Case No:

Neutral Citation Number: [2019] EWCA Civ 215
IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
Murray J
[2018] EWHC 3434 (QB)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13/03/2019

Before :

THE MASTER OF THE ROLLS
LORD JUSTICE UNDERHILL VP
and
LADY JUSTICE NICOLA DAVIES

- -

Between :

(1) Daniel FORSE
(2) Mark Robert CHILD
(3) SHEARWATER GROUP PLC
(4) XCINA LIMITED
(5) XCINA CONSULTING LIMITED — **Appellants**
- and -
(1) SECARMA LIMITED
(2) SECARMA GROUP LIMITED
(3) UKFAST.NET LIMITED — **Respondents**

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Tom Croxford QC and **Alice Mayhew** (instructed by **Mayer Brown International LLP**) for the **Appellants**
Gavin Mansfield QC and **Alexander Robson** (instructed by **Lewis Silkin LLP**) for the **Respondents**

Hearing dates : 31 January & 1 February 2019

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Judgment

Sir Terence Etherton MR:

Introduction

1. This is an appeal from the order dated 30 November 2018 of Murray J, by which he granted, as part of a wider order, an interim springboard injunction against the appellants. The appellants are among a larger group of defendants alleged to be liable to the respondents for the tort of conspiracy to injure by unlawful means.

2. In broad terms, the alleged conspiracy is said to be an agreement or concerted action by the defendants, at a time when some of them were still employed by, and were directors of, the first and second respondents (together "Secarma"), to procure key employees of Secarma to resign and join one or more of the fourth and fifth appellants (together "Xcina") and so build up a cyber-security business competing with Secarma.

3. The springboard injunction prohibited the defendants from doing a number of things damaging to the business of Secarma, and was intended to prevent Xcina from benefiting from the commercial advantage which the respondents claim Xcina had wrongly achieved from the alleged conspiracy.

Factual background

4. Xcina offers, among other things, cybersecurity advisory services, including penetration testing ("pen testing"), which includes its more sophisticated version "red teaming". Pen testing involves testing and exposing weaknesses in the security of a client's IT systems by deliberately trying to hack them. Those with the skills required to perform pen testing are in short supply. Until the events and matters of which Secarma complains, Xcina did not provide that service by using its own employees but outsourced the work, principally to Secarma.

5. The third appellant, Shearwater Group PLC ("Shearwater"), owns and indirectly controls the fourth and fifth appellants. The fourth appellant, Xcina Ltd, is a wholly owned subsidiary of the fifth appellant, Xcina Consulting Ltd.

6. Mr Mark Child, the second appellant, is the founder and managing director of Xcina Consulting Ltd.

7. Secarma carries on a cyber-security company specialising in pen testing. It provides that service by way of an in-house team of pen testers.

8. Mr Daniel Forse, the first appellant, was formerly employed by Secarma as a manager of a team of pen testers.

9. Secarma's business was founded by Mr John Denneny, the first defendant, and Mr Mark Rowe, the second defendant. They have not appealed the Judge's order. They sold that business on 30 June 2016. It is not necessary for the purpose of this judgment to recite in detail the various corporate entities that participated in that sale and its aftermath or to describe the various stages in the transaction. It is sufficient to say the business was subsequently carried on by Secarma and Mr Denneny and Mr Rowe continued to be employed by and were directors of Secarma and that the acquisition was effected by way of an Investment Agreement and a Share Purchase Agreement. Secarma's share capital

was divided between, among others, Mr Lawrence Jones, the CEO of UKFast.net Ltd ("UKFast.net"), the third respondent.

10. The Share Purchase Agreement imposed restrictive covenants on Mr Denneny and Mr Rowe requiring them to refrain, for three years following the completion date of the sale, from assisting any other business to compete with Secarma; from soliciting business from any person who, in the 24 months prior to completion, had been a customer of Secarma's or in discussions with Secarma about becoming a customer; and from poaching any person who was at the time of sale or who had been employed by Secarma in the 24 months prior to completion. The covenants are due to expire on 29 June 2019.

11. On 30 June 2016, the same date the Share Purchase Agreement was completed, Mr Denneny and Mr Rowe entered into contracts of employment with Secarma. Clauses 18 and 19 of those contracts imposed duties of confidentiality and non-disparagement both during and at any time after termination of their employment. Clause 20 imposed 12 month post-termination restrictions preventing Mr Denneny and Mr Rowe from soliciting actual or prospective clients with whom they had dealt personally in the last 12 months of their employment and from dealing with them. They were also restricted from competing with Secarma and from poaching its employees.

12. On 14 February 2017 the third defendant, Mr Paul Harris, who has also not appealed the Judge's order, was employed as Managing Director of Secarma. His contract contained the same restrictions as in Mr Denneny's and Mr Rowe's contracts of employment, except that the restrictive covenants lasted for six months rather than twelve following termination. His contract was amended on 12 July 2017 to add provisions that would place him on garden leave if either party terminated the agreement.

13. In a deed of adherence to the Share Purchase Agreement dated 2 October 2017 Mr Harris also agreed to be bound by the restrictive covenants contained in the Investment Agreement as though he had been a party to it.

14. There followed a series of resignations from Secarma. Mr Forse left on 28 March 2018. His employment contract did not contain any of the competition or poaching restrictions contained in Mr Denneny's and Mr Rowe's contracts. Following his resignation Mr Forse worked as a freelance pen tester. He subsequently joined Xcina. He is responsible for managing and recruiting new pen testers for Xcina.

15. Mr Denneny gave notice of resignation on 2 May 2018, and his employment terminated on 2 November 2018. Mr Harris gave notice of resignation on 13 June 2018, and was put on garden leave. His employment terminated on 13 September 2018. Mr Rowe gave notice of resignation on 23 July 2018. At the time of the hearing before the Judge his employment was due to terminate on 23 January 2019. There had been 28 resignations from Secarma as of mid-November 2018.

16. It is the respondents' case that Mr Denneny, Mr Rowe and Mr Harris, while they were directors of Secarma and while they were bound by their restrictive covenants in favour of Secarma, unlawfully conspired with Mr Child and Mr Forse to poach Secarma's employees, with the aim of building up an in-house pen testing business in Xcina. They allege further that, as part of the conspiracy, Mr Denneny, Mr Rowe and Mr Harris used their knowledge of the terms on which Secarma pen testers were employed so as to assist Xcina to offer either the same or more advantageous terms of employment.

