Case No: HQ17X03282

Neutral Citation Number: [2017] EWHC 2576 (QB)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

The Royal Courts of Justice
Strand
London WC2A 2LL

Wednesday, 20 September 2017

BEFORE:

MR JUSTICE FRASER

BETWEEN:

(1) GEORGE TAYLOR
(2) UNITE THE UNION

Claimants

- and -

BIRMINGHAM CITY COUNCIL

Defendant

MR O SEGAL QC and MS K NEWTON (instructed by Thompsons Solicitors) appeared on behalf of the Claimant
MR P EPSTEIN QC, MR T STRAKER QC and MS L CHUDLEY (instructed by Birmingham City Council Legal Department) appeared on behalf of the Defendant

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JUDGMENT

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(Official Shorthand Writers to the Court)

1. MR JUSTICE FRASER: This is an application for urgent interim relief, namely an interlocutory injunction brought by Mr George Taylor and his trade union, Unite. Mr Taylor is a refuse collector employed by Birmingham City Council, to whom I shall refer as "the Council".

2. Mr Taylor seeks to bring proceedings in a representative capacity both for himself and the other refuse collectors employed by the Council who are all grade 3 operatives. There are 106 operatives in the same situation as Mr Taylor, and approximately two-thirds of those are Unite members. The capacity of Mr Taylor as a representative claimant, and also Unite's capacity as a claimant, are each challenged by the council, a point to which I shall return.

3. The injunctive relief which is sought by the claimants is to prevent the council from giving effect to notices of redundancy issued to all its grade 3 operatives. Those notices were issued by the Council on 31 August 2017 and the redundancies are stated to take effect on 1 October 2017, although that date was later extended by three days to 4 October 2017.

4. These proceedings were issued on Friday 8 September 2017 by the claimants with a rather optimistic time estimate of only one hour. They came before the judge in court 37, which is where emergency applications are heard, on Thursday 14 September. He understandably and correctly took the view that far longer than one hour was required. In the event, the hearing before me lasted for almost two full days, namely Monday and Tuesday of this week.

5. The basis of the injunction essentially is that the redundancy notices are said to have been issued in breach of an agreement reached between Unite and the leader of the council, Mr Clancy, at ACAS. That agreement was in respect of settling industrial action being taken at the time by Unite. The notices are therefore said to be in breach of contract and also in breach of the notice provisions in each of the grade 3 operative's contract of employment.

6. Mr Segal QC, counsel for Unite, accepts that absent the events of 15 to 18 August 2017, there could be no grounds whatsoever for the claimants seeking such an injunction to restrain redundancy. This application therefore entirely concerns what occurred in the period 15 to 18 August 2017. The facts are highly unusual and it is a remarkable case. I shall deal with the facts first, then the applicable law, and then apply the law which I consider applies, to the facts in this case.

7. I must emphasise that this is an interim application and I am not at this stage ruling on the substantive claims after a trial. I am not making decisions on disputed issues of fact. It is not possible to do that at an interlocutory stage. There also appear to be political dimensions to the dispute as will be seen. I take no account of those whatsoever.

8. I have witness statements before me from Mr Beckett, who is the regional secretary of Unite's West Midlands region and the assistant general secretary of Unite, and Mr Taylor, who as I have said is one of the grade 3 operatives concerned and one of the

claimants. For the Council, I have two witness statements from Ms Charlton, who is the city solicitor and the monitoring officer.

The facts

9. The Council has, in common with other public bodies, been considering cost savings measures generally. As part of this, a consultation was started in March 2017 which was potentially to lead to re-organisation of the city's waste collection services, including abolition of the grade 3 post for the city's refuse collection employees, as well as other changes which are said to have the effect of improving efficiency, including cost efficiency. Currently each refuse vehicle has a driver, a grade 2 operative and a grade 3 operative.

10. What are called section 188 notices under the Trade Union and Labour Relations (Consolidation) Act 1992 were issued on 1 March 2017. The proposal made was to make all the grade 3 personnel redundant, and have the vehicles staffed with a driver and two grade 2 operatives. Unite were opposed to these changes and so held a ballot concerning industrial action. That ballot was in favour of taking industrial action.

11. In terms of chronology, on 27 June 2017, a report was made to cabinet (a term used by the Council for its decision making body) by Jacqui Kennedy, the Corporate Director Place at the Council, setting out the proposals for re-organisation of the Council's waste management service to secure high quality of services and value for money. This sought agreement, amongst other things:

> "To continue dialogue with the trade unions with a mandate to implement a structure to deliver improved quality of service whilst operating within the allocated budget."

12. This report also included removal of the grade 3 posts. I shall refer to this as the June report. It stated that 113 grade 3 posts would be lost, or to use the management speak adopted in the report "will be deleted". It was signed by Councillor Trickett, the cabinet member for Clean Streets, Recycling and the Environment. On 30 June 2017 the strike commenced by the refuse collectors, which has seen large amounts of rubbish accumulate on the streets of Birmingham, with all the obvious consequences in terms of the effect upon residents, and also potential risks to public health. This strike has become a very high profile industrial dispute generally, and particularly for those many people affected by it.

13. Mr Clancy is an elected councillor and the leader of the council. The council has elected for the governance model provided for in section 9(C)(3) of the Local Government Act 2000, namely an executive consisting of a councillor -- here that is Mr Clancy -- referred to in the legislation as "the executive leader", and a cabinet referred to in the legislation as the "cabinet executive", which in this case has nine members, ten including Mr Clancy.

14. There is no doubt, and it is common ground, that the strike was damaging to the city of Birmingham in many ways, not least the build-up of rubbish, but also those on strike

were taking lawful industrial action in relation to the proposed removal of the grade 3 role, and what was seen as the downgrading of that role to one of grade 2. Those on strike also suffer. An impasse was reached, it was obviously in all the parties' interests that this come to an end if possible.

15. Mr Beckett therefore, shortly after his appointment to his current post within Unite, began to make overtures to see if a solution could be reached whereby that industrial action could be ended by compromise. He met Labour MPs in the region, and he also met the interim chief executive of the council, Ms Stella Manzie. He also contacted Mr Clancy by telephone on different occasions during July 2017.

16. Mr Beckett made clear what he describes as Unite having two red lines, the first of which was maintenance of the grade 3 roles to include preservation of their safety responsibilities. It was in respect of this that the strike had been called, the members having been balloted as is required by law on that subject.

17. The second of his two red lines had nothing to do with the grade 3 issue, but rather was a demand for the reinstatement of one particular Unite shop steward, who at that point was suspended and facing disciplinary proceedings. This issue was described by the first claimant, Mr Taylor, in paragraph 13B of his witness statement in the following terms:

> "The return to work of our comrade [his name is then provided] who had been suspended on what we considered to be spurious allegations."

