Neutral Citation Number: [2023] EWHC 3061 (KB)

Case No: QB-2022-000309

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 1/12/2023

Before :

THE HONOURABLE MR JUSTICE MARTIN SPENCER

- -

Between :

Gap Group North East Limited	**Claimant**
- and -	
Paul Palmer	**Defendant**

- -
- -

Mr Andrew Crammond (instructed by **Sintons LLP**) for the **Claimant**
Ms Romana Canneti (instructed by **Kleyman & Co Solicitors Ltd**) for the **Defendant**

Hearing dates: 30th October - 8th November 2023

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Approved Judgment

This judgment was handed down remotely at 10.00am on 1st December 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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THE HONOURABLE MR JUSTICE MARTIN SPENCER

Mr Justice Martin Spencer :

Introduction

1. Until January 2022, the defendant was a valued employee of the claimant, which is a company operating in the north-east of England in the sphere of waste collection and processing and resource recovery, with associated operations in haulage and logistics. In December 2021, another company became interested in acquiring the claimant and issues arose in relation to the valuation of the claimant's shares and the amounts that might be paid to the claimant's directors, shareholders and employees in the event of a buy-out. Figures were circulated based upon different valuations of the claimant company and the defendant was aggrieved at the postulated sums which would be forthcoming to him. Matters came to a head over 23/24 January 2022 in advance of which the Defendant had made clear to the claimant's Managing Director, Peter Moody, the sums to which he believed he was entitled. It was made clear to the defendant that such sums would not be forthcoming and on 25 January 2022 he sent an email to 12 recipients, including competitors of the claimant, making allegations of bribery and disclosing confidential information about the claimant. This was the end of the defendant's relationship with the claimant. The present action represents the claimant's claim for damages and an injunction arising out of the defendant's alleged breach of contract, breach of confidence and associated causes of action.

2. The trial in this matter started before me on Monday, 30 October 2023. After the witnesses for the Claimant had been called, the defendant, Mr Palmer, started to give evidence on Thursday, 2 November 2023. His evidence concluded on Monday, 6 November 2023. At the conclusion of his evidence, his counsel, Ms Canneti, requested a short adjournment so that she could take further instructions. When the court reconvened, Ms Cannetti indicated that the defendant had decided to admit liability. It was my understanding (and that of Mr Crammond, counsel for the claimant) that this constituted an admission of all the allegations of breach of contract, breach of confidence and the associated causes of action, in full. Although, at the start of final submissions on Wednesday, 8 November, Ms Cannetti indicated that, in fact, the admissions made were selective in relation to the allegations of breach, after some discussion she conceded, having taken further instructions, that the position was as had been understood the previous Monday, and that all the allegations set out in the Particulars of Claim were now admitted in full.

3. In consequence, this judgment is now only concerned with causation and remedy. However, in order to consider those issues adequately, it remains necessary to recount the background facts in some detail.

Detailed Background Facts

4. The claimant company (hereafter "GAP") was incorporated in 2015 and subsequently became an umbrella holding company for the various companies within the group which had developed over the previous 15 years or so. Peter Moody, after serving in the Armed Forces for 23 years, set up a waste collection business in 2005, PA Moody Recycling Ltd, which traded as GAP Waste. This involved the collection of waste and the sending it to third-party processors. The business was successful and in around 2008 expanded into haulage: it now has a fleet of over 40 vehicles offering a

full haulage and logistics service to clients. GAP also expanded into diverse areas of waste collection, processing and resource recovery.

5. Mr Matthew Flint was a developer who assisted GAP with a fridge plant which they were acquiring and who was aware that GAP was developing a 5 acre site in Gateshead to deal with Anaerobic Digestion of organic waste. He suggested to Mr Moody a venture involving the development of an Organics arm of the GAP group, and in about 2018 a new arm of the business, GOL (GAP Organics Ltd), was established for this purpose. Mr Flint introduced Mr Moody to the defendant as a suitable person to run GOL. Initially the defendant worked for GOL on a part-time basis whilst he continued to do consulting and other work through his own company, CH4 Sense Ltd ("CH4"). The defendant was issued a 12.5% shareholding in GOL and he became a Statutory Director on 10 October 2018. His salary, in the region of £500 per week, was paid by PA Moody Recycling Ltd on behalf of GOL.

6. It seems clear that the arrangement was successful and the defendant's relationship with Mr Moody was a close one. This is illustrated by a WhatsApp message from Mr Moody to Mr Palmer on 31 December 2021 describing him as being "part of the family" and his contribution being "immense". Mr Moody describes the defendant as an "effective operator" who was successful in sourcing and securing feedstock to supply the relevant plants. In February 2020, Mr Moody started to involve the defendant in other parts of the Group: for example, the defendant accompanied Mr Moody on a business trip to Portugal to look at plastic processing equipment which GAP was considering purchasing.

7. So far as the defendant is concerned, he describes himself as having worked in the business development sector since 1983. In 2011, whilst he was working in the Wastewater Treatment Sector, he was introduced to the Anaerobic Digestion and Biogas ("ADB") Sector and was introduced to Mr Flint through a Mr David Quigley. In 2013, the defendant set up CH4 to develop new ADB plants and in 2014, he developed a Biogas Plant at High Hedley. He confirms being introduced to Peter Moody and Peter Young of GAP through Mr Flint and agreeing to run GOL, taking a 12.5% shareholding. In the summer of 2019, he started working full-time for GOL. The defendant recounts a conversation he had with Mr Moody when the prospect of a significant external investment in GAP was discussed. He says that he was told that, following confirmation of the investment, his salary, which in the meantime was significantly reduced (£32,000 pa from the usual £64,000) would be restored to £64,000 and he would be granted a 5% shareholding in GAP, together with an increase in his shareholding in GOL. He says that he understood GAP to be worth about £10m (which would make a 5% shareholding worth £500,000).

8. In 2021, there were two significant developments with regard to GAP. First, a company called Ritchie Bland Energy ("RBE"), through a Mr Ian Bainbridge, became interested in financing a joint venture with GAP. Agreement was reached in November 2021 whereby RBE would invest £2.5m in GAP in return for a 25% shareholding. However, and secondly, a company called ENVA, a leading national provider of recycling and resource recovery services, became interested in acquiring GAP as a buy-out in December 2021.

9. Earlier, in 2021, Mr Moody, consistently with the understanding that had been reached with Mr Palmer in the summer of 2019, had been considering rewarding not

just Mr Palmer but also the other two main managers of GAP, Mark Curry (the Finance Director) and Andy Clark (the Transport Manager) with shares in GAP. This had in fact been written into Mr Curry's contract since January 2020: the offer of employment letter dated 10 January 2020 included the following:

> "Following a successful 24 months in post, you will be awarded equity within the company in the form of class B shares. The class B share value which will be between 3% and 5%."

There was no such written agreement in the case of the defendant, Mr Palmer, but an email from Mr Moody to Mr Bainbridge sent on 4 June 2021 is instructive. It said:

> "Paul Palmer is an integral part of GAP Group. He will also be a small shareholder within GAP Group. <u>This is something which was agreed well before any involvement with future/additional funders</u>." (Emphasis added)

This shows that the same understanding existed in relation to the defendant (and presumably also Mr Clark) as had been agreed in writing with Mr Curry in January 2020, and tends to confirm the defendant's evidence as to the agreement or understanding he had reached with Mr Moody in summer 2019. Indeed, before the involvement of RBE in the summer of 2021, Mr Moody had written an email to Messrs Curry, Clark and Palmer on 2 March 2021 in the following terms:

> "Morning Gents,
>
> Had a call yesterday afternoon with both Ward Hadaway [GAP's solicitors] and Tait Walker [GAP's accountants] to discuss the share options for yourselves.
>
> There are several issues which need to be addressed so that we can minimise any tax implications. We need to look at:
>
> 1. Share Option Scheme. We started one of these for John Quinn, however, due to the way he left, nothing was actioned. This would be the most tax efficient method of issuing shares. Basically, a valuation on your shares will be agreed with HMRC and a line in the sand is drawn. As it happens, if we use 2019 accounts there will be less value attached than once the 2020 accounts are submitted. There is a significant cost to starting a new share option scheme and I am waiting for the quote to come through before seeing which way we issue the shares.
>
> 2. Shares in hand immediately. Given the above, the value will be greater as HMRC will value the shares against the companies trading on the date they were issued and you are likely to receive a tax liability.