17. It is alleged that, in pursuance of the conspiracy, Mr Forse and Mr Harris sought to recruit Mr Liam Harcourt, who was employed by Secarma as a pen tester. Mr Harcourt ultimately disclosed his conversations and bilateral WhatsApp chats with Mr Forse and Mr Harris to, among others, Mr Jones of UKFast.net and Ms Nicola Frost, the company secretary of Secarma and of UKFast.net. He also disclosed a group chat among certain employees of Secarma, including Mr Denneny and Mr Rowe, as well as Mr Forse and Mr Harris. The group chat was called "Order of the Phoenix", in which recruitment to Xcina was discussed. Relevant excerpts from those bilateral and group chats appear in the schedule to our judgments. It was his disclosure which eventually led to the commencement of these proceedings.

The proceedings and the hearing before Murray J

18. The claim form was issued on 14 November 2018. On the same day Secarma and UKFast.net applied for an interim springboard injunction.

19. The application was heard by the Judge on 23 and 26 of November 2018.

20. Relevant witness statements for the hearing were made by Ms Frost, for Secarma, and by Mr Denneny, Mr Rowe, Mr Harris, Mr Forse and Mr Child and also, on behalf of the defendants, Mr Michael Stevens, CEO of Shearwater, and Mr Lorenzo Grespan, an Xcina employee who had formerly been employed by Secarma.

21. The Judge delivered an oral judgment on 30 November 2018.

22. After setting out background facts, and commenting on the various witness statements, including the WhatsApp messages disclosed by Mr Harourt, he said that he had regard to *American Cyanamid Co v Ethicon* [1975] AC 396 and *Films Rover International Ltd v Cannon Film Sales Ltd* [1987] 1 WLR 670 for the principles applicable to interim injunctions, and to the judgments of Haddon-Cave J in *QBE Management Services (UK) Ltd v Dymoke* [2012] EWHC 80 (QB) and [2012] EWHC 116 (QB), [2012] IRLR 458, for the principles for springboard relief.

23. He held (at [21]) that there was sufficient evidence to provide *prima facie* support for the applicants' case, and (at [27]) that there were serious issues to be tried in relation to each of the defendants. He considered the balance of convenience as follows:

> "31 First, would damages be an adequate remedy? No. In my view there is a sufficient *prima facie* case that the Respondents have obtained an unfair head start that cannot be cured simply by reimbursing Secarma Limited for recruitment and related costs.
>
> 32 Would an undertaking as to damages provide adequate protection for the defendants? None of the Respondents have so far suggested otherwise.
>
> 33 Would the injunction help to preserve the present position? I find that it would.
>
> 34 I do not think there are any other particular factors that need to be taken into account. This is not a case in my view where

> the scales are so evenly balanced that I should give particular weight to the relative strength of the parties' cases.
>
> 35 Accordingly, I find that the balance of convenience falls in favour of granting the applicants interim relief pending an expedited trial of their claim.
>
> 36 The principles that apply to springboard relief were discussed in detail by Haddon-Cave J in the *QBE Management* case …
>
> 37. Having taken account of all the circumstances … I consider that the springboard relief requested by the applicants is appropriate, fair and proportionate at this interim stage."

24. As to the length of the springboard relief, the Judge said (at [38]) that, given the difficulties that Secarma faced in recruiting highly skilled pen testers in sufficient numbers to replace the ones that it had lost, the interim injunction should certainly extend until the start of an expedited trial, provided that happened on or before the end of April 2019.

25. The Judge also said that undertakings which had been offered by Mr Harris and the appellants - not to solicit any more of Secarma's employees and not to deal with Secarma's clients - were insufficient.

26. He then turned to the form of the order. The order made by the Judge is complicated in some respects. By way of a brief, broad and simple summary (and without elaborating by mentioning exceptions), so far as concerns the part of the order containing the interim springboard injunction, it prohibited (1) the enticing away from Secarma of any person who was an employee of Secarma immediately prior to the application, (2) the provision by the individual defendants, other than Mr Child, of any pen testing or red teaming services to Xcina, (3) the provision of pen testing or red teaming services to Xcina by any person who is, or was at any time since 1 March 2018, a Secarma employee and who was a participant in the Order of the Phoenix group chat, or was scheduled to be targeted by Mr Harris and Mr Forse or had been encouraged or enticed by them or Mr Denneny or Mr Rowe to leave Secarma, (4) the defendants from soliciting or dealing with any present client of Secarma or anyone who had been a client in the 12 months preceding 13 November 2018, (5) Mr Denneny, Mr Rowe, Mr Harris and Mr Forse from carrying out pen testing or red teaming for a business competing with Secarma, (6) the corporate appellants and Mr Child from carrying on any pen testing or red teaming business competing with Secarma.

Grounds of Appeal

27. There are ten grounds of appeal:

> **Ground 1:** The Judge failed to determine the length of any springboard advantage that had been obtained by the appellants by reason of the alleged breaches of duty;

Ground 2: The Judge applied the wrong test for the grant of springboard relief, notwithstanding the respondents' concession that the higher *Lansing Linde* test should be applied;

Ground 3: The Judge wrongly decided that the undertakings offered by the appellants were insufficient to protect the respondents from sustaining further losses by reason of past breaches of duty;

Ground 4: The Judge wrongly held that the respondents could not be compensated in damages for any losses sustained in the future by reason of the past solicitation of employees;

Ground 5: The Judge wrongly held that future losses might be suffered by the respondents other than by reason of dealings between the appellants and the respondents' customers;

Ground 6: The Judge wrongly held that springboard relief could be granted to cancel out any advantage that would not cause additional future losses to the respondents prior to trial;

Ground 7: The Judge wrongly concluded that the prejudice or harm that would be caused to the respondents if he did not grant the springboard relief would exceed that caused to the appellants (and the appellants' employees) if he did grant the relief;

Ground 8: The Judge wrongly concluded that the respondents had suffered substantial harm, by reason of the recruitment of employees by the appellants when, in fact, as the fresh evidence on appeal shows, the respondents have recruited 19 additional security professionals (including pen testers) and have increased their profitability since the events in question;

Ground 9: The Judge wrongly concluded that there was evidence to show that the appellants did not offer pen testing and red teaming services and/or that they were seeking to set up a new business offering pen testing and red teaming services;

Ground 10: In all the circumstances, the Judge ought to have held that the undertakings offered were sufficient, and that the relief granted in paragraphs 6(b), (c), (e) and (f) ought not to have been made.