18. That shop steward reinstatement issue had nothing at all to do with the strike, in the sense that it had formed no part of the ballot required by law to permit the strike to take place. However, Mr Beckett made it clear to Mr Clancy that if those two red lines, or principles as he also refers to them, could be agreed, then Unite the Union would be prepared to recommend the acceptance of other terms that the Council wanted to change such as changes to shift patterns, the switch to a five-day working week instead of four days, changes to the ways that the refuse collections were run, and other changes.

19. I should say that I cannot immediately see the basis for Mr Beckett seeking to obtain this person's reinstatement, and the end of the disciplinary proceedings against him, as a condition for ending the industrial action. It seems to me to be potentially wrong for him to have done so, and it also appears that he was perhaps using legitimate industrial action as a vehicle to obtain an alternative or ulterior purpose; namely the reinstatement of that particular shop steward. However, this is a point to which I shall return.

20. Various discussions took place during early August 2015. Documents produced as exhibits to the evidence on this application make it clear that there was an internal rift within the council as to whether and the extent to which it was sensible, or desirable, for Mr Clancy to reach an agreement with Unite.

21. Certain officers, which is the word used to denote those employed by the Council rather than its elected members, had their own particular views about the desirability of what was seen by them as the Council "caving in" to Unite. They also had their own views about the necessity of grappling with the issue of the refuse collection, the consequences to the budget of failing to do so, and other concerns, such as equal pay claims that would potentially come from other sectors of their workforce were the changes not to be imposed.

22. However, Mr Clancy certainly considered it was worthwhile continuing discussions with Unite. Mr Beckett made it clear, to use his words, as his statement says:

> "Because of the mistrust existing between the members and the council, there would need to be a deal done through ACAS."

23. ACAS is the shorthand for the Advisory Conciliation and Arbitration Services for employment disputes, both individual and collective. It is a Crown non-departmental body of the government. ACAS is an independent and impartial organisation that does not side with a particular party, but rather helps parties to reach suitable resolutions in disputes. It was very prominent in times of industrial strikes, such as the 1970s. A collective conciliation is described on the ACAS website in the following terms:

> "When there is a dispute between an employer and a group of employees, usual represented, ACAS can help. We act as an independent impartial third party to help parties discuss, consider and reflect on their respective positions with a view to reaching an agreement."

24. On 15 August 2017, Jacqui Kennedy, the Council's Corporate Director of Place, called upon Unite to go to ACAS. It is important to note that she is an officer of the council, not a member of the cabinet, and so not a member of the executive. She did this over the media, effectively issuing a public invitation.

25. Mr Beckett of Unite was asked that same day, again publicly in the media, if he would be prepared to meet the council at ACAS, and he indicated that he would. At 9.11am in the morning on that day, Mr Clancy had sent him a text saying that he (Mr Clancy) was going to a cabinet meeting that day at 10.00am but hoped to be free by 11.00am.

26. At 11.00am, Mr Clancy telephoned Mr Beckett and told him he had the backing of cabinet to enter into an agreement with Unite that would include Unite's two red lines, with the suspension of industrial action occurring to enable further discussions to take place on the remainder of the issues. Mr Beckett then contacted ACAS to arrange the necessary meeting.

27. The evidence before me is that the ACAS officer responsible, Mr Boswell, contacted Ms Kennedy, Councillor Trickett, who is the cabinet member with specific responsibility for this area, and Stella Manzie, the interim chief executive. Thereafter, the meeting took place at ACAS between Mr Beckett and Mr Clancy.

28. This resulted in an agreed position. It is in issue on this application and in these proceedings whether it was an agreement which gave rise to legal obligations, and if it did, which legal obligations. With the consent of the parties, ACAS published a joint press release that stated the following. The heading is "Industrial action suspended in Birmingham bin dispute". The statement is dated the following day, 16 August. It says:

> "Birmingham City Council and Unite the Union have today made sufficient progress in their talks for the Shop Stewards to pause industrial action."

29. I should say before that passage, it says "Following discussions at ACAS the following terms have been agreed". Then it indicates the passage I have just read out. It continues:

> "Birmingham City Council cabinet members have agreed in principle that the grade 3 posts will be maintained. Consequently there are no redundancy steps in place.
>
> In addition the parties will now look to discuss, through ACAS, how the service can be improved, with the intention of improving efficiencies in performance of the bin collection service generally, including what savings can be made, and specifically how best the current Grade 3 roles can now be maintained and developed so that they take forward the ambition to deliver cleaner streets and align to wider Total Place principles.
>
> Unite have also agreed in principle to recommend to their members work pattern changes, including consideration of a 5 day working week. Both parties agree the working week should be designed to maximise service delivery.
>
> To assist in the resolution of outstanding issues both parties will go to ACAS.
>
> These discussions will be with the intention of incorporating any agreement as an amendment to the Waste Management Service Cabinet Report in September 2017.
>
> Both parties are pleased to be recommencing industrial relations and pleased that the bin collection can resume without disruption."

30. Unite also issued a press statement, claiming, as it is put in that statement:

> "... victory in the Birmingham bin dispute which will result in the suspension of the current industrial action."

31. The ACAS joint statement did not refer to the reinstatement of the suspended shop steward also being achieved. That agreement was included in what Mr Beckett refers

to as “a side letter”. It is not clear to me why this was done separately. The Unite press statement did refer to this matter by stating "Unite also welcomes the fact that our suspended rep is now returning to work," but without saying that was part of the agreement to suspend the industrial action.

32. However, Mr Beckett states in his evidence that this subject, which was the second of his so called red lines, was also agreed at ACAS, and indeed, the ultimate form of the side letter relating to it was based on a draft provided by Mr Clancy to Mr Beckett early on 16 August, and not the form of the side letter discussed by them at ACAS.