3. Once the above has been sorted, we can instruct WH to draft the shareholders' agreements for all shareholders.

I'll keep you informed of developments."

Thus, there was a clear understanding, before the other developments in 2021 regarding additional funding or a potential buy-out, that Messrs Curry, Clark and Palmer were to become shareholders in GAP, the only issue being the appropriate mechanism and how best to minimise any tax liability.

10. Mr Moody consulted Tait Walker as to the most tax efficient way that shares could be issued to the three employees. Mr Moody was keen for the shares to be issued free of tax. The scheme lit upon was that GAP would issue Growth Shares which would have no immediate worth but gain value above certain "trigger" values representing valuations of the GAP group. As Finance Director, Mr Curry was closely involved in these discussions and was given the task by Mr Moody of explaining the nature and terms of the Growth Share Scheme to the other two, Mr Clark and the defendant, so that they remained informed and knew what was happening. However, the "trigger points" were exclusively the decision of Mr Moody.

11. Before describing the events of January 2022, it is necessary to refer to the position of Valpak, a valued customer of GAP, and their regional sales manager, Mr Nigel Tomlinson. Valpak are a national Packaging and Waste Electrical and Electronic Equipment ("WEEE") Producer Compliance Scheme ("PCS"), operating in a heavily regulated industry. Valpak did not deal with waste services directly but, in common with other PCSs, would subcontract the work, having secured tenders for the work from such organisations as the North East Procurement Organisation ("NEPO") who manage the procurement on behalf of most of the Local Authorities within the North East of England. Valpak operate throughout England, Scotland and Wales. Mr Tomlinson joined Valpak as a Regional Commercial Manager in 2008, his area covering the Scottish Borders, down through the north-east of England to Lincolnshire and across to West Yorkshire. In early 2010, Mr Tomlinson approached Mr Moody to enquire whether GAP would be interested in engaging with Valpak in support of Valpak's tender for the 5-yearly NEPO contract, and Mr Moody agreed to provide some pricing details and other information for Valpak to feed into their tender. Valpak won the tender and entered into a contract with GAP for the waste collection and other services.

12. Mr Tomlinson was GAP's account manager at Valpak and, as such, built a close working relationship with Mr Moody over the following years. Valpak were involved with GAP in two projects in particular which worked to the mutual benefit of GAP and Valpak. First, in 2015, Mr Moody floated the idea of Valpak assisting GAP in the installation of a WEEE processing plant which could be used by Valpak for the processing of electrical waste and would be beneficial for Valpak's re-tender for the NEPO contract in 2015. The Board of Valpak agreed, with the proviso that Valpak secured the NEPO contract, which they did, and the scheme went ahead.

13. Secondly, in about 2016, the idea came up of GAP developing a plant in the North East for the processing of waste refrigerators. Mr Tomlinson explained what happened as follows:

> "There was not currently a fridge processing plant in the North East and I thought that a new plant in the North East would not only allow for a greater efficiency of gases being collected, beneficial for Valpak in respect of their green credentials but it would also eliminate the need to transport fridges to Bristol. They didn't always have the capacity to process the quantity of fridges that we needed and instead excess had to be sent to Perth in Scotland or St Helens. I spoke to Alan Price, my former manager and then to Peter [Moody] about the idea afterwards. Valpak wanted to explore GAP's ability to finance an opportunity like this. The issue as with the WEEE plant, was having the funds for the deposit. Valpak's board agreed that an advance payment for services would be beneficial to them and decided to make Peter an offer. In return the payment would be repaid via rebates and Valpak would have a guaranteed capacity going forwards. Valpak were involved in the due diligence process and the background work required as they needed to ensure that it was a good decision for them commercially. Following this process, the terms were finally confirmed and Valpak gave the green light for the fridge plant to go ahead. The plant went live for operation around November 2019. This was not Valpak being benevolent. The advanced payments made into GAP have ultimately been for Valpak's own gain. Had they not done so, it is likely that Valpak would be paying more elsewhere for the same service. In addition, it has assisted on reducing transport costs and Valpak's CO2 footprint."

14. Clearly, the opening of the fridge processing plant in 2019 would have given GAP greater capacity for this kind of business and, unsurprisingly, Mr Moody explored the possibility of GAP taking on this work for other Valpak regions. Thus, on 6 June 2020, he sent an email to Mr Ben Richardson, a Director of Valpak and Mr Tomlinson's line manager, attaching pricing proposals for Valpak's fridge processing work in Stoke and various Scottish areas. Mr Richardson replied positively on 10 June 2020 in relation to Stoke, Ayrshire and Inverclyde. In relation to the rest of Scotland, he said:

> "This needs to be investigated further as there are a number of streams intrinsically entwined with the incumbent, alongside the fact these collections are much cheaper than what you have proposed. I am exploring a wider plan for the rest of Scotland so this could be a slow burner."

Mr Moody responded:

> "I've been looking for a Transport yard (which could also be used as a WEEE bulking depot) in the Scottish central belt area for some time. Going forward, if we do manage to sort something, we should be able to take everything in house and reduce costs, but that's one for the future. I appreciate it may be difficult and take time to unwind some of the streams for the

> other areas and we stand by to assist where possible. Thanks again for your and Valpak's support and confidence in GAP."

There was further correspondence relating to the contracts for Stoke, Ayrshire and Inverclyde which were completed. As for the rest of Scotland, Mr Richardson wrote on 1 July 2020:

> "Everything else in Scotland is part of our next stage, as we discussed last week, we need to get the rest of the WEEE sorted. This equates to circa 1kt and I am hoping to confirm next week."

No further documentation has been disclosed by GAP in relation to possible additional expansion into Scotland until April 2022.

15. The Regional Commercial Manager for Scotland (excluding the border regions within Mr Tomlinson's aegis) was a Mr Paul McCaig. Valpak's existing contractor for fridge processing in the areas of Scotland where contracts were not awarded to GAP in 2021 was a company called Shore Recycling Ltd with whom, one assumes, Mr McCaig had a similar relationship to that enjoyed by Mr Tomlinson with GAP.

16. Mr Moody told the court that he made a number of attempts to recruit Mr Tomlinson as an employee of GAP. One of his proposed incentives to Mr Tomlinson was to include him in the offer of shares in GAP which was being made to the other GAP managers – Messrs Palmer, Clark and Curry. Perhaps unfortunately, the designated shares were described in some documents as "Tomlinson shares" although, as Mr Moody explained, this was premature as Mr Tomlinson had not yet joined GAP: in reality, these shares were held by Mr Moody in anticipation of Mr Tomlinson joining GAP and "in trust" for either Mr Tomlinson or any alternative recruit should Mr Tomlinson have finally declined Mr Moody's approaches.

17. In anticipation of completion of the investment deal with RBE, on 30 November 2021, Mr Ian Bainbridge of RBE wrote to Mr Moody in an email which included:

> - We have completed all documents for the transaction including investment agreement and articles
>
> - Growth shares are now written in taking into account the changes that have been requested to Nigel Tomlinson's shares transferring to Peter to be held under trust."

This is an example of the shares held by Mr Moody in anticipation of Mr Tomlinson joining GAP being referred to as "Nigel Tomlinson's shares."