Discussion

28. *American Cyanamid* is the leading authority on the requirements for an interlocutory injunction. They are described in the speech of Lord Diplock, with which the other members of the appellate committee of the House of Lords agreed, and may be summarised as follows.

(1) In the usual case, the court must be satisfied that the claim is not frivolous or vexatious, that is there is a serious question to be tried. If the court is satisfied on that point, it proceeds to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory relief that is sought.

(2) If damages would adequately compensate the claimant, if successful at the trial, for loss sustained as a result of the defendant continuing to do what is sought to be enjoined between the time of the application for the interim injunction and the trial, and the defendant would be in a financial position to pay such damages, no interim injunction should normally be granted, however strong the claimant's claim appears to be at that stage.

(3) If, on the other hand, damages would not provide an adequate remedy for the claimant in the event of success at the trial, the court then considers whether, on the contrary hypothesis that the defendant were to succeed at the trial, the defendant would be adequately compensated under the claimant's cross-undertaking as to damages for loss that would be incurred by the defendant by being prevented from continuing the relevant activity between the time of the application for the interim injunction and the trial. If damages recoverable under the cross-undertaking would be an adequate remedy and the claimant would be in a financial position to pay them, there would be no reason upon that ground to refuse an interim injunction.

(4) Where there is doubt as to the adequacy of the respective remedies in damages available to either party or to both, the question of balance of convenience arises. The various matters to be taken into consideration in deciding where the balance lies will vary from case to case. The extent to which the disadvantages to each party would be incapable of being compensated in damages in the event of their success at the trial will be a significant factor in assessing where the balance of convenience lies.

(5) If the extent of the uncompensatable disadvantage to each party would not differ widely, it may be appropriate to take into account the relative strength of each party's case as revealed by the evidence adduced on the hearing of the application, but this can only be done where there is no credible dispute that the strength of one party's case is disproportionate to that of the other party. Where the material factors appear to be evenly balanced, the prudent course would be to take such measures as are calculated to preserve the status quo.

29. In a subsequent case, *N.W.L. Ltd v Woods* [1979] 1 WLR 1294 at 1306-1307 Lord Diplock observed that the balance of convenience threshold in *American Cyanamid* was not intended to apply to a case in which the grant or refusal of an interim injunction would, in effect, finally dispose of the action in favour of whichever party was successful in the application because there would be nothing left on which it was in the unsuccessful party's interest to proceed to trial. He said that, in such a case, the degree of likelihood that the plaintiff would have succeeded in establishing his right to an injunction, if the action had gone to trial, is to be brought into the balance by the judge weighing the risks that injustice may result from deciding the application one way rather than the other.

30. That approach was applied by the Court of Appeal in *Lansing Linde Ltd v Kerr* [1991] 1 WLR 251, in which the plaintiff company commenced proceedings against the defendant, a former employee, for breach of a covenant preventing him for a period of 12 months after termination of his employment from being concerned directly or indirectly in any competitor business, subject to certain exceptions. The defendant had become employed

by a competing company within a few weeks of the termination of his employment with the plaintiff. The Court of Appeal upheld the refusal of the first instance judge to grant an interlocutory injunction to enforce the covenant. It held that, since a trial could not have taken place until the 12 month restraint had almost expired, the judge had correctly assessed and taken into account the prospects of the plaintiff succeeding at trial and correctly formed the view that the world wide restriction in the covenant was probably too extensive to be valid.

31. Staughton LJ said (at [258]) that, if it will not be possible to hold a trial before the period for which the plaintiff claims to be entitled to an injunction has expired, or substantially expired, justice requires some consideration as to whether the plaintiff would be likely to succeed at a trial.

32. As explained above, the appellants comprise only some of the defendants. The appellants did not enter into covenants with Secarma restricting the business they could conduct or the employment they could undertake. Rather, the interim injunctions against the appellants were intended to prevent them taking unfair advantage of any springboard which they are alleged to have built up by unlawfully conspiring to persuade employees of Secarma to join Xcina.

33. Springboard injunctive relief is well established at the level of the Court of Appeal: see, for example, *Roger Bullivant v Ellis* [1987] FSR 172, *P.S.M. International Ltd v Whitehouse* [1992] FSR 489, 496, *Willis Ltd v Jardine Lloyd Thompson Group plc* [2015] EWCA Civ 450, [2015] IRLR 844. We were referred by counsel to a number of first instance decisions but, with no disrespect to the judges in those cases, it is not necessary to consider them for the purpose of disposing of this appeal. Springboard injunctions are necessarily limited to the period for which the advantage may reasonably be expected to continue: see generally *Roger Bullivant* at ([183]-[185]).

34. It follows that an interim springboard injunction effectively delivers to the claimant, in advance of the trial, all or part of the substantive relief which the claimant seeks. At the same time, it operates in restraint of the defendant's freedom to trade or carry on business or to deploy their skills. Such an injunction may also have consequences for the defendant as regards third parties, whether employees or others, if the defendant is precluded from continuing to honour commitments to such third parties. For those reasons, save only where the time gap between the application for interim relief and the trial is insignificant, the court should adopt the approach in *Lansing Linde* on applications for an interim springboard injunction. The judge should assess and take into account the strength of each side's case both as regards liability and also the length of time during which any unfair advantage from the springboard will continue. In carrying out that exercise, the judge cannot conduct a detailed mini trial on disputed evidence. He or she must, however, undertake a fair and reasonable evaluation of the evidence bearing in mind that there will have been no disclosure, and the witness evidence will be incomplete and untested by cross-examination. I will return to this issue in the context of the assessment of whether the period of unfair advantage would be likely to have expired before the trial has been completed.

