continued. However, the letter also contained the following:

"We understand that the incidents which it is alleged occurred took place away from depots. Is it your position that conduct of this nature would constitute a beach of the order notwithstanding where it occurred? We do not think that can be the case as effectively you would be asserting that Unite members are not entitled to protest anywhere else in the United Kingdom which is oppressive and constitutes a disproportionate interference with the right to freedom of assembly and expression."

31. DLA Piper responded on 16 July 2025 reiterating that they did consider the conduct on 8 and 9 July to amount to breaches of the injunction. They pointed out that Unite had offered to restrict protesting to the designated areas and that it was, therefore, clear that picketing or protesting could not take place elsewhere.

32. Thompsons replied on 21 July 2025. The letter included the following:

"Turning to the substantive issues set out in your last letter, we do not consider that the order from the court limits all protest areas, wherever that protest may occur, to designated Assembly Areas. If that was the case then the workers currently in dispute with your client would have no right to attend a rally outside Birmingham Town Hall or indeed in Parliament Square. .... We trust you would acknowledge how oppressive such an order would be and is clearly not what was intended when it was made. The requirement to stay in the Assembly Areas is related to when the protest takes place at the depot. It does not curtail the right to go and stand (for example) at Parliament Square and we cannot believe your client would seriously think otherwise."

33. The interpretation, therefore, placed on the injunction was that the restriction of protesting to the Assembly Areas only applied to protesting at locations within or adjacent to the depots but not somewhere, undefined, away from the depots. I return to the evidence in this respect below. It was against this background and the defendant's interpretation of the terms of the injunction that the contempt application was made.

The Claimant's evidence

34. In addition to the affidavit of Mr Smiles in support of the application, he made a subsequent witness statement in support of an application for an urgent hearing in which he set out evidence of further breaches between 22 and 24 July, on 25 July, and from 28 to 30 July 2025. Mr Smiles' evidence was that between 22 and 24 July and between 28 and 30 July, protestors blocked vehicles in the area of the Atlas depot blocking turns into Redfern Road and Wharfdale Road. The evidence in relation to 22 to 24 July and 28 to 30 July was not challenged but I place no reliance on the so-called Megapicket on 25 July which Unite says was organised by a third party.

35. The defendant submits, and I agree, that the court should confine itself to the contempt alleged in the application notice. The contempt alleged is that the defendant by its employees, agents or officials knowingly committed the conduct prohibited by the injunction and/or knowingly failed to take reasonable steps to prevent the carrying out of the identified conduct as set out in paragraph 27 above. Mr Segal KC makes the point that Mr Smiles' witness statement which addresses subsequent incidents was made in respect of a directions hearing and not the contempt application. Whilst that is right in principle so far as evidence of the contempt is concerned, the evidence as to what happened after the application was made must be relevant to issues as to why the breaches occurred and thus to sanction. That much is accepted by the defendant.

36. Mr Smiles made a second affidavit dated 17 September 2026 which confirmed the content of his witness statement. To that extent, the defendant makes the same submission as to its relevance. Mr Smiles also identified an incident on 11 September 2025 when two vehicles blocked Markby Road and on 17 September 2025 when the junction of Redfern Road and Wharfdale Road was blocked, as it had been before. I address these below.

37. Mr Smiles provided a series of maps the purpose of which was to illustrate the distances from the depots at which the incidents relied on took place. In summary, the maps demonstrated that most of the incidents of breach had taken place within 1km of the depots and more commonly within 500m of the depots. Mr Smiles was cross-examined in relation to a small number of these maps and the detail of what was shown. He was, in particular, taken to instances in which, as he agreed, slow walking had started away from the entrances.

The Defendant's evidence

38. In response to the application, the defendant served two affidavits of Annmarie Kilcline and an affidavit of Luke Dalton both of whom gave oral evidence to this court. Unite accepted that it had breached the injunction (albeit not on every occasion relied on by BCC) but, in relation to the protests outside the Assembly Areas, the defendant's position was that it had thought that, while the injunction prohibited interfering with the deployment of vehicles from the depots and as they drove along the access roads, it did not prohibit protesting a little way away. However, advice was taken from leading counsel on 25 July 2025 and the defendant now accepted that blocking of vehicles away from the immediate vicinity of the depots was a breach of the injunction.

39. Ms Kilcline is the Unite Regional Secretary for the West Midlands and has had significant involvement in the dispute and the negotiations that have taken place. In her affidavit, she accepted that Unite had breached the court's order, apologised unreservedly, and recognised that it was a very serious thing to breach a court order. Her evidence was that there had been no breaches since 31 July 2025, and she assured the court that Unite would comply with the Order going forward.