18. On the following day, 1 December 2021, the defendant, Mr Palmer, signed a Service Agreement with the claimant as director. Although the defendant disputed reading this before signing it, or having knowledge of its contents, by the admissions of breach of contract and confidence made on 6 November, any issues arising from the scope of the contract and the defendant's obligations have fallen away. On the same day, the defendant signed, electronically, an Investment Agreement between RBE and GAP and also the Managers, including the defendant, which provided for the

Managers to be issued B Ordinary Shares in the capital of GAP on completion of the investment. 'B Ordinary Shares' were defined as "the B ordinary shares of £1 each in the capital of the Company, which have the rights set out in the Articles."

19. In his evidence, Mr Palmer denied ever seeing the Articles or knowing of their contents although Mr Moody said that they were freely available for him to read in the boardroom. In any event, Mr Curry said that he had explained the effect of the B Ordinary Shares being 'growth shares' with both the defendant and Mr Clark on a number of occasions, and I accept Mr Curry's evidence in this regard. Mr Curry had not, however, explained the 'trigger' points as these were solely the decision of Mr Moody. They are set out in the Articles under paragraph 10 as follows:

> "10 EXIT PROVISIONS
>
> 10.1 In the event of a Share Sale, the Exit Proceeds shall be distributed as follows:
>
> 10.1.1 If the Exit Proceeds are £35,000,000 or less, the Exit Proceeds shall be distributed as follows:
>
> (a) the Exit Proceeds shall be distributed between the holders of A Shares and Ordinary Shares pro rata to the number of A Shares and Ordinary Shares held as though they constituted one class of Shares; and
>
> (b) the B Shares shall not be entitled to any of the Exit Proceeds
>
> 10.1.2 If the Exit Proceeds are more than £35,000,000 but less than £40,000,000, the Exit Proceeds shall be distributed between the holders of Equity Shares as follows:
>
> (a) firstly, the first £35,000,000 of the Exit Proceeds shall be distributed as follows:
>
> (i) the holders of the B Shares shall be entitled to an amount calculated as follows:
>
> (A/B) x 50% x £35,000,000
>
> Where:
>
> A = the number of B Shares in the capital of the Company
>
> B – the total Equity Shares in the capital of the Company
>
> (ii) the balance of the Exit Proceeds shall be distributed to the holders of A Shares and Ordinary Shares pro rata to the number of A Shares and Ordinary Shares held as though they constituted one class of Shares

> 10.1.3 If the Exit Proceeds are £40,000,000 or more but less than £42,850,000, the Exit Proceeds shall be distributed between the A Shares, B Shares and the Ordinary Shares as follows:
>
> (a) firstly, in paying the holders of A Shares an amount equal to the amount by which the Exit Proceeds exceed £40,000,000; and
>
> (b) the remaining Exit Proceeds following the allocation pursuant to Article 10.1.3(a) shall be distributed between the holders of Equity Shares pro rata to the number of Equity Shares held in the Company;
>
> 10.1.4 If the Exit Proceeds are £42,850,000 or more the Exit Proceeds shall be distributed as follows:
>
> (a) the A Shares shall be entitled to 30% of such Exit Proceeds; and
>
> (b) the Ordinary Shares and B Shares shall be entitled to 70% of such Exit Proceeds distributed between the holders of Ordinary Shares and B Shares pro rata to the number of Ordinary Shares and B Shares held as though they constituted one class of Share."

The effect of these "trigger" points was that if the shares in GAP were to be sold, the "exit proceeds" would need to be more than £35m or more for Mr Palmer's Ordinary B Shares to be worth anything.

20. The relationship between the defendant and Mr Moody remained amicable throughout December 2021 as illustrated by the WhatsApp message sent by Mr Moody on 31 December 2021 describing the defendant as "one of the family" whose contribution had been "immense". However, things went seriously wrong in January 2022, when the interest of ENVA in buying-out GAP began to crystallise. On 17 January 2022, Mr Curry sent to both the defendant and Mr Clark an email attaching a spreadsheet which illustrated the outcome for all the shareholders in the event of GAP being valued at certain values: £60m, £42.85m, £40m, £35m, £30 and £28.5m. At a sale of £40m, the defendant's shares would be worth £1,820,000 (before taking into account RBE's investment). At a sale of £35m, they would be worth £796,267. At a sale below £35m, they would be worth £0. The defendant was ill and not at work on 17 January 2022 and he said that he did not look at the spreadsheet until the following day, 18 January 2022. This was inconsistent with the evidence of Mr Tomlinson who described receiving a voicemail from the defendant on 17 January 2022 in which he said words to the effect of:

> "I'm just warning you, it's nothing personal but you are going to be collateral damage. I'm just giving you prior warning. Peter has screwed me over."

In order for the defendant to have said this, he would have needed to know two things: firstly, that Mr Moody was intending to sell the company for less than £35m, and secondly, the effect of the trigger points in relation to his shares.

21. In an affidavit sworn on 5 April 2022 in connection with the claimant's injunction application, the defendant said:

> "28. I was unwell on 17 January and was not at work. After speaking with Peter Moody on the telephone and exchanging some messages with him in the morning (which I will not address in the affidavit), I spoke with him on the phone in the afternoon. During that call, he told me that he had a dilemma, namely that Tom Walsh (the CEO of ENVA) had indicated during a conversation on Friday 14 January that ENVA's valuation of the company was going to be low to mid £30m, possibly at £34m. …
>
> 30. By Tuesday 18 January 2022, I was still unwell but certainly improving. I remember working at my desk at home and in the afternoon coming across the share splits email from Mark Curry. There was no message with the email, just his email signature. The email had the spreadsheet attachment.
>
> 31. I was, frankly, astonished when I learned of what Peter Moody had done with the shareholding that he had promised me. I stress that at no time was the share structure explained to me until I received Mark Curry's email on 17 January 2022.
>
> 32. On the morning of 19 January 2022 at 08:04, Peter Moody blind copied me into an email to Tom Walsh (the CEO of ENVA), trying to arrange follow up calls for the offer to buy GGNEL. This was the deal that PM had described to me during our call on Monday 17 January 2022, prior to me seeing the share splits email, as possibly being valued at £34m. When I received this email, I felt it was a deliberate attempt to antagonise me."

22. In his evidence, the defendant accepted, as alleged by Mr Tomlinson, that he had told Mr Tomlinson that he was going to be "collateral damage": the dispute related to the date – on the defendant's evidence, it could not have been 17 January as he had not understood the implications of the proposed deal with ENVA by that date, but only on 18 January. Mr Tomlinson had not kept the voicemail and, on this point, I prefer the evidence of the defendant because of its consistency with the documentation, but little turns on this difference.

23. On 18 January 2022, the defendant sent an email to Mr Curry at 19:48 in the following terms:

> "The more I look at the spreadsheet reattached with some boxes around the areas I'm confused about.

> It comes back to the valuation and the 5% I "believed" was being allocated to you, Andy Clark, and me. To use your own words when trying to explain why Organics Group had been set up with us same three at 5%, and I get the reduction from 5% to 4.55% so that isn't my issue.
>
> It appears that we only have any value associated to our shares at a valuation over £35m. That would suggest that the company was valued at £35m when each of us joined, or at worst, when Peter made the statements which was long before RBE reared their heads. Worse still the 5% or reduced amount because of the RBE investment, only becomes that % at the point when the companies valued at over £40m, something ENVA currently dispute. (Valuation wise). However, the share allocation stays constant at 89 shares each but the value of those 89 shares is only realised at £35m+ and doesn't achieve the real 5% until £40m. Why is that?
>
> I'm going to ask Peter directly on Friday as not a conversation to have whilst we have visitors on site, so please feel free to share with him."

