Neutral Citation Number: [2023] EWHC 1114 (KB)

Case No: KB-2023-001727

**IN THE HIGH COURT OF JUSTICE**
**KING'S BENCH DIVISION**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10 May 2023

**Before**:

**DAVID LOCK KC**
**(Sitting as a Deputy Judge of the High Court)**

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**Between:**

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| **(1) GUY CARPENTER AND COMPANY LIMITED**<br>**(2) MARSH SERVICES LIMITED**<br>**(3) MARSH LIMITED**<br>**(4) MARSH MCLENNAN REGIONAL HOLDINGS LIMITED**<br>**(5) MMC UK GROUP LIMITED**<br>**(6) GUY CARPENTER AND COMPANY SRL (a company registered in Italy)**<br>**(7) GUY CARPENTER AND COMPANY AB (a company registered in Sweden)**<br>**GUY CARPENTER AND COMPANY GMBH (a company registered in Germany)** | **Claimants** |
| **- and –** | |
| **(1) HOWDEN GROUP HOLDINGS LIMITED**<br>**(2) HOWDEN GROUP SERVICES LIMITED**<br>**(3) HOWDEN REINSURANCE BROKERS HOLDINGS LIMITED**<br>**(4) HOWDEN REINSURANCE BROKERS LIMITED**<br>**(5) TIGERRISK PARTNERS (UK) LIMITED**<br>**(6) HOWDEN ITALIA SPA (a company registered in Italy)**<br>**(7) HOWDEN INSURANCE BROKERS AKTIEBOLAG (a company registered in Sweden)** | **Defendants** |

**(8) HOWDEN SCHWEIZ AG (a company registered in Switzerland)**
**(9) DAVID PHILIP HOWDEN**
**(10) ELLIOT RICHARDSON**
**(11) BRADLEY JOHN ANTHONY MALTESE**
**(12) MASSIMO ANTONIO REINA**
**SEBASTIAN COOK**

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**Mr Daniel Oudkerk KC, Ms Amy Rogers and Ms Freddie Onslow** (instructed by Mayer Brown International LLP) for the Claimants
**Mr David Craig KC and Mr Alexander Robson** (instructed by Mishcon de Reya) for the **First to Eleventh Defendants**
**Mr Gavin Mansfield KC** (instructed by Doyle Clayton) for the **Twelfth and Thirteenth Defendants**

Hearing date: 3 May 2023

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# APPROVED JUDGMENT

*Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email. The date and time for hand-down is deemed to be 12.00am on 10 May 2023.*

*I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.*

1. This judgment follows a case management hearing in an action which has been brought by the Claimants against the Defendants arising out of a claimed unlawful means conspiracy which is said to have been secretly planned by the Defendants to use existing employees of the Claimants to persuade one or more other employees of one of the various Claimant companies to terminate their employments with the Claimant and to become employees within the Defendant group of companies, and, the Claimants allege, to bring their existing clients with them.

2. The Claimants and the Defendants are both brokers involved in the reinsurance business. I shall refer to the Claimants as the "**Guy Carpenter companies**" and the corporate Defendants as the "**Howden companies**". For present purposes it is not necessary for me to distinguish between any of the individual companies within either the Guy Carpenter companies or the Howden companies. The ninth to eleventh defendants are individuals who work for the Howden group of companies. It is also not necessary at this stage to distinguish between the role played by individual Defendants and the corporate Defendants.

3. At present it seems common ground that most of the employees of the Guy Carpenter companies who have resigned are seeking employment with the Howden companies. However, they remain Guy Carpenter employees with the exception of the Twelfth Defendant, Mr Reina**.** Mr Reina was an employee of the Guy Carpenter companies in Italy and his contract of employment was governed by Italian law. I understand that it is common ground at present that he has bought himself out of his notice period and hence is no longer an employee of the Guy Carpenter companies, but is nonetheless subject to post-termination restraints (the details of which are not relevant for today).

4. The Thirteenth Defendant, Mr Cook, is a UK based employee of the Guy Carpenter companies who has given notice of termination in order to commence work with the Howden group of companies. Mr Cook has a 12 month notice period and remains an employee of the Guy Carpenter companies, albeit he is on gardening leave, as are most of the other 36 Guy Carpenter employees who have resigned.