35. In the present case the Judge made inconsistent statements about the extent to which he had assessed the strength of the claim that the defendants are liable for the tort of conspiracy to injure by unlawful means. He said (at [21]) that "there is sufficient evidence … to provide *prima facie* support for the applicants' case", and (at [27]) that

there were "serious issues to be tried in relation to each of the respondents", and (at [28]) that the claimants had met "the standard of a serious issue to be tried in relation to each of their principal allegations, including the allegation that here was an unlawful means conspiracy between all the respondents". On the other hand, in the context of the balance of convenience, he said (at [34]) that the principles that apply to springboard relief were discussed by Haddon-Cave J (as he then was) in *QBE Management Services (UK) Ltd*. It is clear that Haddon-Cave J did make an assessment of the strength of the claimant's case. Further, in his written reasons for refusing permission to appeal, the Judge said that "the evidence … meets the necessary standard in relation to springboard relief per the principles set out in [the *QBE* case]" and that he "applied [the *QBE* case] and did take account of the merits to the extent required under the principles outlined there at this interim stage".

36. The lack of clarity on this aspect is unfortunate but it does not matter. It is clear that the evidence before the Judge disclosed a strong case against the appellants for conspiracy to injure through unlawful means, and even more so in the light of further evidential matters disclosed to this court by the appellants' solicitors on the day before the appeal was due to start. Indeed, it is fair to say that Mr Tom Croxford QC, for the appellants, did not make any real attempt to persuade us otherwise. In the circumstances, I can deal with the legal merits of liability quite briefly.

37. It is not a ground of appeal that the Judge applied the wrong legal principles for establishing a claim for conspiracy to injure by unlawful means. They require an agreement, combination, understanding or concert of two or more to do a lawful act by unlawful means: Clerk & Lindsell on Torts (22nd ed) paras. 24-93 and 24-95. The parties do not need to understand the legal effects but must know the facts on the basis of which it is unlawful: ibid. In the present case, the alleged unlawful means comprise the breaches of duty and obligations of the defendant directors and employees of Secarma in securing the recruitment of Secarma employees by Xcina and procuring such breaches of duty and obligations.

38. There is implied in every contract of employment an obligation to serve the employer with "good faith and fidelity": *Robb v Green* [1895] 2 QB 315 at 320. In the case of a director, the duty at common law and now the duty under statute is to act in the way he or she considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and not to place himself or herself in a position of conflict with the interests of the company: Companies Act 2006 ss.172 and 175. Those statutory duties replace corresponding common law rules and equitable principles but are to be interpreted and applied in the same way as those rules or principles: Companies Act 2006 s.170(3) and (4), *Burns v FCA* [2017] EWCA Civ 2140, [2018] 1 WLR 4161, at [65]. As to the common law principles, see *Item Software (UK) Ltd v Fassihi* [2004] EWCA Civ 1244, [41]-[43], and *British Midland Tool Ltd v Midland International Tooling Ltd* [2003] 2 BCLC 523, in which Hart J said as follows:

> "81. It is a fundamental duty of the director of a limited company to "do his best to promote its business and to act with complete good faith towards it": see per Lord Denning in *Scottish Co-operative Wholesale Ltd v Meyer* [1959] AC 324 at 366. It is also his duty not to embark on a course of conduct in which his own interests will conflict with those of the company: see per Lord Cairns LC in *Parker v McKenna* (1874)

> 10 Ch App 96 at 118. He is also, like an employee, under a duty of fidelity to his company: see per Lord Greene MR in *Hivac Limited v Park Royal Scientific Instruments Ltd* [1946] Ch 169 at 174. …"
>
> "89. … A director's duty to act so as to promote the best interests of his company prima facie includes a duty to inform the company of any activity, actual or threatened, which damages those interests. The fact that the activity is contemplated by himself is … a circumstance which may excuse him from the latter aspect of the duty. But where the activity involves both himself and others, there is nothing in the authorities which excuses him from it. This applies, in my judgment, whether or not the activity in itself would constitute a breach by anyone of any relevant duty owed to the company. It does not, furthermore, seem to me that the public policy of favouring competitive business activity should lead to a different conclusion. … A director who wishes to engage in a competing business and not to disclose his intentions to the company ought, in my judgment, to resign his office as soon as his intention has been irrevocably formed and he has launched himself in the actual taking of preparatory steps. …"

39. At the hearing before the Judge the case and evidence for Secarma was set out in the first witness statement of Ms Frost. She said that there had been a deliberate and highly orchestrated scheme to poach many of Secarma's employees, including its entire senior management team and many other key employees critical to its commercial and operational success, in order to recreate the business in Xcina as a direct competitor to Secarma. She said that since 1 March 2018 Secarma had received a total of 28 resignations, representing almost 50 per cent of Secarma's workforce. She said that the key protagonists behind the unlawful scheme appeared to be the founder-owners who sold the business, that is to say Mr Denneny and Mr Rowe, and the former Managing Director of Secarma, Mr Harris. She said that the evidence pointed to a plan stemming from at least May 2018, and perhaps earlier than that.

40. Mr Denneny was employed by Secarma, and was its Global Sales Director and a board director, from the date of its sale until his employment terminated on 2 November 2018, following notice of his resignation on 2 May 2018. Mr Rowe was employed by Secarma and was its Technical Director and a board director from the date of its sale until 23 January 2018, following notice of his resignation on 23 July 2018. Mr Harris was the Managing Director of Secarma from 14 February 2017 until the termination of his employment on 13 September 2018 following a period of garden leave. He was a board director of Secarma between 8 March 2017 and 13 September 2018.

41. Mr Rowe made a witness statement but it was not placed before us on the hearing of the appeal. I understood from Mr Croxford that it contained no denial of the allegations made against him in Ms Frost's witness statement.

42. Ms Frost's evidence was that on 29 and 30 October 2018 Mr Harcourt, an employee of Secarma, alerted Secarma's Operations Manager and Ms Frost and Mr Jones, to the efforts of Mr Harris to bring about a "team move" of Secarma's employees to Xcina. Her

evidence was that Mr Harcourt told them that Mr Harris messaged him out of the blue on 20 August 2018 and explained the plan regarding Xcina, that there was a schedule setting out who would resign from Secarma and when, and that in a WhatsApp message on 3 September 2018 Mr Harris had shown him the schedule. Ms Frost's witness statement set out at length many further details of what Mr Harcourt explained had ensued. That evidence is corroborated by WhatsApp messages between Mr Harcourt and Mr Harris and Mr Forse and by the "Order of the Phoenix" WhatsApp group chat.