The following day, 19 January 2022, Mr Curry replied:

> "Morning Paul
>
> Fully understand where you are coming from and apologies for the delay in replying.
>
> The reasoning, as you say, was to provide shareholdings to the 3 (4) of us, as you say for the hard work etc and for future, in GGNE prior to any new investment. By creating these shares and issuing them it diluted the existing shareholders % shareholdings. Obviously, the biggest dilution in shareholding was Peter and Sharon which they had to agree with. I know that Peter was completely advised against doing this and gifting any shares at all by all professional advisers, but he wanted to do this as he had agreed to it even though his shareholding suffered significantly. When any new investment occurred after the share scheme this then diluted all the shares in existence including the new ones, hence why ours dropped from 4.55% to 3.41%. Again, Peter and Sharon took the biggest hit. Countering that if the investment works as it should and the EBITDA increases significantly, they will receive more than had the investment not taken place.
>
> In order to achieve allocating/allotting shares to the 3 (4) of us so they physically cost us nothing Tait Walker considered a number of schemes and had to undertake a valuation of the group, including, and then excluding Organics to find the best

tax efficient option to save on Tax at point of allocation, stamp duty, income tax etc for the 3 (4) of us.

Based on the valuation there were some that would give the required outcome but all bar one would have meant there would have been a significant amount of tax etc payable on the shares. These would have meant large bonuses each (c£60k) total of £240k which would all have gone to HMRC.

The only scheme that offered notional stamp duty and no income tax for the "gift" of shares was a scheme called the Growth Share Scheme.

This scheme operates in such a way that a new class of shares are created, in this case B shares, which can have full voting rights and dividend rights from day 1, the same as Ordinary Shares, which these shares do. The Shares, although issued, cannot have a value until the company has exceeded a minimum of a 25% increase in valuation, called a trigger point, from when the shares were issued otherwise it would trigger an income tax charge and stamp duty based on when they were issued which would be as above c£60k ish. Once it has achieved this trigger point the shares will have a value. This though is not necessarily the full value, and the scheme allows for further trigger points. The trigger points and values are decided at the outset when the scheme is set up.

Peter set the 2 trigger points at £35m with the 50% value of the shares and £40m with 100% value of the shares. The first trigger point is far in excess of a 25% uplift in the company but that is what Peter wanted and applied. The decision was purely Peter's and he could have opted not to have gone with the scheme at all. Whilst I was party to the majority of the conversations and had my job to do to complete this, it was not my place to declare whether I agreed with this or not as Peter had made his decision and it was, in my opinion, an emotive and difficult decision for him to give away part of the company. I did think that the triggers etc had been explained to us all but AC says he was surprised too when he saw the sheet.

At the time of the scheme being put in place and the investment coming in the agent for ENVA had approached the company and indicated they would be in the mid £40m that Peter stated he wanted. This would have worked for all shareholders although I don't know if this had any bearing on the trigger points. However, they have now stated they would be prepared to offer mid £30m, probably c£35m and enterprise value slightly lower. This doesn't work for the 3 of us, which will be disappointing if it is sold for this. I believe the company can go

> on and be worth significantly more. However, you can't buy time and it will be down to Peter."

The defendant replied:

> "…. What I find appalling is the fact that I wasn't offered the option of taking the financial tax hit, which while £60k is a lump, if it meant the difference being if it sold for any price Peter chose to accept, the value would genuinely be 5% less the share dilution for the investment. That simply isn't right, and I feel I've been lied to and deceived. I've had up to £50k of my money in Organics at times, so Peter knows I could afford it, but I'm not offered the option, just scalped as it appears you, Andy and most likely Nigel has been too.
>
> To me this is the biggest disincentive I could ever imagine, and it stinks."

24. There is no doubt that the defendant was extremely angry at what he perceived to be a betrayal by Mr Moody who, he believed, was reneging on a promise that he would have a 5% share in GAP's equity whatever its valuation: he perceived that, with the "Growth Share" arrangement and sale of GAP for £34m, he would be left with nothing. Indeed, in his evidence, the defendant admitted that he was angry and set out to take steps to coerce Mr Moody into altering his position. What remained unexplained was why the defendant lost all trust in Mr Moody and did not believe that Mr Moody would "do the right thing" by him. This was all the more strange given that Mr Curry and Mr Clark were in the same position. Be that as it may, the defendant took the following steps, with the consequences shown:

i) Shortly after 11:25 on 20 January 2022, he attempted to make three transfers from GOL's account to CH4 in the sums of £75,000, £75,000 and £50,000, a total of £200,000. These transactions were in fact all in excess of his authorised amount of £25,000 and therefore needed a secondary authorisation from Mr Curry, so they did not go through. They were almost immediately cancelled by the defendant at 11:31.

ii) At 11:45 on 20 January 2022, the defendant sent an extremely belligerent email to Mr Moody in the following terms:

> "I see you have had Mark set up the Organics account so I cannot authorise payments alone. Thanks for that Simon.
>
> I'm about to go to social media with the ENVA deal, all the details of the RBE deal, to Valpak with the share deals in Nigel's name and the back handers he receives for keeping GAP informed of confidential information. Keith Patterson will also be given a statement of what I've heard you personally discuss about him.
>
> I'll then start with the VAT, Taxman with the pathetic valuation spreadsheets, PAYE, Environment Agency regarding

> GAP's permit and the Wardley Biogas Investigation Report produced by SRC.
>
> You want to fuck me over Peter, bring it on."

In his evidence, the defendant explained that he called Mr Moody "Simon" ironically, Simon being someone whom the defendant knew that Mr Moody did not like or respect.

iii) At 12:00, Mr Moody instructed Mr Curry to remove the defendant's access to the GOL bank account and reduce the level of payment that required double authorisation from £25,000 to £1:

iv) At some time before 12:57 (in evidence, the defendant said it was immediately before 12:57), the defendant posted an article on GAP's website and Facebook page entitled "Peter Moody stitches up senior management after RBE £2m investment" and containing the following text:

> "At least 3 senior managers were promised a 5% share in the business for historically taking low wages in return. RBE Ritchie Bland Energy received 25% of shares for £2m investment which would suggest the business is worth £8m. However the share ratchet put in place means the shares of the three senior managers are worth nothing until the business is valued at £35m and then only 2.5%. The business needs to be valued at £40m for the shares to be worth the 5% promised. All sales data will now be forwarded to the tax authorities with all of the background files documenting their tax avoidance and also to ENVA who are currently in due diligence to buy the business at the mid £30m level."

In cross examination, the defendant was asked what he was referring to as "all the background files" and he confirmed that he was referring to documents in Word and PDF formats containing confidential information which he had downloaded to his laptop by sending himself approximately 60 emails with the documents attached.

v) At 12:57, the defendant posted a message on the GAP WhatsApp group with a link to the article he had posted on the website and Facebook page;

vi) At 13:57, the defendant sent an email to Mr Moody attaching the spreadsheet which he had been sent by Mr Curry, the Articles of Association and an extract from the Articles of Association and stating:

> "this is about to go to Ben Richardson [of Valpak] and Tom Walsh [of ENVA]. Suggest you pick the phone up because by 14:30 the option will no longer be there."