33. After that, two things then happened that are relevant and which I am going to deal with extensively. Firstly, on the same day at 6.42pm, the acting chief executive of the council, Stella Manzie, sent Mr Clancy a lengthy email which I am going to read out. It is dated 15 August, 6.42 pm, headed "Private and confidential formal note waste management re-organisation":

> "I asked to meet with you today and I have just tried to telephone you and you have not taken my call. I write further to your recent discussions with Howard Beckett, regional negotiator of Unite in relation to the waste management service re-organisation, and your proposal to him that the workforce changes agreed by cabinet on 27 June 2017, the cabinet report would be withdrawn. This note sets out the serious concerns of myself, Kate Charlton and Mike O'Donnell about this proposal. These have been heightened by the information that today you have been in discussions with Howard Beckett about an agreement and a public statement, which having seen the statement we believe endangers the council's equal pay strategy and the council's budget.
>
> As you know, although you had discussed these proposals previously, it was after my meeting with Howard Beckett on Monday 31 July, that you began discussing these proposals informally with Mr Beckett. Since then I and senior members of CLT, including Jacqui Kennedy, Corporate Director Place, Kate Charlton, City Solicitor and Monitoring Officer, and Mike O'Donnell, Chief Finance Officer, have met with you, 3 August, or with you and some of your cabinet, 7 August, to discuss with you your proposed approach to resolving the industrial dispute.
>
> We have on each occasion raised our significant concerns regarding the budgetary implications and legal consequences that would arise if concessions in relation to the grade 3 posts were implemented. Since my meeting with Mr Beckett on 31 July, my advice has been to move forward the natural progression of the resolutions of cabinet on 27 June and issue redundancy notices to the redundant grade 3s. Kate Charlton has provided you with two specific written advice notes setting out the legal implications and risks associated with the proposals in relation to retaining the grade 3s dated 8 and 9 August 2017 respectively.

Earlier in the year, you also received from her a copy of council's advice dated 2 February 2017 and an equal pay briefing dated 31 July 2017. On 10 August after an informal meeting of cabinet convened by you on 9 August, Mike O'Donnell submitted to a further informal meeting of the cabinet a detailed briefing of the financial impact should the proposals then being discussed by you with Unite be approved by cabinet.

Following the 10 August meeting, we were told of a further set of proposals to Unite encompassing possible involvement with ACAS, but still involving withdrawal of the proposal to make redundant grade 3 posts in the refuse service. I sent you an email in which I expressed my continuing concerns. The purpose of this letter is formally to record our concerns if these proposals were to be implemented, in particular:

(a) Our view that the proposal to reinstate the grade 3 into the WM structure instead of proceeding with redundancy notices as justified by the strong business case set out in the cabinet report of 27 June is the face of it discriminatory.

(b) Our concern that despite you and your cabinet colleagues having received detailed legal and financial advice from the monitoring officer and chief finance officer that set out the significant and legal financial risks, these were not taken into account when discussing the reinstatement of the grade 3s with Howard Beckett.

(c) Any variation to the work force proposals as set out in the cabinet report dated 27 June, including reinstating the grade 3s requires formal governance by way of another decision of the cabinet. The council's constitution does not provide delegated authority for you to make that decision acting on your own. Therefore, if any such move is enacted without a cabinet decision, it is likely to be regarded as ultra vires and potentially subject to judicial review for failure adequately to consider proportionality and professional advice from officers.

(d) The other unions with members in the waste and refuse service, Unison, GMB and UCATT, have indicated that they should be included in any negotiation/consultation to change the workforce proposal agreed by cabinet before it is agreed solely with Unite. They have already indicated through other employee consultation that they would consider what action they would need to take to represent their female members if the proposal to Unite was enacted.

(e) The evidence of historic failure to deliver this service efficiently, giving value for money and for the benefit of citizens of

Birmingham. In addition to the equal pay liability this service has created over the past ten years can no longer be disregarded."

34. That is the end of the lettered points in the email, but the email continues:

"The redundancy notices to the affected grade 3 leading hands should be issued no later than 1 September 2017 as advised by the monitoring officer. All of these employees will have access to suitable alternative roles at the same grade and the same salary or receive a redundancy payment and a payment in lieu of notice payment. In addition, all employees in WM are required to work five days out of seven and have access to any overtime opportunities, along with all other council employees. The council's actions in relation to this dispute are being watched closely internally and externally. Internally the three other unions' patience is being tested to the limit. If we go down the route of seeking to pacify Unite, we run the risk of alienating the other three unions, two of them with strong representation in other parts of the council as well as in Unison' case in the waste service. This could lead to more legal action and/or more industrial action. The workforce within the council is also watching closely to see how the refuse operatives are treated with considerable anger and resentment about the strike and its escalation and impact on the council.

In the case of other staff who have being covering the operatives' duties, distinct tensions are appearing. Externally the council looks weak as if it is being walked over by Unite. I would add that as senior officers, we are being inhibited in taking management action as has historically happened in Birmingham in relation to the refuse staff.

We have now seen your 'instruction' in relation to the suspended shop steward. We cannot carry out that instruction. He is due to be interviewed by the investigator. It is then proposed that any disciplinary hearing is stayed, although he remains suspended, pending the matter being referred to ACAS. That is a wholly appropriate response by us as an employer considering the serious allegations against him. However, it also affords him the opportunity to set out his case as well. It is not acceptable for you to interfere in a management disciplinary matter.

Mike O'Donnell, the chief finance officer, Kate Charlton, the monitoring officer, and myself as head of paid service, together are firmly of the view you should not progress the proposal to agree an alternative position with Unite, but that the council should instead proceed to implement the decisions agreed by the cabinet report of 27 June. You have detailed legal and financial advice justifying that this is in the best interests of the organisation. I have previously made reference to the statutory duties of both the chief

finance officer and the monitoring officer in relation to the outcome of the suggested proposal to Unite.

I would ask you to discontinue discussions with Unite and withdraw from the draft statement immediately. If this is published, we believe it will result in a major financial risk to the authority, breach of the Equality Act as well as trade union and workforce unrest. We need to issue redundancy notices to the grade 3s and enable management to move progress forward while taking legal action to enforce the terms of the ballot. Of course this will not immediately resolve the strike, but the only ultimate solution to this is to take the re-organisation forward. The other three unions are waiting for us to do.

Finally may I express my regret that this afternoon you have excluded management from your discussions or any knowledge of the negotiations taking place. If you go ahead with this statement, we feel the only course of action would be to bring a report to the special cabinet meeting on 24 August and as part of this report the monitoring officer and chief finance officer will need to set out their statutory responsibilities and the options that they need to consider."

35. Also the council issued a statement of its own. It is unclear on which day this was issued, but that statement reads as follows:

> "The ACAS statement in connection with the waste and refuse dispute does not represent the council's position. Until these matters are considered by the council's special cabinet meeting on 24 August 2017, the decision on the waste re-organisation taken by cabinet on 27 June is still the current position of the council."