40. Ms Kilcline's evidence as to the steps taken by Unite both after the making of the Order and after the making of the contempt application are important and I set this out in some detail.

41. Following the making of the interim injunction, Unite circulated guidance to its members during the evening of 23 May 2025. The guidance was sent by email from Unite's Legal Department to the membership generally. The guidance explained the nature of an injunction and that failure to comply was a contempt of court. It set out the terms of the Order in respect of picketing and then, in relation to protesting, continued:

"All those attending to protest in relation to the dispute who are not one of the 6 Designated Pickets must protest in the Assembly Areas (which Unite will direct you to) and are not entitled to engage in protesting anywhere else on the depot premises. Protestors are therefore not allowed in any circumstances to seek to block, prevent or interfere with any vehicle leaving or entering the depot including any slow walk in front of any vehicle." (my emphasis).

42. The guidance was, therefore, inaccurate in that it stated that the terms of the injunction applied only to protesting on the depot premises when no such wording appeared in the injunction. In her affidavit, Ms Kilcline repeated the argument that, read literally, the Order would prohibit protest anywhere including outside Birmingham Town Hall or Parliament and said:

"Unite were of the view that this could not be what the court Order meant. In these circumstances, Unite understood this Order related only to the immediate vicinity of the depots named in paragraph 1(a) of the Order."

That is the explanation offered for the wording in the guidance which I have underlined above. This appears, therefore, to have been a view formed in the hours immediately following the granting of the injunction, and it might be inferred with the involvement of the union's legal department. As Mr Carr KC submitted, Ms Kilcline's affidavit merely asserted what was alleged to be Unite's understanding of the scope of the injunction but there was no detail provided as to the source of that understanding or how that view was reached.

43. In any case, the understanding Ms Kilcline set out in her affidavit was not actually reflected in the wording of the guidance which made no reference to not protesting "in the immediate vicinity" of the depots. Nor did it reflect the express undertaking that had been sought in respect of access roads.

44. The guidance note went on to implore compliance with the Order but also to state that *"Unite is extremely aggrieved that BCC would injunct its own employees from engaging in lawful picketing and protest activity …"* and to assure Unite members that the fight would continue. The wording was inappropriate as the injunction would not have been granted, and in due course continued, in respect of lawful action and the terms of the Order largely reflected the "assurances" that had been offered by the union itself.

45. The guidance note was re-issued on 25 June 2025. The guidance in respect of protesting was in like terms to that sent on 23 May 2025 but this time provided the Orders illustrating the Assembly Areas and, at the end of the passage quoted above, added *"[Protestors] must stay within the Assembly Areas."*

46. In relation to the incidents which were itemised in the contempt application, Ms Kilcline also said that, at the time those incidents occurred, Unite did not believe that the Order imposed obligations on Unite other than in relation to activities in the immediate vicinity of the depots and that Unite instructed their solicitors to explain that to BCC. Without in any way going behind privilege, it, therefore, appears that the interpretation of the Order set out in the inter-solicitor correspondence came from Unite, was not the product of legal advice, and that no independent legal advice was taken urgently when the correspondence from DLA Piper raising this issue began.

47. In cross-examination, Ms Kilcline was asked who was meant by Unite who held the belief she had referred to. Her response was that at the time from "our perspective" the Order was not debarring protesting away from the depots. That did not identify the source of the belief or any consideration of the accuracy of that belief. Ms Kilcline's evidence was that the union operated on a bottom up rather than top down basis and that it was the members who determined what to do. She had not been involved in any decision about slow walking away from the depots and she did not know who had taken any such decision although she did not believe it was a decision taken and then "trickled down" to the membership.

48. Ms Kilcline also recognised that the Order was not, as she put it, crystal clear and that she was not legally qualified. What that evidence emphasised was the importance of taking legal advice but, as I have said, on her evidence it appeared to be the union that was driving the interpretation of the Order without such advice. Legal advice was taken from leading counsel only after the contempt application was served. That advice was taken first on Friday 25 July 2025 and, without waiving privilege, in light of that advice Unite accepted, from the time of Ms Kilcline's first affidavit, that the Order encompassed protesting which blocked vehicles away from the immediate vicinity of the depots.

49. Subsequently, and prior to the hearing, a note of counsel's advice was disclosed and included in the bundle before the court. It was not something Ms Kilcline had seen at the time and it is not clear who was involved in the decision to take advice from leading counsel or in the taking of that advice. The note said that there were two conceivable defences. The first, foreshadowed in correspondence, related to the scope of the order:

> *"Namely that you read into the words of the order in the depots, or immediately outside the depots, as opposed to a little further down the road, which is where we've been protesting."*

Counsel's view was that the prospect of succeeding in that argument was zero.