43. WhatsApp messages between Mr Harcourt and Mr Harris, and between Mr Harcourt and Mr Forse, commencing on 20 August 2018, show that Mr Harris was working closely with Mr Forse in planning a move of 21 named Secarma employees in four stages beginning on 3 September 2018, that he was seeking to secure the agreement of Mr Harcourt to move to Xcina, and that that the overall plan was disguised as a bowling championship – "the Hammer's Bowling Championship", of which Mr Forse was designated the "party planner". The "Hammer" was a pseudonym given to Mr Child. In the chats Mr Harris, who was shown to have assumed the pseudonym "Vlad", identified those who had "decided to enter" the championship. The chats with Mr Forse also indicated that a new company was to carry on the pen testing business from March 2019.

44. The participants in the group chat were Mr Forse, Mr Harris and various Secarma employees, including Mr Denneny and Mr Rowe. Evidence of what was said in the group chat begins on 21 August 2018, when Mr Harcourt joined it. The group chat contains detailed discussion about recruitment of the participants in the group chat and other Secarma employees to Xcina and how the arrangements for such recruitment were progressing. Mr Harris gave the other participants updates on the recruitment arrangements, apparently based on his discussions with Mr Child and others in Shearwater. The chats appear to show that Mr Child had assumed overall responsibility for the recruitment and that he was operating through Mr Harris, who was co-ordinating with Mr Forse. Mr Harris asked the participants in the group chat to make sure he was in their "contacts" as Vlad and nothing else. In one exchange with Mr Harris, Mr Denneny said he would speak to Mr Child about the possible recruitment of a particular Secarma employee. In another exchange, Mr Harris said: "We are the peoples front of Secarma", and Mr Rowe responded: "PLA – Pentest Liberation Army". In another exchange, a Secarma employee, Lorenzo Grespan, said he had given his notice of resignation and 21 October was the earliest he could start (with Xcina) and that it was the "End of an era", to which Mr Harris responded: "Continuation of an era really".

45. On one occasion there was a discussion about clearing the chats. A participant asked why the chat was to be cleared, to which Mr Grespan responded: "deleting chat is to reduce the chance of something leaking and Mark [scil. Child] getting shit to no end from LJ [scil. Lawrence Jones] and possibly legal consequences due to the non poaching clauses and all that". Mr Forse gave instructions as to how to clear the chat. On 11 October 2018 there was a discussion about closing down the group chat. It was suggested by Mr Grespan, who said: "Do we still need this chat now that things are in motion? Reduces liability and people can keep in touch privately if necessary with Vlad and Dan [scil. Forse]". Mr Forse, Mr Harris and others agreed with that suggestion. Mr Harris said: "So, seems like the only way to shut this chat group down is to remove everyone individually (or you can remove yourselves). Then it will die when I finally remove myself. See you all in another chat room". It appears that the group chat was finally terminated the following day.

46. Mr Rowe and Mr Denneny were employees and directors of Secarma during the period of those chats. Mr Harris was an employee and director of Secarma until 13 September. In the absence of any denial by Mr Child or Mr Stevens, the strong probability is that they knew the status in Secarma of Mr Rowe, Mr Denneny and Mr Harris.

47. That is how the evidence stood at the hearing before the Judge. It strongly supported the claim of unlawful means conspiracy. The day before the hearing of the appeal, the appellants' solicitors sent Secarma's solicitors a letter which made that claim even stronger and showed that in certain respects the witness statements made by the defendants and placed before the Judge were seriously misleading.

48. The letter explained that the errors had come to the attention of the solicitors as a result of work on disclosure. They said that the material they had seen now showed the following. Mr Harris had approached Shearwater prior to 20 June 2018. Mr Child, Xcina and Shearwater were aware thereafter of Mr Harris facilitating the recruitment of Secarma employees by Xcina. The appellants were aware that Mr Harris discussed with some Secarma employees the possibility of their recruitment by Xcina, and that he sought to ensure that employees who he considered to be appropriate and who wished to leave Secarma would apply to join Xcina. Mr Harris met with one or more of the corporate appellants, including meetings with Mr Child, at which the recruitment of Secarma employees was discussed in general and at which Mr Harris sought to negotiate the terms of the contracts which those employees might in due course be offered by Xcina. Those meetings included one on 12 September 2018 (when Mr Harris was still an employee and director of Secarma) at which Mr Harris discussed the timing of offers to particular employees. Mr Harris expressed his opinion as to the appropriate terms to be offered to such employees and so implicitly disclosed that he believed that the salary of each such employee (as at 29 June 2018) was the same as or less than the figure proposed to be paid by Xcina. Mr Harris and Mr Forse expressed their opinions as to the desirability of recruiting particular Secarma employees, and encouraged Xcina to expedite the sending of offer letters to Secarma employees who had applied to Xcina.

49. As I have said, for obvious reasons, in the light of that further information, Mr Croxford did not seek to persuade us that the evidence was not cogent enough to support a strong prospect of success in the claim against the appellants for conspiracy to injure Secarma by unlawful means.

50. In accordance with the analysis of Lord Diplock in *American Cyanamid* the court at this point considers whether the balance of convenience lies in favour of granting or refusing the interim injunction. As to that issue, the first question is whether Secarma would be adequately compensated in damages for any loss sustained as a result of Xcina continuing to do what is found at the trial to have been unlawful activity. The Judge found that damages would not be an adequate remedy. It is, however, a ground of appeal that the Judge was wrong in making that finding.

51. I do not agree that the Judge was wrong on that point. It would be extremely difficult to calculate with any accuracy the loss sustained by Secarma by the business carried on by Xcina attributable to its unlawful springboard advantage. Damages for lost business which Secarma could have secured but for the unlawful conduct of defendants would presumably be assessed on the basis of loss of a chance, which is itself a very imprecise legal tool for determining recoverable loss.

52. Insofar as Secarma claims an account of profits in its Particulars of Claim, that is an alternative head of relief, for which Secarma does not have to make an election at this stage. In any event, the profit made by Xcina by virtue of its unlawful springboard advantage may be less than the loss suffered by Secarma and also might be difficult to calculate.

53. Turning, then, to the next issue in assessing where the balance of convenience lies in relation to the grant or refusal of the interim injunction, the Judge found that damages would provide adequate protection for the defendants. That is, on the face of it, a surprising conclusion. Mr Croxford suggested it may have been the result of a misunderstanding by the Judge. There is, however, no evidence from the defendants on the issue and it is not a ground of appeal.