36. Thereafter, Mr Clancy sent an email to the members of the cabinet. That was sent on 17 August. I am only going to read part of it, where he says:

> "Dear cabinet colleague,
>
> I am writing to ask your views concerning the interim arrangements which have been agreed through ACAS for the lifting of the strike by refuse collection staff. As you may be aware, there is a difference of view between councillors who are involved in negotiating this compromise through ACAS and senior officers of the council who are concerned that the outlying terms under which the strike was to be lifted and under which further discussions were to take place would expose the council to a higher level of equal pay claims.
>
> Equally, if this compromise is not carried through, the disruption to our communities will be substantial and the reputation of our city

> will be undermined. Whilst these are difficult issues, a particular aspect of the compromise is the agreement the shop steward who is presently suspended should be permitted to return to work and any issues concerning his contact with others should be resolved within the ACAS procedures, as opposed to being matters for his line management immediately to determine. The formulation of the way forward was suggested to cabinet members who were working with senior officers to try and find a way forward.
>
> Based upon the advice we received from officers, councillors negotiated a compromise which included provisions to allow the relevant shop steward to return to work. Strong objections to the proposal to allow the shop steward to return to work have been raised by the interim chief executive judge, Stella Manzie, and she has expressed a strong view that a solution to the strike along the lines agreed in the ACAS compromise is not in the best interests of the council. Whilst I acknowledge the strength of her views, the consequences to the council of resolving this dispute means it falls within the area of a 'key decision' within the council's constitution. Key decisions are for cabinet to take. There is considerable urgency because I fear that any publicity surrounding the possibility of the council reneging on the compromise which we negotiated on the council's behalf through ACAS will result in a resumption of the strike and will make achieving any future compromise significantly more difficult.
>
> Regrettably, the urgency means it would be difficult to take this decision in accordance with the normal cycle of cabinet meetings. I am therefore asking you to let me know whether as a cabinet member ..."

37. And he then sets out three options in bullet points. The first is to support the decision to approve the compromise negotiated on the council's behalf through ACAS. The second is to oppose the decision to approve the compromise and the third is to defer consideration until after the opportunity has been taken to convene a cabinet meeting. He says at the end of the email:

> "I should make it clear that if the majority of the members of the cabinet agree to the first option, I will regard this as a cabinet decision taken urgently in respect of a key decision under our constitution and will therefore instruct officers of the council to act in accordance with this key decision immediately."

38. Mr Clancy clearly explained in that email that this was what he called a key decision and was one which was for the cabinet to take. This interpretation accords with the advice which he was given by Stella Manzie in the email which I have already read, which was at 6.42 pm on the 15 August, and again I am quoting from her point (c) on page 2 which says:

"Any variation to the workforce proposals as set out in the cabinet report of 27 June, including reinstating the grade 3s, requires formal governance by way of another decision of the cabinet. The council's constitution does not provide delegated authority for you to make that decision acting on your own. Therefore if any such move is enacted without a cabinet decision, it is likely to be regarded as ultra vires and potentially subject to judicial review ..."

39. Mr Clancy in his email of 17 August had explained it was urgent and set out the options. He also included in that email reference to the fact that there was a difference of view with the senior officers of the council.

40. He sought approval for what he called the compromise negotiated on the council's behalf through ACAS and the other options. He received approval by email from a majority of the members of the cabinet. He sent an email to Angela Probert, the chief executive officer of the council, on 18 August at 8.12 am. Again, this is a long email, but I am going to read pertinent parts of it. It was copied to Stella Manzie, and the subject is "Instruction to officers, ACAS agreement, and related agreement":

"Dear Angela,
Last night I emailed my cabinet colleagues to seek their views about taking a collective cabinet decision to approve the interim arrangements which have been agreed through ACAS for the lifting of the strike by refuse collection staff. The question as to whether the council should agree to the negotiated terms upon which the refuse collection staff should suspend the strike are an executive decision to the discharge of an executive function. It is also a decision which has a significance in terms of its effect on communities living or working in an area compromising two or more wards in the area of the local authority and the decision making has not been delegated to district committees.

The cabinet has therefore taken the decision that whether to accept or reject the ACAS compromise constitutes a key decision under Article 13.3B under our constitution. I and my cabinet colleagues are fully aware that there is a difference of views between the councillors involved in negotiating this compromise through ACAS, and senior officers of the council. We have noted the strong views that the outlying interim terms under which it was agreed that the strike would be lifted and under which further discussions were to take place to resolve the wider dispute had the potential to expose the council to a higher level of equal pay claims.

Equally, if this compromise were not to be carried through, the disruption to our communities will be substantial and the reputation of our city will be undermined. Further, a long-term resolution to this dispute may only be achievable by consensus on considerably

worse terms due to the loss of trust arising out of the reversal by the council of its position."

41. He then says there are two different decisions, as he sees it, to be taken. But at the bottom of page 1 of that email, he says:

> "I confirm the cabinet will consider the long-term position extremely carefully in the light of any legal advice we receive. Officers will have the opportunity to feed their views into the instructions [by which he means the instructions to counsel for legal advice] as well as seeing any legal advice which is received. However, the immediate key decision that we have to take is whether to press ahead with the interim arrangements agreed by ACAS or to renege on the position we adopted at the end of the negotiations. I fully accept that a particular aspect of the compromise that has caused concern to our interim chief executive is the agreement that the shop steward who is presently suspended should be permitted to return to work, and that any issues concerning his conduct should be resolved within the ACAS procedures as opposed to being matters for his line management to determine.
>
> Based upon the advice we received from a senior officer, the council has negotiated a compromise which included provisions to allow the relevant shop steward to return to work. Whilst I acknowledge the strength of the views expressed by the interim chief executive, the view of the cabinet is the consequences to the council in resolving this dispute means that it falls within the area of a key decision within the council's constitution.
>
> As you are aware, our constitution provides key decisions are for cabinet to take. There is considerable urgency because I fear that any publicity surrounding the possibility of the council reneging on the compromise which we negotiated on the council's behalf through ACAS will result in a resumption of the strike and will make achieving any future compromise significantly more difficult. The urgency meant it would be prejudicial to the best interests of the council to delay this decision so it can be taken in accordance with the normal cycle of cabinet meetings.
>
> I therefore ask my cabinet colleagues to make a decision as a cabinet member regarding this key decision. I identified three options ... "

42. And he then reproduces his three bullet points. His email continues:

> "I confirm that I have had a majority of cabinet members agreeing to the first option. I therefore regard this as a decision which the cabinet has taken. I acknowledge employment matters are usually

> delegated by the council to officers in accordance with Article 12.4A(ii) of the constitution. However, where an employment matter is a key part of a key decision, as is the case here, the cabinet is entitled to rescind the delegation and take the decision for itself. I regard this as having taken a decision and I am therefore giving you instructions to act on behalf of that cabinet decision.
>
> I have taken the trouble of setting out our thinking in some detail in this email. I am satisfied that the cabinet have the authority to take this decision as the ultimate executive decision makers on behalf of the council."

43. He then summarises in his email extracts from the council's constitution in relation to the role of officers. He then continues in relation to the shop steward issue in the next paragraph, which I am not going to read out. He then continues:

> "I have already pointed out my concerns in any event as to whether appropriate due process was followed in relation to the shop steward's suspension and early stages of investigation. I will therefore be informing Unite the Union that the council cabinet has taken its decision and would expect every council officer to implement this council decision this morning."