## The background.

5. The parties are concerned with the business of reinsurance brokerage. The evidence at

this early point in this case suggests that there are a limited number of companies that offer this highly specialised service and that both the Guy Carpenter companies and the Howden companies work internationally. The evidence also suggests that there are a limited number of key individuals operating in this specialised business and those individuals not only have an understanding and experience of the way that the reinsurance market operates but also have long standing relationships with individuals at the clients for whom they negotiate reinsurance contracts.

6. At this stage the bulk of the evidence before the court about the events that lay behind the multiple resignations comes from the Claimants. The Defendants have not yet answered the allegations made by the Claimants or explained the factual basis on which they intend to defend the claim. The Defendants are, of course, perfectly entitled to keep their powder dry but one consequence of their decision is that the factual matrix within which I have to make case management decisions can only be based on the Claimants' evidence.

7. On the evening of Monday 27 March 2023, the Chief Executive Officer of Guy Carpenter's European business, Massimo Reina, resigned to join Howden. Mr Reina is described by the Claimants as being one of the most trusted and senior employees in the Guy Carpenter business. The Claimants' case is that he had been planning to join Howden for some period of time before his resignation but remained working for Guy Carpenter and acted as a recruiting serjeant to persuade other employees to join him in moving from Guy Carpenter to Howden. The Claimants' case is that he was working with others, including Mr Cook, to plan a co-ordinated series of resignations so that a large number of Guy Carpenter employees would leave at the same time, thus destabilising the Guy Carpenter business and persuading other employees and clients to switch to Howden. It is the Claimants' case that the Howden companies have a track record of arranging "team moves" in a manner which breaches the contracts of employment of individual employees who are targeted and their case is that paying damages for these breaches of contract has been treated by Howden as part of the overall cost of a recruitment exercise. If that *modus operandi* were to be proved, it may form a basis for a claim for exemplary damages but that is a matter for the trial Judge.

8. Following Mr Reina's resignation, there were a series of further resignations of Guy

Carpenter employees. These happened in waves over the next few days and the similarity of the wording in the resignation emails, as well as the timing, is relied upon by the Claimants to show this was all pre-planned. At this stage the evidence is that these resignations were a total surprise to senior staff at the Guy Carpenter companies. Hence, if there was a conspiracy, it appears that the conspirators were successful in keeping their plans secret from their employers until the Guy Carpenter companies received multiple resignation emails. I was told that, to date, 38 employees have resigned. Interim relief to prevent Howden recruiting more Guy Carpenter employees has been agreed between the parties, as well as restrictions on the way in which the Defendants can relate to the 38 individuals through their notice periods.

9. Understandably, I was also told that Guy Carpenter staff had been in discussion with other employees and had felt it necessary to offer improved financial packages to those employees to prevent them leaving to join Howden. The costs of those improved packages to staff who they managed to persuade to stay with Guy Carpenter will form part of the losses claimed in this action. The Claimants rely on the observations of a departing employee who explained the situation as follows in an unguarded message, namely that he was moving to "*un concurrent qui fait un raid sur notre boite"* which has been translated as '*a competitor who raided our company'*.

10. There is also evidence that Mr Reina and Mr Cook had tried to recruit other Guy Carpenter employees who were reluctant to move but, at least at the stage when an approach was made, did not disclose the approach to their employers. There is also evidence that clients of the Guy Carpenter companies were informed that staff were moving to Howden with, at the lowest, an encouragement that the staff member would seek to be doing business with them again in the future through Howden.

11. There is, of course, nothing unlawful in company A approaching an employee of company B with a view to persuading that employee to resign from his or her employment with Company A and come to work with Company B. Subject to issues about lawful post-termination restraints, the personal contacts which the employee has built up when working for Company A can be used in the future to generate business for Company B. In general, commercial market knowledge that an employee takes away from employment in his or her own head is rarely subject to legally enforceable restraints.

However, in a specialised people to people business such reinsurance, employees tend to be on longer periods of notice and, once the employment contract has come to an end, I was told that post-termination restraints are common in these types of employment and, depending on the drafting, may well be held to be reasonable. Hence, in this case, unless former Guy Carpenter staff are at risk of acting unlawfully, Howden may have to accept that it may be a considerable period of time before transferring staff are free to work for them or, even if they can work, that they can make active use of existing Guy Carpenter client relationships.