50. The second potential argument was described as a halfway house and was:

"… to acknowledge now that that line of argument doesn't work. But to maintain that we believed, or at least the relevant people believed it was a loophole, as it were in the order and fall on our swords with grovelling apologies for having done so for some weeks."

51. Ms Kilcline's evidence then was that, on Thursday 31 July 2025, Unite representatives attended each of the depots, explained that contempt proceedings had been issued and "reiterated the terms of the Order". She was told that a briefing was given at the Atlas depot on 31 July and further briefings given at each site on 1 August. It is wholly unclear what reiterating the terms of the Order meant or what the content of the briefings was but, in fairness to Ms Kilcline, I assume that the intention, at least, was that the meaning of the Order as now advised by leading counsel was conveyed to those present.

52. On Monday 4 August, in light of the advice of leading counsel, Ms Kilcline said that further guidance was circulated to members. She says that that guidance was circulated by printed copies being given to Unite's representatives and these representatives then read the guidance out at the picket line at each depot. The previous guidance notes had been circulated to an email list of members and Ms Kilcline did not offer any explanation for why a different approach was taken with this revised guidance.

53. The revised guidance referred to the contempt proceedings and said that Unite was considering the evidence from BCC with its legal team and:

"In the meantime and until further notice, given the nature of these proceedings, Unite asks that all members refrain from <u>any</u> protesting activities on any route in which a refuse vehicle is driving or undertaking collection duties in and around Birmingham and not interfere with, or slow down any vehicle."

54. Under the heading "Protesting", the first paragraph now said:

"All those attending to protest in relation to the dispute who are not one of the 6 Designated Pickets must protest in the Assembly Areas (which Unite will direct you to) and are not entitled to engage in protesting anywhere else."

55. This guidance was superseded by guidance issued on 1 September 2025 which stated that the interim guidance issued on 4 August 2025 was now permanent.

56. In her second affidavit, Ms Kilcline did not respond to Mr Smiles' evidence of breaches between 22 and 30 July on the grounds that they did not form part of the contempt application. She did address the incidents alleged to have occurred on 11 and 17 September. I shall deal with these briefly. The incident on 11 September took place about 7.8km from the Atlas Depot and involved a waste vehicle being blocked by two cars. Mr Smiles was not able to identify anyone involved and Ms Kilcline's evidence, having made inquiries, was, in short, that Unite knew nothing about it. This evidence was not challenged. On 17 September, on BCC's case, there was a blockade of waste vehicles on Redfern Road and Wharfdale Road (near the Atlas Depot). Again Ms

Kilcline, having made inquiries, said that this had nothing to do with Unite and this evidence was not challenged. Further, on social media, the Birmingham Socialist Party had claimed responsibility for this action. In both instances, it follows that the court cannot be sure that they amounted to any breach of the injunction by the defendant.

57. Luke Dalton is a Driver Team Leader at the Perry Barr depot, a Unite representative, and has been a picket supervisor at the depot since March 2025. He made an affidavit principally to address what had happened on 18 July 2025 at Wilford Grove, a cul de sac, and to respond to Mr Smiles' evidence about abusive behaviour and an alleged assault. Mr Dalton said that he had attended to exercise his right to protest and to explain the union position to contractors from Tom White, an agency providing crew to carry out waste collections, which he regarded as strike breaking. Mr Dalton said:

"At the time, I did not believe that what happened in Wilford Grove (which was not in the vicinity of one of the depots) was covered by the terms of the Order, but I now understand that this belief was incorrect."

58. In cross-examination, Mr Dalton agreed that before the injunction was granted, the tactic of slow walking, to delay collection, had been spreading away from the depots. After the injunction, he did not know whether or when anyone had told members to adopt this tactic of protesting away from the depots.

59. It is notable that the expression "in the vicinity of the depots" was not one that appeared in the written guidance issued to members. In re-examination, Mr Dalton said that his understanding was that they could not stop anything on Holford Drive (where the depot is situated) but could elsewhere. Similarly, that is not the wording of the guidance. At highest, therefore, the court can infer that union members had not taken the guidance literally – that is as only prohibiting protesting on the depot premises – and had placed some other interpretation on the terms of the Order after they had seen it. It does not assist as to whether this was a genuine belief in its meaning or an interpretation to get around the injunction. It does assist in making it clear that members understood that the injunction was not simply intended to prevent protests stopping vehicles exiting the depots but did not go further. It highlights the failure of the union to make clear to members the proper scope of injunction and, once it became apparent that there was any doubt as to its scope, to issue appropriate guidance immediately or, at the very least, take legal advice and then issue appropriate guidance immediately.