25. When he gave evidence, the defendant accepted that he was very angry when he took the above actions and it was my strong impression that the defendant was out of control, acting irrationally and allowing his anger to dictate his actions against his

own better interests. Following the email at 13:57, there was a phone call between the defendant and Mr Moody and I accept Mr Moody's evidence about that phone call which was as follows:

> "I therefore decided to call Paul. I can see from my phone records that I did so at 14:04, and that the call lasted 11 minutes and 53 seconds. Before doing so, I asked the other members of the senior management team to join me in the office and listen into the call, which I placed on speakerphone as I was worried that the call might descend into a shouting match and wanted some witnesses to it (although Paul was not aware of this). I therefore had Mark, Andy Wiltshire, my wife Sharon, Peter Young and Gary Harbottle in the room with me for this call. I have since asked them whether anyone took notes, and they have confirmed that they did not.
>
> The call was a difficult one:
>
> a) Paul repeatedly insisted that I had ripped him off and also talked about how he would be a Bad Leaver;
>
> b) He also said several times that he wanted his money and that if he didn't get it that he would release all the information about Nigel and the Environment Agency;
>
> c) I told Paul that he was not entitled to any money, but I also asked how much he wanted, and we seemed to go around in circles on this;
>
> d) I said that I presumed that because he had tried to take £200,000 out of the bank account then that was his line in the sand;
>
> e) In response, he did not deny that he had tried to take the money, but said that he wanted it as a bargaining chip;
>
> f) He did not give me any figure of what he wanted on this call and the call was going nowhere, which I told him;
>
> g) I asked him to come into the office to have a discussion face-to-face about the problem, which he refused and suggested an off-site meeting, which I did not want to do given his actions and demeanour;
>
> h) The call ended [with] Paul telling me to fuck off."

26. At 15:22, the defendant sent an email to Mr Moody indicating that he would be seeing his accountant at 16:00 to discuss GAP's proper valuation and indicating that he would write again when he had a value which was justifiable. At 08:06 the following morning, 21 January 2022, the defendant wrote again proposing a one-off payment of £500,000 for him to walk away from the business completely and

> "subject to all the usual confidentiality and settlement requirements including a professional handover of all Organics customers/suppliers."

The most that Mr Moody was prepared to offer was £100,000 which the defendant regarded as an insult, and the negotiations accordingly collapsed.

27. On 22 January 2022, the defendant sent an email to Mr Moody at 17:37 indicating both that he had already divulged confidential information to a third-party and intended to divulge such information to other recycling operators in the UK (ie GAP's competitors) and Valpak. In response, on Sunday, 24 January 2022 at 16:50, Mr Curry sent to the defendant an email attaching two letters from Mr Moody suspending him from GAP and suspending him from GOL. The letters included the following:

> "For the avoidance of doubt, you will continue to be employed by the Company throughout the period of your suspension and you remain bound by your terms and conditions of employment as set out in the Service Agreement. In particular, you must not disclose any Confidential Information (as defined in the Service Agreement) in relation to any Group Company (as defined in the Service Agreement) or any of their business contacts, set up in competition with the Company, solicit the Company's employees or customers or undertake any other paid employment."

28. The defendant's response was to carry out the threats which he had previously made. At 08:53 on Monday, 25 January 2022, he sent an email to 12 recipients alleging illegal cash payments having been made by Mr Moody to Mr Tomlinson of Valpak over the previous 43 months, effectively amounting to bribery, and attaching GAP's Articles of Association and Mr Curry's spreadsheet showing the shareholder entitlements at various price points. The recipients were, in addition to Mr Moody, Mr Wiltshire and Mr Curry of GAP, Steve Gough, CEO of Valpak, Mr Bainbridge and Mr Ritchie (of RBE), Mr Tomlinson, Mr Tomlinson's direct supervisor at Valpak (Mr Ben Richardson), the CEOs of two of GAP's largest competitors (Mr Simon Howie of Shore Recycling and Mr Robert Sant of AO Recycling), and to Mr Walsh of ENVA. It was also copied to a Mr Darren Jobling, apparently in error. He followed this up with emails to the Serious Fraud Office and the Environment Agency.

29. On 24 February 2022, Mr Curry wrote to the defendant inviting him to attend a disciplinary hearing on 28 February 2022. The defendant failed to attend. The defendant was summarily dismissed.

The Legal Proceedings

30. In the meantime, on the 31 January 2022, GAP had issued a Claim Form against the defendant alleging breach of confidence and breach of contract and seeking injunctive relief and damages. At the same time they issued an application for an interim injunction, supported by witness statements from Mr Moody and Mr Curry. The return date was initially 8 February 2022, followed by a further return date on 16 March 2022, which was vacated due to the terms of an order being agreed by consent. Master Sullivan made an order dated 14 March 2022 and the defendant made an

affidavit in relation thereto on 5 April 2022. In that affidavit, the defendant repeated his allegations of bribery stating:

> "Over the time I have worked for GAP, I have seen countless cash payments made by Peter Moody to Nigel Tomlinson. Indeed, it was common knowledge within GAP that these payments were being made. In essence, the arrangement was that Peter Moody would make cash payments to NT in return for preferential treatment by Valpak."

Having heard the evidence of Mr Moody, Mr Tomlinson and the defendant, I have no hesitation in finding that these allegations of bribery are completely unfounded. The email of 25 January 2022 had the effect of Valpak suspending Mr Tomlinson whilst Valpak carried out an investigation, using a reputable firm of solicitors, Messrs Shoosmiths, which included (with Mr Moody's cooperation) an examination of GAP's books. The investigation exonerated Mr Tomlinson who was restored to his position, albeit it was considered inappropriate that he should continue to manage the GAP account. Mr Tomlinson described, emotionally, the effect that these allegations had on him and his family. Importantly, what had been described by the defendant as "countless cash payments" became, when he gave evidence, just 4 occasions when he allegedly saw Mr Moody hand to Mr Tomlinson an envelope. All these occasions were capable of an alternative explanation: for example, Mr Moody and Mr Tomlinson said that one such occasion, in December, was Mr Moody in fact giving Mr Tomlinson a Christmas card. The defendant claimed to have received cash payments himself from Mr Moody which, if true, would have meant that the defendant was party to transactions which had the effect of defrauding the Inland Revenue. This detracts from his credibility. Mr Moody described the way in which the systems at GAP, and in particular Mr Curry's careful oversight as Finance Director, would not have allowed for such cash payments. In short, despite the difficulty of proving a negative, the defence of the claimant's witnesses to these allegations was wholly convincing and I find that the allegations are and were untrue.

31. At the return date for the interim injunction application, on 8 February 2022, the defendant consented to an order being made whereby he was to use his best endeavours and take all reasonable steps to keep confidential the Confidential Information, not to disclose it to any other authorised person, not to destroy or otherwise deal with documents containing confidential information and not to make detrimental allegations about GAP or its associated companies. The assigned Master was Master Sullivan who, by consent, continued the injunction order on 14 March 2022, as amended by her further order of 9 June 2023.

32. Particulars of Claim were served on 24 June 2022 which alleged that, by reason of the matters pleaded in detail at paragraphs 37 to 70, the defendant was in breach of the Service Agreement which he signed on 1 December 2021 in that he had breached his duty of identity, he had failed to use his best endeavours to promote, protect, develop and extend the business of GAP and was otherwise in breach of contract and further it was alleged that he had acted in breach of his equitable duties of confidence. As stated, these breaches of contract and duty have now been admitted in full by the defendant.

Loss and Damage

33. In the Particulars of Claim, as well as the claim for final injunctive relief, claims for damages were made relating to:

    i) Damage to GAP's business and loss of goodwill;

    ii) The lost chance of securing Valpak's Scottish fridge work;

    iii) The loss of the commercial value that would have flowed from the joint PR campaign with Valpak;

    iv) The lost chance of investment into GAP by ENVA and consequent business generation and ensuing profits; and

    v) Wasted management time, which at a minimum will amount to the pro-rated remuneration of the relevant managers in relation to time spent addressing the disruption caused by Mr Palmer's wrongdoing.

    However, at trial, (i), (iii) and (iv) were abandoned leaving the claims for wasted management time and the lost chance of securing Valpak's Scottish fridge work.

The Scottish Fridge Work

34. It is the claimant's case that, but for the defendant's actions in January 2022 which were intended to damage both Mr Moody and GAP, the GAP Group would probably have been awarded the Scottish Fridge work from Valpak for the period 2022/23 and, in consequence of not obtaining that work, sustained loss of profit calculated in the sum of £465,894.