12. Whilst an individual employee has no duty to disclose the fact that he or she has been approached about a possible job move, the Claimants submit that it is different if (a) the employee is senior and (b) the senior employee is aware that approaches are being made to multiple employees for a proposed mass move. The Claimants rely on the observations of Openshaw J in *UBS v Vestra Ltd* [2008] IRLR 265 ("*UBS")* who said at paragraph 24:

> "*I cannot accept that employees, in particular senior managers, can keep silent when they know of planned poaching raids upon the company's existing staff or client base and when these are encouraged and facilitated from within the company itself, the more so when they are themselves party to these plots and plans. It seems to me that that would be an obvious breach of their duties of loyalty and fidelity to UBS.*"

13. At this stage the Defendants have not disputed that this is an accurate statement of the law. There is also no evidence before me to suggest that Mr Reina or Mr Cook alerted anyone senior in the Guy Carpenter companies to the fact that Howden were attempting a team recruitment exercise.

14. The Claimants also alleged that, when Guy Carpenter took commercial steps to protect its business and stabilise its staff in the wake of the first wave of resignations, Howden, Mr Reina and Mr Cook actively sought to prevent it from doing so. If proven, that may well amount to further breaches of their duties to the Claimants.

15. The Claimants allege that, after Mr Reina had resigned, his London-based PA emailed to her personal email address a spreadsheet containing a compilation of contact details for multiple Guy Carpenter clients. That would have been information which was

confidential to Guy Carpenter but would have been commercially useful to Mr Reina and Howden. She is said to have done this on Saturday 1 April 2023, before resigning herself on Monday 3 April 2023. The Claimants' case is that she did so on Mr Reina's instructions but Mr Reina has not yet filed any evidence about this issue.

16. Further, the Claimants allege that Mr Cook called at least 5 Guy Carpenter clients on the day of his resignation and shortly afterwards. One of those clients has told Guy Carpenter that Mr Cook called him after his resignation and said that he "*hoped they could do business again together*" in the future once his notice period was over, clearly implying that he was hoping they would continue to work with him through Howden. That is said by the Claimants to be a breach of his duty of fidelity since, at that point, he remained a Guy Carpenter employee and so owed a duty of loyalty to Guy Carpenter alone.

17. The Claimants' investigations are, so they say, at an early stage and I make no assumption about what further evidence they will rely upon to demonstrate alleged breaches of contract or the existence of the unlawful conspiracy or what explanations will be advanced by the Defendants to rebut the Claimants' case. Guy Carpenter seeks a variety of forms of relief including final injunctive relief (including a continuation of the interim relief given by way of undertakings in lieu of injunctions), damages, an account of the profits the Defendants have made and will make based on a series of overlapping causes of action including breaches of contracts, breaches of fiduciary duties, dishonest assistance, knowing receipt and breaches of confidence. They also claim exemplary damages.

18. At this stage I acknowledge that the Defendants' case is that they have defences to the claims but the nature of the defences is unclear. Any defence pleaded case may or may not be proven by evidence at trial. I also accept that the Defendants, faced with the need to file pleadings with a statement of truth attached, may make full or partial admissions to the case advanced by the Claimants. This lack of clarity provides a real difficulty in making case management decisions since, at this stage, I cannot know the extent to which there is any real dispute on liability.

19. If breaches of contract are proved, injunctive orders can be made to prevent the Defendants from taking advantage of any proved wrongdoing. The terms of any such

injunctions are required to be carefully worded in order not to stray into preventing what would otherwise be lawful competition for both employees and customers. However, if wrongdoing is proven, there is clear authority that injunctions can be granted to restrain wrongdoers from taking advantage of their unlawful actions. In effect, the purpose of such injunctions is to prevent the Claimants from suffering losses as opposed to allowing the losses to be suffered and then limiting the Claimants' remedy to a damages claim. However the springboard relief will only be granted for the limited period of time for which the Defendants have an unlawful market advantage: see *Roger Bullivant Ltd v Ellis* [1987] ICR 464.

20. This form of relief is potentially not limited to cases of misuse of confidential information. Although some doubt was originally raised as to whether springboard relief can be granted more widely (see Scott J in *Balston v Headline Filters* [1987] FSR 330), but it is now well arguable that it can extend to breaches of fidelity: see Openshaw J in *UBS* at paragraph 4. Whether an injunction is granted or not and any terms will, obviously, depend on the precise factual findings made by a Judge at trial, provided the Judge is making the decision at a time when the unlawful advantage remains in the future. If, by the time the Judge comes to make decisions, the delay in getting on the trial means that there is no continuing unlawful advantage, there would be formidable arguments against any form of springboard relief.