Further aspects of the evidence

60. The evidence before the Court also included a series of photographs and videos which showed the nature of the interference with wagons in streets around the depots. It is not practicable to describe them in the course of this judgment but they do show graphically the disruption being caused and, putting it mildly, the difficult and unpleasant situation in which those trying to collect rubbish found themselves.

61. The evidence was not presented in a manner which made it easy to identify in each instance which element of the injunction was said to have been breached, and indeed admitted to have been breached. I, therefore, asked the parties to identify which actions amounted to breaches of different elements of the injunction, that is, a breach of sub-paragraph 1(a), (b) or (c) of the injunction. It seemed to me that that was potentially

relevant to issues of culpability and corresponding mitigation to which I refer below. There could be no question that breaches of the prohibitions in sub-paragraphs (a) and (b) would have been obvious to defendant and ought to have been obvious to its members. The position was, at least on the defendant's case, different in relation to sub-paragraph (c).

62. BCC had drawn up a table, provided to the court on the day of the hearing, that separated out all of the breaches which were drawn together in the application as set out above. This resulted in the listing of nearly 30 distinct incidents. However, only five incidents at the Atlas and Perry Barr Depots were said to have taken place at the depots themselves. Of these four involved protestors moving outside the Assembly Areas and slow walking and/or blocking the passage of vehicles. Mr Segal KC explained that his cross-examination of Mr Smiles sought to interrogate the extent to which his evidence was hearsay and the extent to which the court could safely rely on his evidence of the locations of specific incidents and a number of the five incidents said to be at the depots were, therefore, the subject of cross-examination.

63. Only one, on 10 July 2025 at Perry Barr, involved designated pickets (rather than other protestors) standing in the middle of the road. The defendant points out that there is no evidence that these pickets were blocking vehicles and that Mr Smiles agreed, in cross-examination, that there were no photographs or videos of individuals blocking vehicles at the depots after 8 July 2025.

64. Of the four incidents, one incident on 8 July 2025 was accepted by Mr Smiles, and indeed described in his evidence, as occurring after the vehicle had been deployed from the depot rather than "at the depot". A similar point can be made in relation to the incident on 9 July 2025 "at" the Atlas Depot. Despite that, it was and remains the defendant's case that some breaches occurred at the depots.

65. In response to the court's further request, BCC then served a "List of Breaches" which identified the incidents on all days referred to in the application as involving a breach of paragraph 1(a) as well as breaches of paragraph 1(c). On two occasions there was said to be a breach of paragraph 1(b). That does not square with the earlier table. To take one example, Mr Smiles evidence in relation to 8 July 2025 does not identify any breaches by pickets and only refers to protestors but the List of Breaches states that there was a breach of paragraph 1(a) which is solely concerned with pickets. In its response, the defendant submits, rightly in my view, that BCC has elided picketing and protesting activities.

66. That was disputed by BCC in its Additional Note in response on the basis that if vehicles were blocked it was immaterial whether that was picketing or protesting. That, in my view, misses the point of the court's request which related to the specific and distinct provisions of the Order. However, taking the application as a whole, what these further exchanges made clear is that the real issue on this application is the obstruction of vehicles away from the depots, even if a short distance away.

67. On that issue, therefore, I accept Mr Segal's submission that the incidents largely took place away from the depots and that, although there were admitted breaches of the injunction at the depots, there was no instance of blocking of vehicles at the depots. That, it was submitted, would be relevant if the court accepted, as I will come to, that

there was or may have been a genuine misunderstanding on the part of the defendant as to the scope of the injunction.

The law

68. It is common ground that the imposition of a financial penalty is sufficient at this stage. Mr Carr KC on behalf of BCC submits that the court should have regard to the importance of the sanction for breach in terms of upholding the authority of the court and ensuring future compliance and that, in fixing the appropriate sanction, the court should have regard to the level of culpability and harm as it would in a criminal case:

(i) In *JSC BTA Bank v Solodchenko (No. 2)* [2011] EWCA Civ 1241 at [45] Jackson LJ said:
"The sentence for contempt in the form of non-compliance with a court order performs a number of functions. First, it upholds the authority of the court by punishing the contemnor and deterring others. Such punishment has nothing to do with the dignity of the court and everything to do with the public interest that court orders should be obeyed. ...."