44. He concludes:

> "You have ultimate responsibility for the council's human resources policy. I trust all of the cabinet can look to you and your senior leadership team colleagues to ensure other officers' decisions were taken in accordance with the constitution and they have a duty to implement it in the morning."

45. It will be noted that the email uses the word "reneging" on the agreement reached at ACAS in more than one instance.

46. Key decisions are described in the council's constitution in chapter 11 "Decision making and key decision". I am not going to read them out, but the relevant passages are at pages 186 and 187 of exhibit KC-1 in the defendant's evidence bundle. Thereafter, Mr Clancy communicated both to Unite and the depot managers in the following terms. This was done by way of forwarding to Mr Beckett the email that he had drafted and sent to the depot managers:

> "Dear Nick/Lesley,
>
> I understand that you are acting up at the depot at the moment. I am writing to let you know that Birmingham City Council cabinet took the decision last night to support the compromise which had been negotiated through ACAS as a step forward in achieving a longer term solution to the refuse collection dispute. All of the

terms of the compromise will be implemented and the council looks forward to working with the union to progress discussions towards achieving a lasting solution which works for the staff, the council and most importantly delivers for the people of Birmingham. This is a key decision under the council's constitution and thus falls to be made by the cabinet. Officers of the council are required to act in accordance would be cabinet decisions. These decisions would normally be communicated to you by officers, but due to the relatively unusual circumstances in this case, I am writing to you directly to inform you of the decision the council has made.

It is part of the terms agreed with Unite that the interim employment suspension of [then he gives the gentleman's name] will be lifted. I anticipate he will be returning to work around noon. Please take this email as an instruction on behalf of the council to give effect to that decision and permit him to return to work in the usual way. Please pass these instructions on to anyone who will be involved with overseeing his return to work.
I appreciate the sensitivities involved in this matter and am grateful to you for your cooperation."

47. There was substantial opposition within the council from the officers to the agreement -- whether it is called an agreement, a compromise or a deal, different terms could be used -- that had been reached at ACAS between Mr Clancy and Mr Beckett, and approved on the face of the documents by the cabinet. On the evidence before the court and on the contemporaneous documents, initially that opposition was primarily focused on the return to work of the shop steward.

48. Meanwhile, Mr Taylor's evidence makes it clear that the ACAS statement was handed out to everyone at each depot and all the grade 3 operatives, so far as Mr Taylor is able to give evidence about what they thought, understood the industrial action to be resolved on the basis that there would be no grade 3 redundancies.

49. Events thereafter unfolded in a way which is not entirely factually clear. The nearest one comes to being able to follow developments is through text messages sent from Mr Clancy to Mr Beckett, together with the limited evidence from the Council. Ms Charlton's two witness statements say that the council considered then, and consider now, that neither the leader nor the cabinet (collectively she means the executive) had the legal power to take a decision to retain the grade 3 personnel. She also says that any such decision taken was not valid because it was not taken at a formal cabinet meeting.

50. Discussions took place at ACAS on the other matters outstanding in the second half of August. She does not say who represented the council, but it does not appear to have been Mr Clancy, but nothing further was agreed between the parties. Unite began to realise that the council was reneging, or as they saw it were going to renege, on what I will refer to as the ACAS agreement, and on 30 August issued a statement saying that unless the agreement was honoured, they would re-ballot members for further

industrial action. The fact I use the expression “ACAS agreement” does not mean that I am prejudging the issues.

51. On 31 August, the council issued redundancy notices to all the grade 3 operatives. The claimants say this was the first time they actually knew that the agreement, as they saw it, which had been reached on 15 August was indeed not to be observed by the council. On 8 September, these proceedings were commenced in the High Court.

52. On 11 September, Mr Clancy resigned as leader with immediate effect. He blamed frenzied media speculation and the relevant parts of his resignation statement read as follows. I am going to omit some parts of that statement dealing with what he saw as his personal achievements during his period in office. He said:

> "It has become clear to me that frenzied media speculation about the Birmingham waste dispute is beginning to harm Birmingham City Council and the Birmingham Labour Party.
> I can see no end to such speculation, as ill-informed as much of it is, for as long as I remain Leader.
> I have therefore decided to resign both as Leader of the Labour group and as the Leader of Birmingham City Council with immediate effect.
> I would wish to stress that the actions I took along with my cabinet to negotiate an end to an extremely complex and difficult industrial dispute were done with the best of intentions. None of us are perfect, and I made some mistakes, for which I am sorry and take full responsibility."

53. The rest of that statement ended with him saying that he "really am looking forward to spending more time with my family."

54. Neither party to this litigation emerges from this sorry saga with any credit at all, in my judgment. How a public body with 12,000 employees can operate sensibly with this degree of chaos between its senior personnel is remarkable. I could choose any number of similar words; extraordinary and astonishing being two which immediately spring to mind. Certainly this is an exceptional case.

55. Mr Segal for the claimants described the situation as a power struggle within the council. In the written skeleton argument for Unite and Mr Taylor, it was described as internal dysfunction. In one of Mr Clancy's text messages to Mr Beckett on 22 August, Mr Clancy stated the following:

> "Still working most of every day to outflank inappropriate officers so they have nowhere to go. Obviously a pincer manoeuvre from others will help specifically to do this."

56. The aptness of the description as one of internal dysfunction was challenged by the Council. Yesterday I asked Mr Straker QC how he would describe it. He put it rather

more subtly in his oral submissions and said effectively that it was a failure by Mr Clancy to follow advice.

57. There are at least two problems with that answer. There is no evidence before the court to show any such advice prior to the meeting at ACAS on 15 August 2017. Secondly, what Mr Straker appears to mean is not a failure to follow advice, but rather a failure to follow instructions. This is clear from one of the points relied upon by the Council in its skeleton argument, which stated that Mr Clancy "defied instructions from officers".

58. However it is described, the events will clearly have elevated mistrust on the part of the workforce, and will have caused considerable damage to industrial relations. Quite what was Mr Clancy's motivation in all of this is difficult to fathom. The very considerable number of text messages passing between him and Mr Beckett would be surprising on its own, even without considering their content. Between 15 and 31 August, there were at least 34 such messages which are printed out in the bundle. About half of them relate to the reinstatement of the shop steward, referred to by both men by his first name, Richie. In one of them, 22 August, Mr Beckett tells Mr Clancy, "You can count on Unite activist for support going forward", and Mr Beckett certainly seems to have known more than Mr Clancy, the leader of the Council, at one point about what was going on within the Council itself. In a text message of 29 August, he told Mr Clancy that Mr Clancy needed to:

> "Get hold of a copy of the instructions sent by your officers' solicitors to counsel, the legal advice is premised not on safety staying with the loaders ".