21. In this case the Claimants are seeking springboard relief and I am mindful that they do so on the basis of evidence which may or may not come up to proof at trial. However, given the present state of the evidence, I find myself in a similar position to Openshaw J in *UBS* who said at paragraph 35:

> *"I am firmly of the view that the claimants have put together a formidable case that there was an unlawful plan to poach both staff and clients from UBS, that that plan was formulated and actively managed by Mr. Scott [in this case that role is said to have been played by Mr Reina and Mr Cook], and it was at every stage assisted and encouraged by senior staff, including each of these defendants"*

**Should there be an expedited trial?**

22. The position taken by all parties in their Skeleton Arguments was that there should be an expedited trial or a "speedy trial" as it is sometimes called. The Claimants' case was that

there should be an expedited trial in October this year on issues of liability, declarations and injunctive relief, with quantum being adjourned to a later date. The Defendants' case in their Skeletons was that there should be an expedited trial starting in January 2024 covering all issues, namely liability, injunctive relief and quantum.

23. As I understood the case advanced on behalf of the Claimants from their Skeleton and in oral submissions, the Claimants submitted there should be an expedited trial on liability and injunctive relief for substantially the following reasons:

a) It was common ground that resolving the issues of liability and injunctive relief was urgent but that resolving the issues around quantum was not urgent and court time in advance of other litigants should only be allocated to resolve urgent issues;

b) This was the standard way in which unlawful conspiracy cases involving "team moves" were handled, as demonstrated by case management decisions taken in a series of previous cases and as recognised in the leading practitioners' books;

c) The final relief sought by the Claimants would not be limited to the interim relief which they had obtained by agreement but may well extend further;

d) It was important for the liability trial to be completed before the 2024/25 contracting cycle started so that the Claimants were in a position to seek springboard relief to prevent an unfair advantage accruing to Howden within the 2024/25 contracting cycle; and

e) It was neither practical nor possible to have a quantum trial in January 2024 because the Claimants would not know what losses they either have suffered or would suffer in the future by January 2024, and thus any quantum trial would need to take place at a much later date and, if it took place at such a later date, the Claimants would lose any practical opportunity to obtain springboard relief.

24. As I understood the case advanced on behalf of the Defendants from their Skeletons and in oral submissions, the Defendants submitted that a split trial was not appropriate in this case and that all issues should be decided in an expedited trial starting in January 2024 primarily for the following reasons:

a) Issues of liability, injunctive and quantum were so inextricably linked that it would not be practicable for the court to divide the issues in the way the Claimants suggest;

b) Split trials would lead to extra costs which could be avoided by a single trial;

c) The issues for a split trial could not be defined with sufficient precision;

d) As some of the Defendants were individuals, it was not appropriate for any quantum claims to be unresolved against them for an extended period of time;

e) Having a split trial without a quantum assessment would make it more difficult for the parties to reach a settlement of the issues; and

f) Having regard to the factors set out in *Electrical Waste Recycling Group Ltd v Philips Electronics UK Ltd* [2012] EWHC 38 (Ch), a split trial was not appropriate because my analysis of those factors should lead me to refuse the application for a split trial.

**Discussion.**

25. The Defendants rely on the observations of Peter Macdonald Eggers KC in *In Jinxin Inc v Aser Media PTE Ltd & Ors* [2022] EWHC 2431 (Comm) who helpfully summarised the approach to the consideration as to whether there should be a split trial as follows:

> *"In Electrical Waste Recycling Group Ltd v Philips Electronics UK Ltd [2012] EWHC 38 (Ch), at para. 5-7, Hildyard, J said that the Court should adopt an "essentially pragmatic balancing exercise in assessing how the case is likely to unfold according to whether there is or is not a split". The judge identified the relevant considerations to be taken into account amongst all of the facts of the case which guide the Court's discretion in this respect (see also Daimler AG v Walleniusrederierna Aktiebolog [2020] EWHC 525 (Comm), at para. 25-32). The considerations identified by the learned judge, which I have adapted, include:*
> *(1) Whether the prospective advantage of saving the costs of an investigation of the issues to be determined at a second trial if the determination of the first trial renders it unnecessary to determine such issues outweighs the likelihood of increased aggregate costs if a further trial is necessary.*