(ii) In *Elliott Cuciurean v (1) Secretary of State for Transport and (2) High Speed Two (HS2) Limited* [2021] EWCA Civ 257 at [17], Warby LJ made the similar point in the following terms:
"In line with general principles, any sanction must be just and proportionate and not excessive. The purposes of sanction in cases of civil contempt are, however, different from those of criminal sentencing. They include punishment and rehabilitation, but an important aspect of the harm is the breach of the Court's order. An important objective of the sanction is to ensure future compliance with that order: Willoughby v Solihull Metropolitan Borough Council [2013] EWCA Civ 699 [20] (Pitchford LJ). This would explain why the laws and guidelines that govern criminal sentencing do not apply directly, but only by analogy, and then with appropriate caution ..."

(iii) In *HM Attorney General v Crosland* [2021] UKSC 15 at **[**44], the court recommended an approach analogous to that in criminal cases where the Sentencing Guidelines require the court to assess the seriousness of the conduct by reference to the offender's culpability and the harm caused, intended or likely to be caused.

69. Relying on *Crystal Mews v Metterick* [2006] EWHC 3087 (Ch) at [13], as cited in the first instance decision in *JSC BTA Bank v Solodchenko (No 2)* [2010] EWHC 2843 (Ch) at [18]-[19], Mr Segal KC identified as relevant factors (i) whether the breach was deliberate or unintentional, (ii) the degree of culpability; (iii) whether the contemnor has appreciated the seriousness of the breach; and (iv) whether the contemnor has cooperated. All of these matters go in some way to the assessment of culpability and are similarly likely to be relevant to deterrence and risk of further breach. They are not contentious. In *Solodchenko*, Proudman J added that whether the contemnor had made a sincere apology was a relevant factor. Further she said that whether the contemnor had admitted the breach – the equivalent of a guilty plea – and how early that admission had been made were relevant factors. That approach was endorsed by the Supreme Court in *Crosland*.

70. The defendant also emphasises that the standard of proof for contested issues of fact relevant to sentence is the criminal standard – see *Aspect Capital Ltd v Christensen* [2010] EWHC 744 (Ch) at [7]-[8]; *JSC BTA Bank v Solodchenko (No 2)* [2010] EWHC 2843 (Ch) at [25]-[26].

The parties' submissions

71. As to upholding the authority of the court and ensuring compliance with its orders, Mr Carr KC points out that many of the breaches were patent breaches and that no explanation or mitigation has been offered in respect of them. He asks the court to reject the argument that breaches committed by Unite members in protesting away from the depots were committed because of a genuine misunderstanding as to the scope of the injunction. By the same token, he invites the court to doubt the sincerity of the apology that has been given.

72. BCC relies on the same matters as going to culpability which it is submitted should be regarded as high. The harm, it is submitted, is more to the residents of Birmingham enduring the impact of the strike and the disruption caused by the breaches of the injunction.

73. On behalf of defendant, Mr Segal KC says, firstly, that Unite apologises unreservedly to the Court and that is set out in the affidavit of Ms Kilcline. It is submitted that the sincerity of that apology is demonstrated by the steps that Unite officials took to ensure that there were no further breaches.

74. As I have already indicated, it is the defendant's case, which I accept, that the relevant breaches of the injunction are those set out in the committal application, although it is recognised that subsequent breaches may be relevant to sanction.

75. Unite accepts the breaches alleged occurred and that waste vehicles were obstructed, the vast majority of those obstructions being caused by protesting activities outside the Assembly Areas and some way away and, as I have already said, I accept that that is the position on the evidence.

76. Some relevance is attached to the fact that the union cannot control the actions of all its individual members. Mr Segal KC submitted that the evidence shows that there was no decision from on high, so to speak, to move protests from the depots to locations away from the depot and that was a tactic alighted upon by members like Mr Dalton. Mr Segal submits that the Claimant's evidence does not focus on the extent to which Unite took all reasonable steps to ensure compliance are required by the Order, but the extent of the steps taken is only relevant to sanction since the breaches are admitted.

77. Unite does not accept all the factual allegations made by BCC. It is not accepted that there has been abuse and intimidation and, even if there was such conduct by individuals, Unite says that it was neither orchestrated nor encouraged by the union. Without judging the merits of the industrial action, the court is also asked to take into account, as a mitigating factor, the strength of feeling amongst union members about the industrial action and its causes.

78. For completeness I note that Unite denied the incidents of physical assault which BCC alleged took place on 18 July 2025 and in which it was alleged that one contractor was grabbed by the arm and a member of a crew was pushed. Mr Carr KC confirmed that BCC no longer relies on these allegations of assault and accepts that they could not be proved to the criminal standard.

79. Mr Segal KC submits that the defendant's admission – the equivalent of a guilty plea – was made at the first opportunity in Ms Kilcline's affidavit served on 10 September. He, therefore, equates the first opportunity with, as it is put, the first opportunity to serve evidence on the contempt application.