59. Either the instructions themselves, or the gist of them must have been communicated to him by one means or another, as certainly he seems to have known the content of the instructions which were being sent to whoever was advising the council.

60. Mr Beckett's insistence that one of Unite's red lines was something which appears on the face of it to be unconnected with the strike, namely the reinstatement of the shop steward, and having the agreement to this included in a side letter is not something which is explained fully, or at all, in the evidence either.

61. The schism within the council of the officers and the executive not working together, and in fact positively working against one another in some respects, is what has led to this highly unusual situation and what has led to these proceedings.

62. On 31 August, the redundancy notices were issued by the council to all the grade 3 operatives. In general, the following questions arise in relation to those notices. Firstly, are they in breach of the agreement of 15 August 2017 reached at ACAS? Or put another way: does what is contained in the ACAS statement and joint press release evidence a legally enforceable agreement in respect of which the claimants and in particular Mr Taylor are entitled to rely?

63. The second issue is whether the redundancy notices are effective in law, given that they purport to give less notice to the grade 3 operatives than the periods of notice specified

in their contracts of employment. I now turn to the law and the test to be applied on the application.

The Law

64. I shall deal firstly with preliminary matters. There are two of these: one is the capacity of Mr Taylor to sue as a representative claimant; and the second is the union as a claimant, and whether relief can be granted to anyone other than these two claimants alone.

65. The Council maintains that relief can only be granted to Mr Taylor. It is said that Unite has no legally enforceable right as any agreement reached at ACAS can be only be a collective agreement. Further, it is said that some of the grade 3 personnel, eight of them, have accepted the Council's offer, or wish to accept the Council's offer, and their interest is not the same as Mr Taylor's.

66. Firstly, even if that is correct in respect of the eight, there are the other 90 or so others who do have the same interest as Mr Taylor. Secondly, the acceptance by those eight personnel of the Council's offer was in the belief that each of them would be made redundant at the end of this month, and in my judgment is a wholly circular submission.

67. I consider that Mr Taylor's interests are sufficiently aligned with enough of the other grade 3 personnel for him to be a representative claimant.

68. So far as Unite's involvement is concerned, the Particulars of Claim identify in paragraph 3 that Unite only claims in respect of what is said to be a breach of legitimate expectation. However, the agreement, if that is what it was, was made with Unite on 15 August, and it is Unite who proffer the relevant undertakings in damages in respect of the application for interim relief. Unite has other members whose interests entirely align with those of Mr Taylor.

69. In view of the shortness of time available to the claimants in respect of bringing these proceedings, in my judgment it would be quite wrong to allow the council to take a highly unmeritorious technical point because the claimants have not served a schedule listing the names of all the different Unite members who are grade 3 operatives, of whom even on the council's case, there are in excess of 60. There is no need to operate the provisions of CPR Part 9.2 to order the addition of all those other members as parties, as it is not necessary to dispose of the issues in the case.

70. It is entirely appropriate, in my judgment, for Unite to be a party, even if the legally enforceable right is one arguably enjoyed by one of its members, Mr Taylor, or all of its members, rather than the entity itself, which is the union.

71. I now turn to the approach of the court on an application for an interim injunction. The claimants rely upon the well-known principle of the seminal case of ***American Cyanamid*** that governs the grant of interim relief. This involves consideration of

whether there is a serious issue or issues to be tried, together with whether damages are an adequate remedy, and the balance of convenience.

72. The Council submits that such an approach is not appropriate in this case -- that is the consideration of whether there is a serious issue -- because the notices of redundancy take effect on 4 October and it is not possible to hold a trial before then. The Council submits that this means that resolution of this interim application will effectively dispose of the issues between the parties.

73. Accordingly, the council submits that the ***American Cyanamid*** test is modified, and rather than considering whether there is a serious issue to be tried, that element of the test becomes the likelihood of success of that issue or issues at trial. I reject that submission by the council. The outcome on this application will not effectively finally resolve the dispute between the parties. The parties are in dispute about whether the ACAS agreement prevents the council from making the grade 3 operatives redundant in the current re-organisation process as approved by the council in the June report.

74. That issue is one that can be resolved with finality at the trial. It will not be resolved with finality on the outcome of this interim application. The correct test in my judgment is whether there is a serious issue to be tried. A trial can be held expeditiously finally to determine that outcome.

75. Also in dealing with an application such as this, I have to keep in mind the overriding objective in CPR Part 1, which requires me to deal with matters justly and at proportionate cost. It is for that reason I am not going to recite in this already lengthy judgment each and every authority that has been submitted to me in argument, although I have considered all the relevant passages.

76. The ones I am going to identify though start with the case of ***Sukhoruchkin & Ors v Van Bekestein & Ors*** [2014] EWCA Civ 399. That case concerned an appeal against the refusal by Morgan J to continue a worldwide freezing order and a proprietary injunction on the basis of breach of fiduciary duties and other reasons. In allowing the appeal, Sir Terence Etherton, then the Chancellor, now the Master of the Rolls, said at [32] and following:

> "32. The general principle is now well established that, on an application for an interim injunction, the court should not attempt to resolve critical disputed questions of fact or difficult points of law on which the claim of either party may ultimately depend, particularly where the point of law turns on fine questions of fact which are in dispute or are presently obscure: *Derby v Weldon* [1990] Ch 48….
>
> 33. The Judge in the present case cited relevant passages in *Derby v Weldon* which state and illustrate the operation of that principle but he nevertheless felt able to reach the firm conclusion in paragraph [72] of his judgment that the appellants' claims in relation to the Distribution Agreement and the Rio Agreement are

'clearly barred by the no reflective loss principle'. Indeed, as I read that paragraph in his judgment, he considered that, had there been an application to strike out those claims, he would have granted that application. It was only because there had not been an application to strike out the claims and so it might be said that there is no reason why they should not be investigated at trial that he went on to say that the appellants' case that the claims give rise to a serious issue to be tried 'is no more than borderline'.

34. I do not consider that the Judge was entitled to take that view at this interlocutory stage for the following reasons."

77. He then set out what those reasons were in that case. It is important to remember that I am considering the application in this case at the interlocutory stage. I am not providing the definitive first instance judgment on all the different legal and factual points in issue in the case. All I am doing is considering whether there is a serious issue or issues to be tried. I therefore turn to identify those issues before considering whether they are serious issues to be tried.

78. The issues are, in my judgment as follows, and I will provide a numbered list:

(1) The binding or enforceable nature of the agreement reached by Unite and Mr Clancy at ACAS on 15 August 2017.