35. The breakdown of the claim, and the basis upon which it is put, was reduced by Mr Moody into a document entitled 'Scottish Cooling Collection & Processing Work – Damages Resulting From Palmer's Allegations' which states as follows:

> "We conduct work within various regions of Scotland for both Repic and Valpak (the 2 largest producer compliance schemes) and given our geography, we are always looking to increase work out of this area. In 2022 GAP had been asked by Valpak to quote for various additional Scottish council fridge collection and processing which was currently being carried out by Shores recycling Valpak had asked for quotes for the following area and tonnages:
>
> | | |
> |---|---|
> | Clackmannanshire Council* | 81t (25 fridges per ton) |
> | East Renfrewshire Council * | 80t |
> | Falkirk Council | 237t |
> | Glasgow Council* | 690t |
> | West Dunbartonshire Council | 138t |

Stirling 126t

We subsequently submitted pricing and quoted for all areas of the work. However, the areas with * are the areas which allowed GAP to submit exceptionally keen pricing which was effectively being subsidised by our haulage department as we had general haulage deliveries within these very same areas.

In addition to the above, we had previously been awarded very similar Scottish fridge work in the following areas by Valpak:

Ayrshire Council (January 2019) 540t

Inverclyde Council (January 2019) 150t

We have had no service issues on any of the historic work, therefore, we were extremely confident that we were in an excellent position to be awarded the work and receive the additional volumes. Added to this, our offering was from a newly accredited Weeelabex (WEEE label of excellence) facility. Something Valpak are promoting within the industry.

This work would have equated to approximately 1,382t of additional work, resulting in the following revenue stream:

- Processing charges of 1,355.78t charged at £154pt = £208,790
- Bulk Transport of 246 articulated loads at £75 per load margin = £18,487
- Sale of all recyclates at £323 = £437,916
- Overheads (manpower, power, cost of sale) £147pt = £199,299
- Total loss of profit = **£465,894**"

36. The above was partially re-iterated by Mr Moody in his written evidence (which formed part of his evidence-in-chief) where he stated:

> 67. Due to [the defendant's] actions and disclosures [GAP] have suffered substantial losses that form part of its claim.
>
> 68. The most substantial loss in connection to the loss of Scottish fridge work which included multiple Councils and over 1,300 tonnes of fridges. We estimate that our loss of profit in connection with this, amounts to £465,894.

> 69. Prior to Paul's email of 25 January 2022, we had been awarded two of Valpak's Scottish fridge work for Ayrshire and Inverclyde that totalled almost 700 tonnes. This was awarded to the GAP Group in January 2019 and the work was taken away from the incumbent provided, Shore Recycling. Since commencing this work, we have not had any service issues with the work and have since obtained a Weeelabex accreditation (one of only two facilities to achieve this standard), something we know Valpak are keen to promote.
>
> 70. Valpak had approached the GAP Group in 2022 to provide pricing for additional areas that were currently being carried out by Shore Recycling. We had won the previous contracts from them in 2019 and believe that we would have been awarded the contract in 2022, if Paul had not made his allegations. We are also aware that following Paul's allegation, Valpak informed us that they had received a third-party challenge. We have reason to believe this came from Shore Recycling although this has never been confirmed to us.
>
> 71. Valpak instead decided for the contract to remain with the incumbent with an additional review taking place later in the year. Valpak, understandingly, have not been able to confirm categorically that we would have got the Scottish work but for Paul's actions. However, in my mind, given the history and the work that we had previously won from Shore Recycling, I have no doubt.
>
> 72. Following Valpak's thorough investigation of the allegations and the reinstatement of Nigel, after his suspension, we have recently been asked to submit additional pricing. We are confident of winning this work but have lost out on over one year of lost profit, which is based on the volumes that Valpak provided."

37. When asked questions in cross-examination, Mr Moody confirmed that GAP had succeeded in getting the Scottish fridge work contract in the last week of March 2023 covering the period 1 April 2023 to 31 March 2024. He further confirmed that the claim for loss of profits related to the previous year's contract, ie the period 1 April 2022 to 31 March 2023 for which there would have been a 3 month lead-in period. He stated:

> "We had given indicative pricing to Valpak before 25 January 2022 for three areas: Glasgow, Renfrewshire and Sterlingshire."

He further acknowledged that GAP themselves ask for 3 months' notice if a customer wants to change contractor, and the incumbent (Shore Recycling Ltd) may have required a shorter or longer notice period. In the light of this evidence, Mr Moody was asked whether he had any documentation confirming the negotiations before (on GAP's case) the prospects were ruined for 2022/2023 by Mr Palmer's actions on 25

January 2022. However, it turned out that the "indicative pricing" which had been given to Valpak by GAP was a reference either to pricing which had been provided in 2020/2021, when, as Mr Moody conceded, GAP did not secure the Scottish fridge work for reasons unconnected with Mr Palmer's breach of contract, or to emails in and following April 2022, after Mr Tomlinson had been reinstated and Valpak had completed their investigation. I return to these emails from paragraph 45(viii) below.

38. In his witness statement, adopted as his evidence-in-chief, Mr Mark Curry also asserted that the defendant's actions had caused the claimant to suffer loss of the Scottish fridge work, stating:

> "We have a firm belief that if it was not for Mr Palmer's disclosures and allegations, that [GAP] would have been awarded this contract from the incumbent provider, Shore Recycling."

39. Although he repeats the estimate of loss of profit of £465,894, he adds no further information to substantiate this claim.

40. Another witness relevant to this head of loss was Andrew Laight-Wiltshire, who joined GAP as a director in 2014 and had primary responsibilities involving compliance special projects, energy and financial management. His evidence was as follows:

> "31. I believe that if the allegations about Nigel had not been made, GAP would not have lost work they would have otherwise been given. GAP still have a relationship with Valpak but there is no denying that Paul's allegations derailed that for some time and Valpak wanted to distance themselves from us.
>
> 32. Valpak for instance decided they could not go ahead with a previously discussed press release about GAP processing their millionth fridge. This was instead conducted with one of our competitors, REPIC.
>
> 33. The most significant loss that I am aware of is the Scottish fridge work that GAP provided pricing for, covering an additional 6 areas. GAP are currently servicing Ayrshire and Inverclyde Scottish contracts for Valpak. These are areas that GAP won from the incumbent, a company called Shore Recycling.
>
> 34. Shore Recycling currently service the additional 6 areas but they are only able to process the fridges in a non-WEEELABEX site. GAP, on the other hand, obtained their WEEELABEX Accreditation in June 2021. This accreditation is considered to be the gold standard in the electrical waste industry and is something that GAP are able to promote, in addition to pricing, which in turn can feed into Valpak's tenders with the Local Authorities.

> 35. There were conversations above Nigel at Valpak that the work would be heading to GAP because of their offering. However, when it did not arrive, specific reasons were not provided by Valpak who instead simply said they had other matters to deal with and they would revisit this later. However, from the conversations that had been had previously, this didn't make sense.
>
> 36. I think it is safe to assume that had the allegations have not been made by Paul, GAP would have been awarded the additional Scottish fridge work last year.
>
> 37. GAP have been asked again by Valpak and they have submitted prices again for this year. Because of our offering we are confident of being awarded this work this time around given the passage of time since the allegations were first made."

Mr Laight-Wiltshire then set out the calculation of losses amounting to the claim of £465,894 as set out in paragraph 35 above.