80. Mr Segal KC also submits, critically it is said, that this is not a case where a severe sanction is needed to ensure future compliance with the injunction. That is demonstrated by the acceptance of the breaches and the fact that there had been no further breaches since at least 31 July 2025.

81. At the heart of Mr Segal's submissions, however, is Unite's case that the breaches, in terms of protests away from the Assembly Areas between 8 and 21 July 2025, were unintentional because they were the result of a genuine misunderstanding of the scope of the injunction. That, of course, if it is accepted, also goes to the issue of the need for any sanction to ensure future compliance.

82. As to the amount of any fine, the parties were able to refer the court to only one recent decision in *Secretary of State for Justice v Prison Officers Association* [2019] EWHC 3553 (QB), a decision of the Divisional Court. Put shortly, section 127 of the Criminal Justice and Public Order Act 1994 prohibits inducing a prison officer to take industrial action. In 2017, the Secretary of State obtained a permanent injunction restraining the Prison Officers' Association ("the POA") from inducing, authorising or supporting strike action. The Secretary of State subsequently applied for a penalty for civil contempt on the basis that the POA had both induced national strike action and supported industrial action by officers at a prison in Liverpool. The POA made a cross-application and raised extensive arguments as to why the injunction should not have been granted and should be set aside or varied, all of which arguments were dismissed by the Divisional Court.

83. Turning to sanction, the court found both breaches to be serious and deliberate. Although no actual harm had been caused, the potential risks and consequences were grave. The court continued:

"141 In light of the deliberate decision to take strike action in full knowledge of the injunction and on the purported basis that it was out of options and forced to do so, it is difficult to give much credence to apologies or expressions of remorse offered by the POA for its unlawful conduct. It appears to us to have behaved as if it is above the law, and literally to have shown contempt for solemn court orders with penal notices.

...

143 Having regard to all of the matters set out above, particularly the established history of threats and interim injunctions having to be sought, we are satisfied that this is not a case for a last warning as [counsel] submits. The POA has had many warnings, not least the injunction itself, made following a contested trial. It has shown itself quite

unwilling to respond to serial court orders. Nor in light of its deliberate defiance, do we regard the public humiliation attached to this judgement as sufficient penalty by itself. In our judgement, the culpability of the POA for these breaches and their potential harm is high and warrants the imposition of an appropriate fine."

84. Submissions were made to the court on the financial position of the POA. Its general fund at year ending December 2018 was a little over £3 million and its balance sheet showed assets of £4 million. That showed that the POA could meet a fine without a surcharge on its members. The court imposed fines of £95k for the first breach and £115k for the second.

85. It seems to me that this case is, on its facts, very different from the present and that, if anything, the fines imposed are indicative of fines for individual and very distinct breaches of an injunction at the top of the range for a comparatively small union.

86. Mr Segal KC submits that this case assists the court to some extent in that a contrast can be drawn here with Unite's genuine and unreserved apology to the court and the complete absence of any history of previous contempt. Mr Carr KC, on the other hand, emphasises that the financial position of Unite is very different. The POA was, as he put it, a minnow of a union. In contrast, Unite's membership numbers around £1.2 million and its annual return for the period to end December 2019 showed income of £219 million, including membership income of £171 million, and expenditure of £177 million.

87. Mr Carr KC did not seek to put a figure on the potential fine but suggested that individual breaches might attract a fine of £50k-£100k. He recognised that if that was multiplied up by the number of breaches, that would result in a fine that was disproportionate.

88. Mr Segal KC submitted that if there had been a single breach, the court would impose no sanction or a nominal fine (say £3k). Given the number of breaches, and on the facts of this case, he submitted that a fine in the region of £50k would be appropriate but that anything more would be disproportionate.

Discussion

89. The background to the issue of the injunction was one in which BCC's complaint and concern was that vehicles were being prevented from leaving the depots or interfered with and delayed when leaving the depots. Although Mr Segal KC is right to say that the correspondence focussed on what was happening at the entrances to the depots and on the access roads, that reflected where the picketing and protests were then occurring. The matter was dealt with by external solicitors and leading counsel's advice was also taken. I cannot accept that when Unite offered an assurance that protesting would be limited to the Assembly Areas, anyone giving instructions for that assurance to be offered would have intended that the protests could just be moved a few hundred metres away from the depots so that the vehicles that had left the depots could then be obstructed and delayed at a different point in their route. It would make a nonsense of the Order if, once the wagons had exited the depots, a few yards down the road their progress could be obstructed by protests outside the designated Assembly Areas. It

cannot realistically be suggested that that was what was being offered by Unite's assurances or was the scope of the injunction or that anyone genuinely thought that that was what was intended by the restriction of protesting to the Assembly Areas.