*(2) What are likely to be the advantages and disadvantages in terms of trial preparation and management?*
*(3) Whether a split trial will impose unnecessary inconvenience and strain on witnesses who may be required in both trials.*
*(4) Whether a single trial to deal with all issues will lead to excessive complexity and diffusion of issues, or place an undue burden on the Judge hearing the case.*
*(5) Whether a split may cause particular prejudice to one or more of the parties (for example by delaying any ultimate award of compensation or damages).*
*(6) Whether there are difficulties of defining an appropriate split or whether a clean split is possible.*
*(7) What weight is to be given to the risk of duplication, delay and the disadvantage of a bifurcated appellate process?*
*(8) Generally, what is perceived to offer the best course to ensure that the whole matter is adjudicated as fairly, quickly and efficiently as possible?*
*(9) Whether a split trial would assist or discourage mediation and/or settlement"*

26. Those observations were made in the context of applications for an initial trial on a series of discrete issues as opposed to a trial where, in substance, liability and injunctive relief was to be tried first and quantum tried at a later date. There are inherent dangers in having a trial on discrete issues and there have been cases where such trials have led to substantial later problems within litigation. In contrast, split trials between liability and quantum are more common and give rise to those problems on fewer occasions.

27. The principles set out above are nonetheless relevant to this exercise of case management discretion, albeit this is not an application for defined issues to be tried initially with the bulk of the issues on both liability and quantum adjourned to a later date. Whilst all these factors are potentially relevant and I have had regard to each of them in reaching my decision, it seems to me that there are two further matters to which I should have regard as well as the above factors. First, this is a case in which a springboard injunction is sought. Whilst the Claimants have not yet formulated the precise form of springboard injunction they will be seeking at trial (and may not be able to do so until all of the evidence is available), as explained above the purpose of such injunctions would be to prevent the Defendants from taking advantage of any headstart they had in securing clients which was based on their wrongful actions. This is a well-recognised form of relief in these types of cases: see the principles set out in Employee Competition – Covenants, Confidentiality and Garden Leave by Paul Goulding KC and others (OUP: 3rd Edition). Assuming the Claimants make good their case at trial, in order to be effective

any such form of injunction has to be granted reasonably promptly because it has to be granted before the damage is caused to the Claimants' business by the unlawful headstart available to the Defendants. That consideration argues for an early trial, as all parties originally accepted. Given that the parties all agreed prior to the hearing there should be an early trial, I am not attracted by a submission that there should be a delayed trial and that the Claimants should be invited to reformulate the interim relief they have previously agreed with the Defendants.

28. Secondly, I have to have regard to the effect on other litigants of these parties, in effect, jumping the queue of litigants waiting for their day in court. If there is to be an expedited trial, it will inevitably mean that other litigants will have their cases delayed because judicial resources will be allocated to this matter in preference to others. That consideration suggests that any order for expedition should be carefully confined to only those issues which are genuinely urgent in order to limit the scope of any early trial and thus limit the prejudice to other litigants. Having a trial which included an assessment of quantum, which all parties agreed was not urgent, would substantially extend the length of any trial and thus would further inconvenience other litigants. It is part of the overriding objective that the court should ensure that all matters are dealt with "*expeditiously and fairly*" (see CPR 1(2)(d)) and should do so by "*allotting to it an appropriate share of the court's resources while taking into account the need to allot resources to other cases*": see CPR 1(2)(e). Those factors, in my judgment, point strongly in favour of only ordering an expedited trial in relation to those matters which are urgent and which can thus justifiably claim the right to jump the queue over other litigants.

29. In this case, the Claimants submitted that an overriding factor against the Defendants' proposals was that a quantum trial in January 2024 would not be fair to the Claimants because a significant part of their losses would not have crystallised by that date. The evidence to support that submission comes from Mr Eagle, and it was largely supported by the evidence from Mr Cook. Both explained that about 80% of reinsurance contracts are renewed in January each year, and that the renewal process followed an annual cycle. As I understand matters, the annual cycle starts with detailed discussions between clients and their proposed brokers about the client's future reinsurance needs in the period running up to the annual summer break. Proposals about what forms of reinsurance

contracts should be placed are then put by the brokers to the clients in June or July, and instructions come back from the clients in September. The brokers then spend the autumn in discussions with underwriters to work out a series of proposed reinsurance contracts to meet the clients' needs. Most substantial clients need a range of reinsurance contracts to meet their needs and thus the broker is tasked with putting together a network of arrangements to fulfil the mandate provided by the client and that recommendations are made to the clients and final agreement is reached towards the end of the year, with the contracts starting on 1 January the following year.