54. Mr Croxford concentrated his submissions on two other matters. He submitted that an interim injunction which prevents Xcina from using the ex-Secarma employees in Xcina's pen testing and red teaming business is not legitimate because their move to Xcina could not be undone and so the interim injunction could never preserve or restore the status quo prior to the alleged unlawful act; rather, the injunction should be limited to avoiding future loss. He further submitted that, in any event, springboard relief can properly only be directed at preventing loss to the claimant as a result of the unfair advantage obtained by the defendant; and so a springboard injunction should never be of a scope or length that punished the defendant rather than preventing loss to the claimant. He said that punishment is more appropriately addressed by the claims for an account of profits and exemplary damages.

55. The first of those submissions is, with all respect, quite plainly wrong. The object of an interim springboard injunction is to preserve the status quo, in the sense of freezing until trial, the relevant business activity of the defendant. On the assumption that damages would not be an adequate remedy, the interim injunction is necessary to hold the position between the parties so that further unfair competitive advantage cannot be obtained by the defendant between the application for the interim injunction and the trial. That includes the ability to obtain work from new clients. It is true that, at the same time as, and by virtue of, the interim injunction the claimant obtains substantive relief in the sense that it provides the claimant with a period of time to arrange its affairs – whether by persuading ex-employees to rejoin or recruiting new employees and securing expert or other resources – in order to remove the unfair competitive advantage obtained by the defendant. That, however, is why it is appropriate, on the application for the interim injunction, to take into account the relative strength of the claimant's case.

56. On this part of the appellants' case, I do not accept their contention that the proper analysis is that the corporate appellants were simply enhancing an existing business activity. Their existing activity was outsourcing pen testing and red teaming, for which they were not competitors of Secarma but rather they were clients of Secarma. The intended carrying out of pen testing and red teaming in-house was a new kind of business activity for the corporate appellants, specifically for which they wished to recruit Secarma's employees. In carrying out that new business activity, the corporate appellants would be competing for the first time with Secarma both in relation to existing and past customers of Secarma and, critically, new clients.

57. Turning to the question of the scope and duration of a springboard injunction, whether interim or final, I agree with Mr Croxford that the object is not to punish the defendant:

Roger Bullivant at [183]. The injunction must be no greater in scope and for no greater period than is reasonable to remove the unfair competitive advantage secured by the defendant.

58. In the present case, even though the Judge directed an expedited trial, it was contemplated that this would not take place until April 2019. In fact, it has now been fixed for 12 days commencing on 1 or 2 April 2019. At first sight, delay of over four months for an expedited trial is surprising. We were informed, however, that the delay was not because of the court's inability to accommodate a trial sooner but because Secarma considered that it would need the time for preparation. Although there is no suggestion of this being the position in the present case, the court will no doubt be astute to ensure that a claimant does not artificially seek to extend the period of any interim springboard injunction by delaying the expedited hearing.

59. Since a springboard injunction should never last longer than is reasonable to remove the unfair advantage secured by the defendant, a judge granting an interim injunction must always do their best to estimate what is the length of the reasonable period. If it is shorter than the period before the trial will commence (the date of which should always be ascertained), they should specify the period and relief will be limited accordingly. If it is at least as long as the period prior to commencement of the trial, it will not normally be necessary to say more than that. In any case, the judge must always state the grounds for their conclusion. They should avoid being too prescriptive because the evidence will be incomplete and untested at the interim stage and, as the present case shows, it may prove to be incorrect and even knowingly false.

60. As for the length of the period necessary to remove the unfair advantage, it will all depend on the nature of the advantage and how it can reasonably be expected to be removed, bearing in mind that the object is not to punish the defendant but to correct the wrong to the claimant. In some cases it may be reasonable to take as a starting-point the length of time it has in fact taken the defendant to secure the advantage but the right period may in the circumstances of the case be either longer or shorter than that. By way of an example, if the defendant has taken several months surreptitiously and unlawfully to recruit employees of the claimant, but because of the closure of a competitor, the claimant is able to replace all its ex-employees with personnel of similar expertise and experience within a month of the hearing for interim relief, and there are no other special considerations such as misuse or potential misuse of confidential information, the springboard injunction would not necessarily be for the length of time it had in fact taken the defendant to carry out the unlawful recruitment. It all depends on the facts. If it would have taken the defendant more than one month lawfully to recruit the relevant personnel, the claimant could contend that the injunction should be for longer than a month in order to remove the advantage to the defendant of being able to compete sooner than would otherwise have been the case – an advantage which is matched by the disadvantage and consequential damage to the claimant of having to compete in a market with the defendant sooner than would otherwise have been the case. Depending on the facts, the judge will have to decide whether, as a matter of balance of convenience, to grant the injunction for the longer period or just the month, and, if the latter, leaving the claimant to a remedy in damages or account of profits for the balance of the period of unfair competition.

61. In the present case, the Judge's only statement about the limit of the interim injunction was at [38] of his judgment as follows:

> "As to the length of that springboard relief, given the difficulty that Secarma Limited is faced with in recruiting highly skilled pen testers in sufficient numbers to replace the ones that it has lost, I think it certainly should extend until the start of an expedited trial, provided that happens on or before the end of April 2019. I will be making an order for an expedited trial but if for any reason the trial does not commence by the end of April 2019 the respondents, of course, have liberty to apply."

62. On the assumption that the defendants are liable for unlawful means conspiracy, that was a compressed and unsatisfactory analysis of the minimum time it would take to remove the unfair competitive advantage, bearing in mind that an injunction for the months until trial would be a substantial interference with the defendants and, in particular, the business of Xcina. As it happens, the evidence before the Judge indicated that the plans for the recruitment of Secarma's employees and the execution of that plan took place over a number of months. The appellants' solicitors' letter of 30 January 2019, disclosing the misleading evidence in the witness statements before the Judge, shows that the plan may well have originated before June 2018. That was at least six months before the hearing before the Judge**,** when the recruitment of targeted Secarma employees was still in progress according to the schedules in the WhatsApp conversations, Mr Rowe was still under directors' duties to Secarma, Mr Denneny, who had been under directors' duties to Secarma until 2 November 2018, was still under restrictive covenant obligations to Secarma, and Mr Harris, who had been under directors' duties to Secarma until 13 September 2018, was on the face of it also under restrictive covenant obligations to Secarma.