90. Even without knowledge of the background, it would have been obvious to anyone giving the Order a reasonable reading that the purpose of the injunction was to stop picketing and protesting impeding the collection of rubbish and it is equally obvious that that involves more than the wagons simply being able to leave the depots.

91. I do not accept the evidence of Ms Kilcline as to what Unite thought the injunction meant, at the time it was made, in terms of protesting in the immediate vicinity of the depots or at the time of the breaches. I do not consider that that evidence was dishonest. Rather it seems to me far more likely that it was not an issue that was in anyone's mind at the time the injunction was made; the immediate vicinity of the depots was where the protests were being conducted and no other location was being thought about; and Ms Kilcline's evidence is an ex post facto justification of what then happened. If I am wrong about that, Mr Dalton's evidence was that slow walking had already taken place and was spreading away from the depots before the injunction was granted and that would make it all the clearer that the injunction was intended to prohibit such action by confining protesting to the Assembly Areas.

92. In any case, Ms Kilcline's understanding of the Order was not reflected in the terms of the guidance sent to members which referred only to not protesting anywhere else on the depot premises. Mr Segal KC submitted that that is contemporaneous evidence that supports the defendant's case because it illustrates what Unite thought the injunction meant and it is what members were told it meant. As to what Unite thought the injunction meant, that submission reads too much into the terms of the guidance. It seems to me far more likely that it simply reflected where protests had been taking place to date. As I have already said, it is to my mind clear that, at the time the injunction was granted, either no-one had thought about protesting a little way from the depots or along collection routes or no-one thought that that was permitted by an injunction that confined protests to the Assembly Areas. No such protesting took place for over a month. That militates strongly against the argument that the guidance led members to believe that they could protest outside the Assembly Areas but a little way away from the depots and, if it did create that impression, it was in itself a failure to take reasonable steps to ensure that the injunction was complied with.

93. It is similarly clear that, at some point, an idea or argument was developed that the injunction could properly be read as confining protests to the Assembly Areas in some ill-defined area now described as the vicinity or immediate vicinity of the depots. Mr Segal KC suggested that BCC had invented a mythical decision maker of this protest tactic but that does not seem to me be BCC's case. Rather than put that some decision maker was responsible for this tactic which was then disseminated to members, Mr Carr KC in cross-examination simply sought to ascertain where this idea came from. He did not get an answer. It does not, in fact, seem to me of any great relevance whether this was an argument or a tactic thought up by individual union members or was one that came, so to speak, from on high. Wherever the idea came from, its consequences – the slow walking and obstruction of vehicles away from the depots – was quickly brought to the union's attention in solicitors' correspondence and, on Ms Kilcline's evidence, the response and justification for members' actions was one that came from the union.

94. That response was the argument that the injunction applied only to protests in the vicinity or immediate vicinity of the depots. Wherever or whoever that interpretation came from, it was, therefore, readily adopted by Unite as a body.

95. The injunction read entirely literally would prohibit protesting anywhere other than the Assembly Areas and the defendant's argument that it could not prohibit protesting outside Parliament had merit. In other words, there must have been some implied limitation on the scope of the injunction. But that limitation could not have been, and could not genuinely have been thought to be, one that permitted protesting away from the depots on collection routes and/or in such a way that it impeded rubbish collection. I am sure that, even if union officials and/or members held such a "genuine" belief, it was one that they had persuaded themselves of, having come up with an argument to get round the clear terms of the injunction or having sought such an argument after these protests were drawn to the union's attention. Ms Kilcline's evidence which did no more than assert what "we" believed did not assist.

96. Further, it follows that, once the breaches of the injunction had been raised in correspondence, the defendant did not admit the breaches but instead sought to justify them and did not take any steps to ensure compliance with the Order. The defendant then appears to have been content to rely on its own belated argument as to the scope of the injunction and did not take any independent legal advice for over two weeks. Even then, although revised guidance was issued, it did not accept that any breach had been committed but was framed as interim guidance. It was not until Ms Kilcline's first affidavit that "the guilty plea" was entered. To follow the criminal analogy, the plea could have been indicated in solicitors' correspondence (the equivalent of the interview) from early July or from the time the application was made (the equivalent of charging) from late July but it was not.

97. I reject the defendant's submission that any of the admitted breaches were not deliberate and were the product of a misunderstanding. I accept BCC's submission that I should regard the culpability of Unite as high because I am sure that there was at best a genuine belief that Unite had a clever argument as to the scope of the injunction but not a genuine belief that the injunction permitted protesting away from the depots which nonetheless obstructed the progress of the wagons. By the same token, I do not consider that any belief in this argument offers any meaningful mitigation.