41. Finally, in relation to the witness evidence, Mr Tomlinson stated that in 2019 he had assisted Mr McCaig, who had asked for pricing from GAP to service Scottish fridge work for Ayrshire and Inverclyde and that GAP had been awarded the work, taking over from the incumbent provider, Shore Recycling. He said:

> "72. Then in January 2022, I had discussions with Paul McCaig as he was interested in GAP providing pricing for some additional Scottish areas that were coming to tender. These were again areas that were being serviced by Shore Recycling and I would have thought this request was made due to Shore Recycling wanted to increase their prices.
>
> 73. In addition, GAP had recently received the WEEELABEX Accreditation, the highest accolade within the WEEE industry and one of only 3 plants in the UK and this is not something that Shore Recycling could offer.
>
> 74. Due to my suspension I ceased to take any further part in assisting Paul McCaig and instead I understand that he dealt with GAP directly.
>
> 75. I understand that GAP were not awarded any additional Scottish work in 2022 and to me that is surprising, especially given how competitive they can be on pricing and the incumbents were seeking to increase their prices. Although I am not responsible for making the decision, I cannot help but to think that the reason why this did not happen was due to the allegations that Mr Palmer made."

Claimant's submissions

42. For the claimant, Mr Crammond submitted that the court should conclude that the GAP Group were not awarded the additional Scottish fridge work because of the conduct of the defendant and the allegations which the defendant had made. In addition to relying on the witness evidence cited above, he relied on the various emails sent in 2022, to which I return at paragraph 45 below. Mr Crammond argued that the evidence showed that:

    i) GAP Group were doing some Scottish work for Valpak and were doing so without issue. They had obtained that work in place of their competitor, Shore Recycling, who were also the incumbent provider for the new Scottish work;

    ii) The defendant's now admitted breaches of contract and confidence included him providing confidential information and making false allegations, which were made directly to Valpak, as well as competitors of the claimant;

    iii) The same led to investigation by Valpak and a suspension of Nigel Tomlinson;

    iv) Inference can and should also be drawn from the emails of 14 February 2022 and 5 July 2023 that the defendant's conduct did negatively impact the relationship between GAP Group and Valpak at that time;

    v) The GAP Group has since been awarded this work by Valpak which supports the contention that the GAP Group were good enough to win the contract and makes it more likely that the period in which the work was not awarded was as a result of the situation arising from and following the defendant's conduct and breaches of contract/confidence.

43. In the alternative, Mr Crammond submitted that the court should be satisfied that the defendant's breaches caused the GAP Group to lose the chance or opportunity of securing the additional Scottish fridge work and the loss of that chance should be reflected in a high percentage of the losses claimed.

The Defendant's Submissions

44. For the defendant, Ms Canneti submitted that the claim for loss of profit is purely speculative: GAP had failed to get the work in 2021/22 although they had bid for that work, so it should not be assumed that they would have got the contract for 2022/23. She submitted that the claimant cannot even show they pitched for the work in 2022/23. Mr Tomlinson was back at work by 5 April 2022 and within a short time Valpak were approaching GAP for pricing as shown by the emails in April 2022. However, there was no quotation for the period in question, namely the year commencing 1 April 2022 and Mr Moody was unable to provide any documentation showing that he had quoted for the work prior to 25 January 2022 when Mr Palmer made his unlawful disclosures. By the time the quotations were made, the contract for 2022/23 had already been awarded. She asked the court to conclude that the quotations provided related to the contract for 2023/24. In addition, she submitted that there is no evidence as to how competitive GAP's pricing was but there is at least a query over the pricing from the fact that GAP had not won the contract in 2021/22. She submitted that, on the evidence, either GAP didn't quote for the 2022/23 work or, if a quote was given, they didn't get the work because their pricing was higher than that of the incumbent, Shore Recycling.

Discussion

45. In my judgment, the solution to this issue lies, principally, in the documentation. Thus,

i) In 2020, Mr Moody had provided indicative pricing to Valpak for the Scottish fridge work which had been passed on to Paul McCaig, Valpak's Commercial Manager for the Scottish regions.

ii) On 6 January 2021, Mr McCaig wrote to Mr Tomlinson:

> "Just a quick one re GAP and Scot WDA cooling. Undertaking an initial review as we move into 2021 and looking to gauge whether the pricing supplied by Peter in 2020 is valid or would updating?"

Clearly Mr McCaig was considering where to place the contract for 2021/22 and, in particular, whether to stay with the incumbent, Shore Recycling, or switch to GAP.

iii) On 7 January 2021, Mr Tomlinson wrote to Mr Moody as follows:

> "Paul is looking at the Scottish fridges that currently go to Shores. Can you confirm what your pricing is going forward?",

(Paul being a reference to Mr McCaig).

iv) On 8 January 2021 Mr Moody replied:

> "Evening Nigel. Please find pricing for areas requested. The site collections would be done by WEEE Solutions, however if you want to use current or another collector, then the transport and processing charges would apply only."

v) There is no further correspondence from 2021 and Mr Moody confirmed that for 2021/22, the Scottish fridge work was left with Shore Recycling.

vi) Although Mr Moody indicated, in the course of his evidence, that he would be able to produce documentation showing GAP had provided pricing quotes for the year 2022/23 and that this pre-dated the defendant's disclosures of 25 January 2022, he was in fact unable to do so: the quotations and pricings provided were from April 2022, by which time the contract for 2022/23 had, I assume, already been awarded and the lead-in time for the awarding of such a contract had long passed.

vii) On 14 February 2022, Mr Moody sent an email to Mr Richardson of Valpak enquiring whether Valpak remained interested in the PR element of GAP's one millionth fridge celebration. Mr Richardson responded:

> "Hi Peter. At this moment in time I think we are going to have to pass, based on everything going on at the moment."

Whilst this confirms that Mr Palmer's breach of contract/confidence had an effect on the relationship between the claimant and Valpak, there is no correspondence indicating that, because of "everything going on at the moment" (in Mr Richardson's words) Valpak intended to stay with their incumbent, Shore Recycling, in relation to the contract for the Scottish fridge work in 2022/23.

viii) On 14 April 2022, Mr McCaig sent an email to Mr Moody stating:

> "Thanks again for the comprehensive update earlier this week – much appreciated. As discussed here are the updated volumes for cooling across local authorities in Scotland in 2021."

and then setting out the volumes for various councils, Clackmannanshire, East Renfrewshire, Falkirk, Glasgow City, Stirling and West Dunbartonshire. On 25 April 2022 Mr Moody responded:

> "Apologies for the delay getting back to you. However, please find attached. Pricing for the collection, bulky and processing of the cooling from the regions detailed below."

ix) On 5 May 2022, Mr McCaig wrote to Mr Moody as follows:

> "Thank you for taking the time to review the 2021 cooling data and submit pricing last week, I've now taken time to review the pricing supplied. At this time, there are a number of projects underway in Scotland with regards to the securing the supply of the local authorities for future years. As a result, I'm going to have to revisit this later in the year, as those projects need to be managed in a careful, succinct manner. I appreciate the pricing would therefore need to be reviewed again by GAP. As always, the pricing is much appreciated, and I would like to re-ignite the conversation at a later date once a few more actions occur."

x) On 6 May 2022, Mr Moody replied:

> "I totally respect your decision and strategies; however I'm also a little confused as I presume the projects in question would have been on the agenda prior to our proposal.
>
> Do you have any time period you are working to whereby we can reignite the conversation?"

xi) On 5 July 2022, Mr Richardson, in an email entitled 'Feedback', wrote to Mr Moody as follows:

> "I can confirm that we engaged a law firm to investigate the allegations made against a Valpak Ltd employee. That investigation reached a conclusion whereby the employee returned to work without any action being taken. I can also confirm that we decided not to proceed with the planned media

> around the one millionth fridge being delivered with GAP Group North-East Ltd. Given the ongoing investigation that was being conducted, it was not considered appropriate until that investigation had concluded."