30. The Claimants' case is that the processes for fixing the reinsurance contracts which will take effect from 1 January 2024 have already commenced and that, whilst they have already lost some clients as a result of the disruption caused by Guy Carpenter staff who have resigned, many of the processes were already sufficiently advanced that they look as if they will continue through to a renewal in January 2024. The Claimants say their real concern is the next contracting cycle which will lead to contracts being placed on 1 January 2025, following substantial work between clients and brokers during 2024. They rely on the fact that some employees, including Mr Cook, are on 12-month notice and others are on 6 months' notice. Thus, these staff could only start working for Howden in a time window when they can influence client decisions for the 2024/25 contracting cycle but, even then, will be subject to post-termination restraints which will prevent them doing so. The Claimants say that, if the trial is held in January 2024, it will be too early to tell which clients have been persuaded to change from Guy Carpenter to Howdens for the 2024/25 contracting cycle as a result of the allegedly unlawful actions of the Defendants and far too early to be able to quantify the extent of the losses arising from those clients who are persuaded to do so. It seems to me that there is considerable merit in these points.

31. The Defendants had two answers to this point. First, Mr Craig KC on behalf of the First to Eleventh Defendants, supported by Mr Mansfield KC on behalf of the Twelfth and Thirteenth Defendants, submitted that the court could make a damages assessment in January 2024 as to which clients were likely to depart in the 2024/25 contracting cycle and thus award damages on that basis. I do not accept that submission because I cannot see how such a speculative exercise in January 2024 could make any accurate prediction of the likely flow of clients away from Guy Carpenter at a later point within 2024 and,

even if it could identify potential client departures, I cannot see how the court (a) could be provided with evidence as to whether any such departure was sufficiently caused by any unlawful activity by the Defendants to make the Defendants liable for the Claimants' losses arising from such a departure or (b) quantify the losses caused to the Claimants arising from any unlawful actions by the Defendants. It seems to me far more preferable to allow the 2024/5 contracting cycle to be completed and for the parties to assess losses as and when the outcome of that cycle is known.

32. Faced with that difficulty, Mr Craig next submitted that, if the court was against him on the question of an expedited trial in January 2024, the trial of any issues in this case should be adjourned until at least the autumn of 2024 when he submitted that any client losses suffered by the Claimants caused by the wrongful actions of the Defendants would have become clear. In response Mr Oudkerk KC on behalf of the Claimants submitted that if the extent of any departure of clients only became clear in the middle of 2024, the process of evaluating the losses, no doubt through detailed accountancy reports on both sides, would inevitably push the trial further back and that a trial in the autumn of 2024 may well be premature. There seems to me to be considerable merit in that submission and thus, for today's purposes, I work on the basis that any fair trial on all issues including quantum could probably not take place until the first quarter of 2025. Mr Craig helpfully showed me information from the King's Bench listing office which explained that trials of more than 8 days are presently being listed for the period after April 2024. Thus, far from seeking an expedited trial, it seems to me that the Defendants' case is now that the trial should take place later than the court could otherwise accommodate it. The Defendants' submissions have thus changed from saying that this matter should have an expedited final trial to submissions that there should be a delayed final trial.

33. There are, in my judgment, two answers to that submission. First, the Defendants have already agreed there should be an expedited trial and they should be held to their agreement on that issue. Secondly, and perhaps more substantively, a trial in the first quarter of 2025 would effectively deprive the Claimants of the opportunity of seeking springboard relief to protect them in the 2024/5 contracting cycle because, by that date, any unfair or unlawful advantage secured by the Defendants would already have been translated into new customer contracts. Thus, if this matter were not tried until the first quarter of 2025, the Claimants would in practice be prevented from having the

opportunity of seeking to restrain the Defendants from taking the benefit of any unlawful actions and be left with a claim in damages for the consequences of any unlawful action. That seems to me to be a substantial reason against delaying a liability trial and considering injunctive relief until a later date.