(2) The ratification process that followed that agreement leading to the communication by Mr Clancy to Unite and the depot managers on 18 August 2017.

(3) The extent to which components of that collective agreement were incorporated into the individual contracts of employment of the grade 3 operatives. This includes the aptness for incorporation elements of that agreement and also includes construing the text of it.

(4) In the light of the answers to issues 1, 2 and 3, the lawfulness of the decision reached by cabinet at some point between 18 and 31 August to issue the redundancy notices themselves and whether to do so was in breach of the agreement reached, which I will refer to as "the ACAS agreement".

(5) The failure of those redundancy notices to observe the necessary notice periods included in the individual contracts of employment and whether payments in lieu of notice can cure any defect in those notices.

(6) In the light of the answers to each of issues (1) to (5), whether the redundancy notices are lawful.

79. I have also referred to the fact that there is a claim at one stage by the claimants, and it is still on the pleadings, that there is a breach of legitimate expectation on the part of the individuals arising from the agreement reached at ACAS. That was not formally

abandoned by Mr Segal for the claimants, but he did not advance it to any appreciable degree, and he did not rely on it for the purposes of this application.

80. Legitimate expectation is a public law concept, and I consider that point not to be properly arguable in the context of this application. Had it been relied on in the application, I would have concluded that on that issue there was no serious issue to be tried.

81. Turning to the numbered list of issues I have identified, the council would seek me to approach each of the six issues I have identified above as though I were determining all the various disputes with finality today. I have had cited to me a great number of authorities seeking to persuade me that the correct answer in law on each or all of the different issues is that contended for by the particular party. I reject that approach.

82. The ***American Cyanamid*** principles are set out in volume 2 of the White Book at page 2961. They are at paragraph 15-8, and were enumerated by Lord Diplock in that case, the reference to which is [1975] AC 396, at pages 406 to 409. There are 12 of them. I am not going to read them all out, but I consider those principles apply in this case.

83. I also take account of the introductory passages at page 2963 about the approach to the ***American Cyanamid*** principles and CPR case management, and they are on page 2963 against paragraph 15-9. The first sentence which I am going to read out says:

> "At bottom, the principles are based on the great object of the court when hearing an application for an interlocutory injunction, which is to abstain from expressing any opinion on the merits of the case until the hearing."

84. The parties have approached this matter as though it is a mini trial and as though my task is to arrive at a substantive conclusion on the merits of the case. There are disputes of fact, there are serious questions of law which also require resolving. This is an interlocutory hearing. As the hearing moved into its second day with no fewer than 42 different authorities, including extracts from textbooks and statutes as well legal precedent, it began increasingly to resemble a trial, albeit a truncated one without witnesses being cross-examined.

85. This is not the correct approach on an interlocutory application such as this. I am not going to resolve the numerous issues of fact and disputed points of law on this application. Given Mr Clancy was the elected leader of the council and attended ACAS on 15 August with the knowledge of other senior members of the council, and following a public invitation to Unite to attend at ACAS to resolve the damaging industrial dispute, that public invitation being issued by an officer, not an elected representative, issue (1) of my list of six alone involves complex points of law and fact dealing with, amongst other things, Mr Clancy's authority to bind the council.

86. The question of the binding nature of the agreement reached at ACAS is partly, if not wholly, governed by the extent of the authority, actual or apparent, that Mr Clancy had.

I would find it rather surprising if the arrangement for this meeting to take place at ACAS, which the evidence shows was done by an officer at ACAS, had not addressed the question of the authority of Mr Clancy. Any alternative dispute resolution process, and this includes conciliation, would if following best practice deal with authority and limitations on authority as part of arranging such a meeting. Even if that were not so in general terms, the fact is that the evidence of Mr Beckett makes it clear that ACAS itself (in the person of the case officer, Mr Boswell) specifically arranged the meeting through contact with at least two officers, Ms Kennedy and Ms Manzie. This makes it clear to me that there is a serious issue to be tried on the question of authority alone.

87. Also the fact that the cabinet was required to approve the re-organisation proposed in the June report would suggest that cabinet also had the power, not only to settle the industrial dispute, but to decide that re-organisation would be accomplished without making the grade 3 operatives redundant. Mr Straker's submissions to me on the law are to the effect that the executive as a whole, the leader and the cabinet, had no such power at all.

88. This too raises a serious issue to be tried. A serious issue to be tried on either of those issues alone would in my judgment justify the interim relief sought. Under the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, S.I 2853 of 2000, regulation 2.1 states:

> "The functions of a local authority specified in column (1) of Schedule 1 ... are not to be the responsibility of an executive of the authority."

89. Item 37 of that schedule under the heading "Miscellaneous" includes the power to appoint staff and to determine terms and conditions on which they hold office, including procedures for their dismissal. Under The Local Authorities (Standing Orders) (England) Regulations 2001, S.I.3384 of 2001, regulation 3(10)(b) states that:

> "If the executive of a local authority is to take the form of leader and executive [which Birmingham does], it must incorporate its standing orders in relation to its staff the provisions set out in part 2 of schedule 1."

90. Part 2 of schedule 1 states at paragraph 2:

> "... the function of appointment and dismissal of, and taking disciplinary action against, a member of staff of the authority must be discharged, on behalf of the authority, by the officer designated under section 4(1) of the 1989 Act (designation and reports of head of paid service) as the head of the authority's paid service or by an officer nominated by him."

91. In my judgment, these two regulations apply to the disciplinary action in respect of the shop steward, and neither the designated officer, nor an officer nominated by the designated officer is an elected councillor and/or is the leader, and disciplinary matters are no part of his remit.

92. However, whether or not Mr Clancy could be clothed with the necessary authority by someone who did have it, such as an officer, I do not consider at this stage that the analysis arising from those two regulations applies to settling or agreeing to settle an industrial dispute. Even if it did, Mr Clancy could be clothed with that authority by someone who had such authority, which on the Council's case again is an officer. I consider that there is a serious issue or issues to be tried on this point. I also consider the fact that the agreement was reached with the involvement of ACAS a highly material factor.

93. Out of deference to the amount of time spent on the construction of the ACAS agreement itself and the issue concerning its aptness for incorporation in the employment contracts, I will also briefly deal with that too. It is correct that the statement uses the phrase "in principle". However, Mr Clancy then sought approval from the cabinet for the agreement and communicated to Unite that he had obtained that agreement or approval. He also communicated the same to the depot managers. Even on the council's understanding of the situation as set out in the email from Stella Manzie to Mr Clancy, Mr Clancy required cabinet approval. That provides or deals with the point arising from the words "in principle".