98. I do, however, reject the submission that the evidence as to what Unite understood the injunction to mean was positively dishonest. Rather, as I have said, it seems to me that members and/or officials persuaded themselves of their own spurious argument and, in that sense, came to believe that it was what they had always understood the scope of the injunction to be.

99. I accept that the apology now offered is a genuine one but the weight to be attached to it is tempered by the fact that it was not offered until September 2025, some two months after the breaches had first occurred and the excuse for them was first offered.

100. For BCC, Mr Carr KC did not press the case that there had been further breaches after, at least, 31 July 2025 and, for the reasons I have given, I would not have found such breaches. The breaches for which there is uncontroverted evidence between 22 and 30

July are limited in scope but demonstrate the impact of the slow response to the advice as to the true compass of the injunction. That is an aggravating factor but I would accept that the sanction for breach does not need to be such as to ensure future compliance. That does not, however, mean that the sanction should not reflect the more general importance of ensuring compliance with the orders of the court and upholding the authority of the court and, in this case, marking the fact that that compliance was in the interests of the provision of public services and services material to public health and wellbeing.

Sanction

101. For completeness, I should explain that, although they are by no means analogous, I have given some consideration to whether there is any assistance to be derived from the Sentencing Guidelines for Environmental Offences and Health and Safety Offences since these are Guidelines that apply to offences committed by corporate or other bodies as well as individuals. Under these Guidelines, Unite would be a large organisation in the sense of having a turnover of over £50 million. For high culpability offences, the sentences would be in the millions and it is not in issue that anything of that nature would be disproportionate in this case. To that extent these Guidelines are of no assistance. They do, however, support the view that the size of the organisation is a material consideration although I bear in mind that a union is not a commercial organisation or profit-making undertaking and is largely funded by its membership.

102. Drawing the threads together then:

(i) I find the breaches of the injunction to have been deliberate and culpability to be high. There were repeated breaches and they repeated after they had been drawn to the defendant's attention. They were excused by the defendant on the basis of a purported belief in the meaning of the Order that I am sure was not genuinely held. They were, however, all part of a pattern of action over a period of 2 weeks (as relied on in the application) and any sanction should have regard to totality.

(ii) There was a moderate degree of harm in the continued disruption of rubbish collections which the injunction was intended to alleviate but the primary cause of any harm was the lawful strike.

(iii) Since I am sure that there was no genuine misunderstanding as to the scope of the injunction, I do not regard that as a mitigating factor.

(iv) I do regard as a mitigating factor, the apology offered to the court, although that is tempered by the continued excuse offered for the breaches.

(v) I also regard as a mitigating factor the steps taken to prevent further breaches but again that is tempered by what I regard as the delay in doing so.

(vi) I give some credit for the admission of the breaches but I do not accept that that admission was made at the first opportunity.

(vii) I have to mark the importance of compliance with court orders. This is not a case in which that is necessary to ensure future compliance with this Order but it is necessary in terms of upholding the authority of the court and the more general deterrent effect.

(viii) I take into account the financial wherewithal of the defendant. In particular, a fine at the sort of level proposed by Mr Segal KC would have little impact on

the defendant and would, in my view, signal wrongly that the court regarded the breaches as of little significance.

103. Taking all these factors into account, the sanction I impose for the breaches identified in the application is a fine of £265,000.

104. Having provide this judgment in draft, I invited the parties to agree the terms of the consequential order to made and I am grateful to counsel for doing so. The parties are agreed that the defendant should pay the claimant's costs of the application to be assessed if not agreed. The claimant asks for an interim payment on account of costs. The defendant does not agree either in principle that there should be an interim payment or as to amount.

105. Firstly, I can see no reason why there should not be an interim payment on account. That is particularly so given that the contempt was admitted but only some time after the application had been made and the hearing as to sanction was hard fought.

106. As to the amount, the claimant filed a statement of costs for summary assessment prior to the hearing. The total sum claimed was approximately £277k (exclusive of VAT). As the defendant points out that is the extent of the information before the court and the court does not have the benefit of an approved costs budget to consider.

107. If I were considering the statement of costs for the purposes of a summary assessment, I would be raising issues as to the amount of costs in a number of respects. The overall amount appears high. There is a high level of work done on documents and particularly by Grade A and B fee earners. There are obvious errors in the inclusion of refreshers for counsel.

108. The claimant asks for a payment on account of £200k payable in 14 days The defendant submits that a more realistic figure is £150k payable within 28 days. Taking a broad brush approach but bearing in mind the issues I have referred to, I order a payment on account of costs in the sum of £170,000 payable within 14 days.