34. Further, if a trial is delayed until (say) February 2025, the departing employees would not know whether the post-termination restraints in their contracts are enforceable or not. That is a further reason for an expedited trial on the issues of liability and relief.

35. The primary reason advanced on behalf of the Defendants as to why a trial of liability and injunctive relief should not be separated from an assessment of quantum was that the precise form of any injunctive springboard relief would be likely to be so closely connected to the issues of quantum that it would not be practically possible to separate out the issues in a trial which was limited to liability and issues of the extent of injunctive relief. That submission was made strongly but, having carefully considered it, I do not accept that the difficulties are anything like as substantial as the Defendants contend. With the exception of Mr Reina and certain other employees based in Italy (whose employment contracts are governed by Italian law), I understand that the Claimants have not agreed to any early termination of the contracts of employment of the relevant employees. These employees are on a range of notice periods but the senior staff, who are particularly relevant because they are the ones who can be assumed to have most sway with clients, are mostly on notice periods of between 6 and 12 months. Further, the employees are subject to post-termination restraints in their employment contracts which the Claimants will seek to enforce. Whilst I have not been shown the precise details of those restraint clauses, the period during which individuals who previously worked for Guy Carpenter will be lawfully able to approach the Claimants' clients will very largely not have begun before a liability trial in October this year and may well extend well into 2024. It seems to me that it is likely to be important for both the Claimants and the affected employees to know when they will be able to approach Guy Carpenter clients, and for the corporate Defendants to know this so they do not unwittingly become parties to unlawful actions by the affected employees. I do not see any good reason why those issues cannot be decided at a speedy trial in October 2023. If the Defendants wish to argue that the covenants are too wide to be lawful, they are likely to be in just as good a position to do so in October 2023 as in February 2025.

36. The focus of the Defendants' submissions against an expedited trial was substantially not based on the effect of post-termination restraints but on whether the Claimants would be able to lead evidence to persuade a Judge that the corporate Defendants should be restrained from approaching specified Guy Carpenter clients as a result of their own wrongful actions as part of the alleged conspiracy, and thus whether the Judge would be in the best position to make decisions about the extent of any springboard relief without knowing the full picture. I accept that there is a small danger that this will become the position at trial but, in my judgment, it is not a good reason not to have an expedited trial limited to liability and injunctive relief for 3 reasons.

    a) First, if this becomes a problem, it is substantially a problem for the Claimants, not for the Defendants. It seems to me that it is likely to be to the Defendants' advantage if this evidence is not available since they will be able to submit that the evidence does not support the making of springboard injunctions;
    b) Secondly, the real choice is between an expedited trial in October 2023 or a delayed trial in (say) February 2025 when the losses to the Claimants (if any) are likely to have been suffered and no springboard relief will be available for the 2024/25 contracting round. Hence it is a choice between a case management structure which gives the Claimants a chance to advance springboard arguments and one which, in practice, either prevents them from doing so or at least restricts the springboard relief they could claim at such a late trial; and
    c) Thirdly, it is not yet clear whether the Defendants have any substantial defence to the claimed unlawful conspiracy or not or, if they have a defence, what it is. I do not know the extent to which the factual claims of wrongdoing by the Defendants are likely to be in dispute and thus the extent to which the factual basis on which the Judge will be invited to draw inferences is genuinely disputed. Thus, on the evidence before me at present, it is not clear to me that understanding the quantum of losses which will flow to the Claimants from a particular breach of contract will be a real problem in practice.

37. I accept that the costs of two trials are likely to be higher than the costs of a single trial. However, that factor has be set against the advantages of an expedited trial on liability and injunctive relief as set out above. Equally, a liability and injunctive relief trial will

take less time and cost less than a trial of all issues, whether in January 2024 or in February 2025 and will also inconvenience other litigants to a lesser extent.

38. It also seems to me relevant that this is the third action brought against Howden by Guy Carpenter in recent years and that each of the previous cases was settled in advance of a trial. Past conduct does, of course, provide no guarantee about how this case will proceed but it does not seem to me inevitable that, even if this matter proceeds beyond the first trial, the parties will have to incur the costs of a quantum trial because the outcome of the first trial may well allow the parties to take a realistic view on settlement. There must be a substantial chance that the case will be resolved either before or after an expedited trial on liability and injunctive relief. I thus cannot see that the added costs caused by two trials becomes a decisive factor in making the decision whether there should be an expedited trial on liability and injunctive.