94. Also, I see no difficulty in concluding that there is a serious issue to be tried on the nature of the term to be incorporated into the individual employment contracts of the grade 3 operatives. I am not going to draft such a term for the parties; the different ways of expressing it were suggested during the hearing before me. It must be remembered that the ACAS agreement was not drafted by lawyers. The relevant sentence is "The grade 3 posts will be maintained".

95. Consequently, this arguably means that there would be no redundancy steps in place. Applying the relevant principles of construction and giving the words their natural meaning, that seems to me fairly clear. However, given the test is whether there is a serious issue to be tried and not deciding with finality what the term is, that test is satisfied in respect of this point too.

96. There are other relevant points that I also wish to add. Firstly it appears on the documents before me that some members of the cabinet may have changed their mind concerning the wisdom of such an agreement. In a text message of 31 August from Mr Clancy to Mr Beckett at 18.42, Mr Clancy said the following:

> "To update you, the letters and statements overnight from Unite have unfortunately gone down really badly with both the cabinet and inside the Labour group. The mood has changed drastically. I'm afraid it will make it inevitable that the legal advice the cabinet now has on current grade 3 roles will mean the redundancies will have to go ahead straight away."

97. Taking that at face value, it is obvious that members of the cabinet, if not Mr Clancy himself, appeared to have changed their mind about the agreement that they had approved barely two weeks earlier. However, in English law, a decision by a contracting party unilaterally to change its mind about a contract into which it has

entered does not entitle that party to behave as though that contract has never existed at all. This too raises a serious issue to be tried.

98. The second point is that it has been suggested by the council in their written skeleton argument that it is not in the public interest to grant an injunction. I reject that submission. So far as I am concerned, the public interest is served by applying the rule of law to all situations, and I do not believe that there is any different approach justified in this case.

99. It is not necessary to identify the precise reasoning and rationale behind each of the other issues that I have identified in my numbered list, but I will say that on each of those numbered 1 to 6, and in particular those arising directly out of the ACAS agreement numbered 1 to 4, there is a serious issue or issues which in my judgment ought to be tried.

100. Mr Epstein QC acting for the council drew my attention to the authorities stating effectively that due to the particular nature of the relationship between an employer and an employee, or as in some of the older cases in archaic language expresses it as "master and servant", injunctive relief will only be granted in an exceptional case.

101. In my judgment, this is an exceptional case. I therefore turn to the question of adequacy of damages as a remedy and the balance of convenience. I remind myself of the statement of wide application in ***Fellowes v Fisher*** [1976] 1 QB 122, a Court of Appeal case, judgment by Brown LJ (as he then was), which set out in numbered order the approach to Lord Diplock's guidelines. They are reproduced in volume 2 of the White Book on page 2964. They are numbered 1 to 7, I am not going to read them all out, but I have taken them fully into account.

102. Whether to grant interim relief of this nature is a discretionary remedy. There are two specific points which raise their head at this stage, in relation to the conduct of the parties which is relevant to the exercise of my discretion. The first concerns the reinstatement of the shop steward, suspended for disciplinary reasons. The agreement, if that is what it was, to reinstate him was deliberately contained in a side letter and is clearly not included within or referred to in the joint press release published by ACAS. I do not consider that this point determines the way I ought to exercise my discretion, but I refer to it to show that I have taken it into account in considering that discretion.

103. The other is the second ground of potential industrial action, namely that balloted earlier in September, following a notice to the council by Unite on 1 September. The results of that ballot were known on 18 September, which was the end of day one of the hearing and was a vote again substantially in favour of industrial action.

104. It was not directly referred to in the evidence for the application, as that had been served before the outcome of the ballot was known. Mr Segal QC brought the court up to date on 19 September at the end of the hearing. A central plank of his case was that the ACAS agreement constituted or evidenced a legally enforceable agreement, with the council ending the redundancy process for grade 3 personnel on the one hand, and

Unite causing the industrial action on the other. The potential outcome in the light of that second ballot was theoretically possible that the claimants might succeed in their claim for injunctive relief, yet still commence lawful industrial action on the second ballot. This unattractive and unequitable scenario, which in my judgment would have been highly material in the exercise of my discretion, was avoided by Unite proffering an undertaking to the court in the following terms:

> "The second claimant undertakes until trial or further order not to induce its members employed by the defendant to take any industrial action pursuant to either of the industrial action ballots which closed on 14 June or 18 September 2017."

105. The wording of that undertaking might require some fine tuning, but the general point is that Unite will undertake to cease its industrial action pending final resolution of the proceedings in any order I may make for an interim injunction.

106. I therefore turn to whether damages are an adequate remedy. If I were to grant the relief sought, the status quo would be maintained in the sense that the grade 3 operatives would not now have to decide, by the end of this month, what to do in terms of accepting alternative employment, facing redundancy in a little over 15 days, and that being potentially in breach of the ACAS agreement.

107. If that were to happen, the operatives would be made redundant, and a successful trial on the issues I have set out would be otiose and of no practical effect to them at all. However, on the other hand, delaying the efficiency changes sought by the council, in this case making a hundred or so people redundant, and re-organising the waste collection of Birmingham will have costs attached to it, which so far as the council are concerned can be compensated in damages. Unite proffer a cross-undertaking in damages, as well as the undertaking to which I have referred already.

108. Therefore, taking all the circumstances of this case into account, in my judgment damages will be an adequate remedy to the Council but not to the first claimant, Mr Taylor, or the other grade 3 operatives in the same situation.

109. I therefore turn to consider the balance of convenience. In my judgment, that lies firmly in favour of granting the injunction. This matter is suitable for and will in fact be ordered to be dealt with by the court expeditiously, and a trial date is available in November 2017, which is a matter of eight or so weeks away.

110. Such a delay to the proposed restructuring of the council's waste disposal arrangements is a modest one. That restructuring is not a matter of the utmost urgency, as the council appear to suggest. I cannot avoid the impression that as part of the manoeuvring within the council itself between officers on the one hand, and others who have a different view, these redundancy notices have been issued with less notice than that required by the individual contracts of employment as part of a device by one faction within the council to avoid the consequences of the ACAS agreement.

111. The balance of convenience clearly lies in granting the injunction. The claimants are entitled in my judgment to the interim relief they seek, subject to fine tuning the terms of the order. It goes without saying that bringing court proceedings in the context of industrial disputes is hardly going to assist labour relations. Proceedings such as these are very expensive. Each party is now also faced with an expensive trial in the very near future, because as I have said, I am going to order the matter to be resolved by an expedited trial, and that trial will commence no later than 27 November 2017.

112. However, putting all that to one side, this dispute concerns the jobs of over one hundred people who are living in a state of considerable uncertainty over their futures. Strenuous efforts should be made by both sides to agree a consensual way forward.

113. That is the end of my judgment on the application. There are now consequential matters to deal with.

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This transcript has been approved by the Judge