63. Ms Frost's evidence was that pen testers are highly skilled and relatively rare in the market, and it is not easy to recruit to replace departing testers. She said that it is even harder to recruit where there is a new competitor in the market seeking to take over Secarma's business. In view of those difficulties, the time it took the defendants to plan and execute the recruitment of Secarma's employees would have been a reasonable starting point for assessing how long it would take to remove the unfair competitive advantage obtained by Xcina. Furthermore, the Judge would have been entitled and right to take into account that the defendants' evidence on this aspect is incomplete and untested and possibly, as indeed it transpired, inaccurate. That is why it would have been wrong for the Judge to have been too prescriptive about the likely time that it would take to remove Xcina's competitive advantage but, on the other hand, perfectly legitimate to conclude that it was likely to be not less than the period of some four to five months prior to the trial.

64. The appellants applied to file a further witness statement of Mr Stevens on the appeal, containing evidence that Secarma had "hired or [was] in the process of hiring" 19 security professionals, including senior managers, pen testers, red team and account managers to replace those who had left or were leaving and so had not been caused any substantial harm by Xcina's recruitment of Secarma's employees. The appellants further say that such evidence should have been disclosed by Secarma on the hearing before the Judge and that it shows that the extent of the risk of any future harm was not fairly stated by Secarma. Mr Croxford informed us that the current position is that 21 employees or former employees of Secarma have been made offers by Xcina and Secarma has recruited 21 replacements. I accept that the further evidence might have been difficult to obtain

prior to the hearing before the Judge. It is relevant evidence and I would permit the appellants to rely on it.

65. The evidence, however, in the second witness statement of Ms Frost, in reply to the further evidence of Mr Stevens, is that very few of the new employees recruited by Secarma between 1 March 2018 and 13 November 2018 were replacements of the employees who have resigned and were named by Mr Harris as intended targets for recruitment by Xcina. Her evidence includes a detailed organogram of Secarma showing who has been replaced. It is impossible at this interlocutory stage to reject Ms Frost's evidence. Mr Stevens' further evidence does not, therefore, cast any doubt on the decision of the Judge.

66. Finally, I turn to the scope of the injunctive relief granted by the Judge. I reject the contention of the appellants that it would have been sufficient to require, and the Judge ought to have accepted, undertakings from the defendants equivalent to (a) and (d) of paragraph 6 of the order: namely, not to solicit any further employees of Secarma who were in post on 13 November 2018, that is to say the day before the application for the interim injunction; and not to solicit or deal with current clients of Secarma or those who were clients in the 12 months preceding 13 November 2018, subject to an exception for pre-14 November 2018 clients of Shearwater and Xcina. Those undertakings would not have protected Secarma from Xcina continuing to take the benefit of its unlawful springboard advantage by planning and building up an in-house business of pen testing and red teaming, using the ex-Secarma employees who had already been wrongly recruited, and unfairly competing with Secarma, not only for existing and former customers, but also new customers.

67. The Judge was correct to grant an injunction restraining the corporate appellants from carrying on pen testing in-house. That was a new type of business in the sense that it was a different business model from outsourcing, which is what the corporate appellants had done previously. It was that new business which the Secarma employees were to be recruited to undertake.

68. The scope of the injunction was too wide, however, insofar as it prevents the corporate appellants from carrying on pen testing and red teaming by outsourcing, as that was its existing business.

69. The injunction was also too wide insofar as it prevents Mr Forse from carrying on any particular activity as he was not subject to any covenants with Secarma restricting his post- employment activities and there is no evidence that, in joining Xcina, he was in breach of any of his employment obligations to Secarma. Mr Child is in the same position in his personal capacity, as distinct from his role as CEO of Xcina, as he was never under any directors' duties or contractual obligations to Secarma. Nor should the injunction extend to prohibiting ex-Secarma employees from involvement in anything other than in-house pen testing and red teaming.

Conclusion

70. For all the reasons above, I would dismiss the appeal save to the extent that I have indicated the injunction granted by the Judge was too wide in its scope.

Lord Justice Underhill:

71. I agree that this appeal should be dismissed for the reasons given by the Master of the Rolls. At the heart of Mr Croxford's submissions was the contention that, while the grant of relief in this case may have deprived Xcina, in the period covered by the injunction, of any advantage from having poached Secarma's workforce, that was merely punitive because it did not prevent any ongoing loss to Secarma itself. But, as the Master of the Rolls points out at para. 55, that is not the case. Xcina (in respect of its new business) and Secarma were competitors: that is, they were both seeking to supply pen testing services in the same market. By keeping Xcina out of that market for (at least) the period up to trial the injunction did not simply deprive it of an advantage: it deprived it of a *competitive* advantage, because its unlawful conduct improved its ability, at the expense of Secarma's, to secure clients in that market.

72. Like the Master of the Rolls, I was surprised that the application proceeded on the basis that a trial could not take place before April; but I was also surprised that, as we were told, Secarma said that it could not be properly prepared by the earlier date offered by the Court. In a case where a defendant is subject to an interim injunction of a kind which is of its nature damaging to its business claimants may reasonably be expected to pull out all the stops.

Lady Justice Nicola Davies:

73. I agree with both judgments.

Schedule of WhatsApp Messages

Key to senders

Paul Harris – PH	Mitchell Bradley -- **MB**	John Denneny -- JD
Liam Harcourt – LH	Kyle Fleming (KF)	Paul Ritchie -- PR
Daniel Forse – DF	Lorenzo Grespan (LG)	

'Convo with PH'

Date	Sender	Message
3/9/2018	PH	Just following up with a few more details re The Hammer's bowling championship, following my recent post on the group chat re progress with planning. Official 'invitations' will start being issued from this week onwards, so party planner Dan has pulled together a broad schedule

		[…]
		There are still a few unknowns and people that haven't been reached, but these are the ideal date ranges based on what is known:
		Round 1 (03/09/18 > 17/09/18)
		[…]
		Round 2 (17/09/18 > 01/10/18)
		[…]
		Round 3 (01/10/18 > onwards)
		[…]
3/9/2018	LH	Intricately planned. Would I be right in presuming I'd fit into round three if I don't go travelling?
3/9/2018	PH	Yeah, if that suit you
		-
18/9/2018	PH	They've just been very slow getting everything sorted at their end to get offers out etc. […]
		-
21/9/2018	PH	Hi Liam, you're on for 3:30pm on Monday with Mark Child @ Juxton House (next to St.Paul's Cathedral)
		-
25/9/2018	PH	Good news. Feedback from Mark was good to :)
		-
3/10/2018	LH	Hi, just heard from micky that he'd be my manager, is this the case?
3/10/2018	PH	It depends. If you moved out of London, no, you could come under either Gaz in Manchester or Paul R in Scotland. Similarly, if you stay in London and this is completely unworkable for you, we could arrange a different reporting line. […]