39. I also accept that it is better for the individuals involved if any litigation in which they are involved is resolved as quickly as possible and that there will be a strain on departing employees if the litigation continues for longer than needed. However, the affected persons are senior staff earning substantial sums who, on the evidence before me, deliberately set out on a course of conduct which involved them breaching their contracts of employment. Given the history of past litigation which arose when similar things happened in the past, in my judgment the individuals cannot really complain if litigation follows their allegedly wrongful actions and that they suffer stress as a result of that litigation. The situation may, of course, look very different when all the evidence is before a trial judge but I have to decide the matter on the basis of the evidence before me at this hearing.

40. In those circumstances I accept the Claimants' submissions and have made an order for there to be an expedited trial of all issues pertaining to liability and declaratory and injunctive relief. I have also required a pre-trial review to be listed for 1 day in the week commencing 24 July 2023. I accept the Defendants' submission that it is important to ensure that the issues to be decided at any split trial are precisely formulated. There is a formulation of those issues in the order but, if there is any need to clarify the issues to be decided at the trial, this should be resolved at the PTR.

41. The trial is presently listed for 6 weeks. That trial length assumes that everything is in

issue. However, if substantial admissions are made so that the ambit of the issues at the trial is reduced or the evidence suggests that all of the 6 week period is not needed, as I indicated in the hearing the parties must inform the court listing staff without delay so that appropriate decisions can be made concerning the allocation of judicial and court resources.

42. Managing this claim of this size involving the actions of a large number of individuals within the constraints of an expedited timetable will require a considerable measure of co-operation between the legal teams acting for the Claimants and the Defendants. The Claimants have now served their Particulars of Claim and Defences are due on behalf of all Defendants by 26 May 2023. It seems to me that the terms of CPR 16.5 are likely to be particularly important in the management and clarification of the issues in this case. CPR 16.5 provides:

> *"(1) In the defence, the defendant must deal with every allegation in the particulars of claim, stating—*
>
> *(a) which of the allegations are denied;*
>
> *(b) which allegations they are unable to admit or deny, but which they require the claimant to prove; and*
>
> *(c) which allegations they admit.*
>
> *(2) Where the defendant denies an allegation—*
>
> *(a) they must state their reasons for doing so; and*
>
> *(b) if they intend to put forward a different version of events from that given by the claimant, they must state their own version.*
>
> *(3) If a defendant—*
>
> *(a) fails to deal with an allegation; but*
>
> *(b) sets out in the defence the nature of their case in relation to the issue to which that allegation is relevant,*
>
> *the claimant is required to prove the allegation…"*

43. It is particularly important that the pleadings on both sides should provide the particulars set out above because it will unnecessarily strain the timetable if either party has to make Requests for Further Information in order to understand the other party's case. If any party considers that there is a lack of clarity or deliberate obfuscation in pleadings, an urgent application should be made for Further Information against a tight deadline. I anticipate that any failure to remedy any real and clear lack of clarity or to remedy any obfuscation in responses may well lead a Judge to make unless orders for the provision of proper particulars, also against a tight deadline. I stress that this degree of discipline

applies equally to the Claimants and the Defendants.

44. The parties have agreed an order for Standard Disclosure by List by 23 June. This expedited timetable will only work if the parties genuinely provide full disclosure by that date, as opposed to holding documents back in the hope that their absence is not pursued. It seems to me that there is likely to be a particularly heavy weight of responsibility of the shoulders of the Defendants' solicitors to make sure that complete disclosure is given in relation to all issues (including documents relating to quantum) by 23 June 2023. It seems inevitable that a team recruitment exercise at this scale must have been carefully planned over a number of months. There will be a large number of relevant documents showing the planning, progress and budgeting allocated to this exercise which will need to be disclosed. An expedited trial can only work in practice if full and proper disclosure is given by this date, as opposed to being the subject of satellite litigation. Equally there will be substantial disclosure required from the Claimants in relation to the steps that they took once the resignations started because those steps will be relevant to both injunctive relief and quantum.

45. Any applications in this case should be made to the Judge with a request that they are dealt with expeditiously so that the parties can work to this tight timetable.