'Convo with DF'

Date	**Sender**	**Message**
20/8/2018	DF	Remember to check contract for any non competes or whatever and let us know
		-
20/8/2018	LH	I've checked my contract, and my notice period id 1 week, it doesn't go up at any point, I do have a non poaching clause (6 months) and a non compete (6

		months)
		-
20/8/2018	DF	no – it just has a potential impact on timing. The non-compete isn't a problem. The none poaching can be. Basically the way around it is to have you as one of the last ones out the door (i.e. impossible that you poached anyone then). the other way around it (less ideal) is to contract for shearwater for the 6 months so that you aren't an employee, and then be an employee after. […]
		-
20/8/2018	DF	aye OK. let me speak with harris (prob tomorrow) and probably get him to chat to you as well.
		-
20/8/2018	DF	ph: [*mobile telephone number redacted for confidentiality*]
		(aka vlad)
20/8/2018	LH	Who is he?
20/8/2018	DF	paul harris
		-
5/9/2018	DF	Micky could fill you in on what the interview is like, but it's mostly just them filling you in on what xcina is like and an opportunity to ask any questions.
5/9/2018	DF	It's not a pass/fail thing as discussed
		-
19/9/2018	DF	Hello from Spain! You may have noticed offers and contracts starting to roll in now. Sorry it's taken longer than originally hoped! With the delay in mind, please see the new "ideal" resignation timeframes below. Again though, don't feel you have to. Do as you wish
		Shout if you need anything
		[…]
		(March 2019 (new company))
		Micky
		AndiP
		DawidG

Jose
Marcell
Pedro

Group Chat – “Order of the Phoenix”		
Date	**Sender**	**Message**
21/8/2018	DF	Excellent day to clear this chat anyway
		-
29/8/2018	MB	Oh yeah, burning hoodie video … can we all clear chat please? […]
		-
29/8/2018	DF	Not to patronise anyone, but if you don’t know how – tap on Order of the Phoenix up top and then scroll all the way down and press “Clear chat”
29/8/2018	KF	why are we clearing chat?
		-
29/8/2018	DF	Other one off things you should do:
		Disable chat backups – Settings -> Chats -> Chat Backup and turn auto backups off
29/8/2018	LG	Ah deleting chat is to reduce the chance of something leaking and Mark getting shit to no end from LJ and possibly legal consequences due to the non poaching clauses and all that
29/8/2018	LG	At least for me
29/8/2018	DF	Also go Settings -> Chats and disable “Save to camera roll”
		-
30/8/2018	PH	Excellent planning session yesterday with SWG. Lots of good stuff agreed re contract terms, benefits as financials, which means X should be in a position to start issuing offer letters from next week if the remaining work goes to plan.
		Also a good planning session on Tuesday with Dan and Chris to establish what an ideal on-boarding schedule would look like. Trying to satisfy individual people, client, legal and new co requirements. It’s not prescriptive and we will need

		to adapt to changing circumstances as we go, but it's a good starting point. […]
11/9/2018	JD	[…] I like Richard and think his maturity and style would fit well with mark Child. Good spot btw. I'll discuss with mark today.
		-
13/9/2018	PH	Good meeting with SWG yesterday.
		They're in the final stages of a £30m acquisition (good news for the Group and ideal target customer base for us – all very large multinationals) so it's been difficult to get share of mind the last couple of weeks.
		However, I have been assured things will start flowing over the next few days, so keep an eye on your Inbox 👍
24/9/2018	PH	The Cinnamon Club is now booked from 1st Oct, every Monday for the full day. Anyone who can get down for catch-up's, planning etc very welcome.
28/9/2018	PH	Quick Update: I am pressing MC to start getting all offers/contracts out from Monday next week. Phil, the COO, is managing the process, but he is very bogged down in the acquisition of a £30m security company. (Great news for us btw, as they have exactly the type of clients we need - large enterprise accounts.)
		[…]
		P1: start dates 01.11 > 14.11
		P2: start dates 15.11 > 28.11
		P3: start dates 29.11 > 14.12

		-
28/9/2018	LG	So my notice is in. 29/10 is the earliest I can start.
28/9/2018	LG	End of an era. Feels weird
		-
28/9/2018	PH	Excellent news
		Continuation of an era really.
		-
3/10/2018	LG	Can we just all resign with a group video on YouTube? Paul Ritchie can surely prepare a soundtrack. That will definitely get more views than all his social media posts combined…
4/10/2018	PR	We are the peoples front of secarma
4/10/2018	PH	PLA – Pentest Liberation Army
8/10/2018	PH	The Hammer is up in Glasgow tonight/tomorrow.
		He's invited anyone who fancies a catch-up to meet him either tonight (after 7pm) or tomorrow for breakfast at the Radisson Blu around 8:30/9:00
8/10/2018	PH	Mark Child
		-
8/10/2018	PH	UPDATE: Next batch of offers going out today – Chad, Clare, David Q, Gaz, Patrick, Rodger, Sam P.
		[…]
		-
8/10/2018	PH	As and when you resign could you DM me with your agreed start date pls. Thanks
11/10/2018	PH	As good a time as any to clear down all chats!
		-
11/10/2018	PH	Also, can you make sure I am in your contacts as Vlad and nothing else. Thanks
		-
11/10/2018	LG	Here's an unpopular opinion. Do we still need this chat now that things are in motion? Reduces liability

		and people can keep in touch privately if necessary with Vlad an Dan. I don't mind either way, it's just a suggestion and a decent way to know what's going on in the madhouse for those who left
11/10/2018	DF	It's not a terrible idea
		-
11/10/2018	MB	I'm happy with that
		-
11/10/2018	Lucia Eden	I'm easy either way 👍
11/10/2018	LG	If nobody objects by the end of the day then I think Dan or Vlad could delete this
11/10/2018	Clare Cavanagh	That's fine with me
		-
12/10/2018	PH	So, seems like the only way to shut this chat group down is to remove everyone individually (or you can remove yourselves). Then it will die when I finally remove myself. See you all in another chat room 🖐