46. From the above, I find that there is no, or insufficient, evidence that the claimant had submitted a bid for the 2022/23 contract with Valpak for the relevant Scottish regions which was in any way hijacked or thwarted by the defendant's actions on 25 January 2022. The fact is that there is no document showing that there had been any correspondence or provision of pricing for a contract which was due to start on 1 April 2022. The email from Mr Richardson of 5 July 2022 indicates an effect upon the planned media around the one millionth fridge but makes no mention of any impact on a bid for the Scottish fridge work; this is in the nature of a deafening silence. Although Mr McCaig invited pricing in April 2022, he then indicated that he was not going to take the matter further forward at that stage for internal reasons, with no mention being made of any effect upon the commercial relationship between GAP and Valpak as a result of Mr Palmer's breaches of contract/confidence. Indeed, by that time, Valpak had completed their investigations, Mr Tomlinson had been exonerated and reinstated and full commercial relations had resumed between the companies. By that time, in relation to the contract for the 2022/23 Scottish fridge work, as Ms Canneti put it, "the bird had flown". However GAP were able to quote for the following year's contract for 2023/24 and were successful in securing that contract. This is consistent with Mr McCaig indicating that he would like to "re-ignite the conversation at a later date once a few more actions occur": what those actions were is not known but there is no indication it relates in any way to Mr Palmer's disclosures or breaches of contract/confidence.

47. I therefore reject the claim for loss of profits.

Lost/Wasted Management Time

48. The second head of claim is for £20,154.54 (reduced from £23,929.08) for lost or wasted management time pursuant to the principles set out in *Aerospace Publishing v Thames Water Untilities* [2007] Bus LR 726, per Wilson LJ at paragraphs 86 and 87:

> "86. I consider that the authorities establish the following propositions.
>
> a) The fact and, if so, the extent of the diversion of staff time have to be properly established and, if in that regard evidence which it would have been reasonable for the claimant to adduce is not adduced, he is at risk of a finding that they have not been established.
>
> b) The claimant also has to establish that the diversion caused significant disruption to its business.
>
> c) Even though it may well be that strictly the claim should be cast in terms of a loss of revenue attributable to the diversion of staff time, nevertheless in the ordinary case, and unless the defendant can establish the contrary, it is reasonable for the

> court to infer from the disruption that, had their time not been thus diverted, staff would have applied it to activities which would directly or indirectly have generated revenue for the claimant in an amount at least equal to the costs of employing them during that time.
>
> 87. In that in the present case the diversion of the time of a significant number of the claimants' employees , particularly their senior employees, was set out in detail and adequately established, and in that there could be no sensible challenge to a conclusion that their business was thereby disrupted, indeed substantially so, I consider that the judge was entitled to draw the inference that the employees had been diverted from revenue-generating activities; and accordingly I see no error in his allowance within the damages for the costs of the employees referable to the diversion."

49. In the present case, it is claimed that significant senior management time has been diverted from the usual business of the company in dealing with the consequences of the defendant's breaches of contract/confidence. Such a consequence is hardly surprising given the defendant's avowed intent to cause as much damage and disruption to Mr Moody and the claimant company as possible by his email of 25 January 2022.

50. The following is a summary of how the claim, as originally formulated, was made up:

	Time Spend on Breaches	Directors Updates	Other	Total Hours	Hourly Rate	Total hours Cost
P Moody	114	15	2	131	£45.63	£5,977.53
M Curry	175.25	15	4	194.25	£38.03	£7,387.33
A Wiltshire	185	15	3	203	£37.55	£7,622.65
				0		£0.00
S Moody		15	6	21	£42.72	£897.12
G Harbottle		15		15	£37.68	£565.20
P Young		15		15	£39.08	£586.20
A Clark		15		15	£35.97	£539.55
				0		£0.00
Chole Hull			4	4	£16.50	£66.00
Harry Tomlinson			15	15	£18.50	£277.50
					Total	£23,919.08

The claimant has provided further details indicating more precisely how the total hours are compiled by reference to various dates and headings: for example, in the case of Mr Curry, the headings are 'HR, Injunction, Police Investigation, Legal Dispute with CH4 Sense and Miscellaneous'. However, in closing, Mr Crammond conceded that certain items were irrecovrable as not being related to, or resulting from, the defendant's breaches of contract/confidence, for example the time spent on 'police investigation' arose from the complaint of attempted theft against the defendant in relation to the aborted attempt to transfer £200,000 from the account of GOL to the account of CH4 (see paragraph 24 above). However, that was a separate matter to the consequences of what the defendant did on 25 January 2022 and Mr Crammond accepts that the management time spent on the police investigation is not recoverable. Equally, it is now accepted that time spent by Mr Laight-Wiltshire on Freedom of Information Requests cannot be attributed to the defendant's breaches of contract.

51. For the defendant, Ms Canneti contrasted the detailed evidence adduced in the *Aerospace* case to the evidence in the present case. She submitted that the only senior manager for whom a detailed breakdown had been provided was Mr Curry. She further submitted that there had been no evidence of the extent to which the claimant's business had been disrupted, nor that the management time claimed would otherwise have been productive. Under the title 'HR', wasted time has been claimed for hours spent on dealing with the legal proceedings arising out of the defendant's breaches of contract and confidence. Ms Canneti submitted that these constitute legal costs and are not recoverable as damages. Apart from these principled objections, Ms Canneti also challenged the number of hours claimed. She did not, however, challenge the hourly rates which have been claimed for.

52. For the claimant, Mr Crammond referred again to paragraphs 86 and 87 of the *Aerospace* case and submitted that there is no requirement to prove a loss of revenue: it is perfectly acceptable for the court to draw an inference that an employee has been diverted away from revenue-generating activities. It did not follow from the fact that because a greater level of detail was provided in the *Aerospace* case that such a level of detail is required for every case. He disputed that management time dealing with legal issues is irrecoverable.

53. In the course of her cross examination of the claimant's witnesses, Ms Canneti went into the detail of the hours claimed, so far as she could, to challenge the amounts sought. In my judgment, those (perfectly valid) challenges have now been conceded and taken fully into account by the concessions made by Mr Crammond in the revised claim.

54. In my judgment, Mr Crammond's submissions are to be preferred to those of Mr Canneti's in relation to this head of claim. I find that the level of detail provided for all the senior management of the claimant company is sufficient to provide a sound basis for the claim that is made. I reject the suggestion that management time spent dealing with legal issues is irrecoverable, or only recoverable as costs. In particular, I adopt the approach and reasoning of Ramsey J in *Bridge UK -v- Abbey Pynford* [2007] EWHC 728 (TCC) at paragraphs 121-125.

> "**Executive Time**
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> 121. The Claimant claims £7,680.00 as management time incurred by Mr Peter Ruck in dealing with the problems caused by the Defendant.
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> 122. At exhibit PR 33 to his witness statement Mr Peter Ruck has set out a schedule of the time spent from 31 August 2002 to 30 April 2003. In the main part of his witness statement he deals with the claim at paragraphs 79 and 80. He says that he calculated that he was engaged for 128 hours in dealing with the problems caused by the Defendant. As he explained in evidence the hours were based on his assessment of the time he spent on various matters. That assessment was made retrospectively. He prepared it by looking through the various documents which record what happened.

> 123. Such a method of retrospective assessment is, I consider, a valid method of calculation. I have been referred to the judgment of His Honour Judge Peter Bowsher QC in *Holman Group v. Sherwood* (Unreported, 7 November 2001) where he indicated that in the absence of records, evidence in the form of a reconstruction from memory was acceptable. I respectfully agree. However, it must be borne in mind that such an assessment is an approximation of the hours spent and may over-estimate or under-estimate the actual time which would have been recorded at the time.
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> 124. Some hours have been included for organising the outsourced work at M and M Printing. In addition, I consider that a discount should be applied to allow for the inherent uncertainty in this retrospective method. Overall, I consider that a discount of about 20% would be appropriate to allow both for the hours wrongly included for outsourcing to M and M Printing in August 2002 which I have disallowed and for the uncertainty arising from the method. The relevant hours spent by Mr Ruck were, therefore, I find 100 hours. urcing to M and M Printing in August 2002 which I have disallowed and for the uncertainty arising from the method. The relevant hours spent by Mr Ruck were, therefore, I find 100 hours.
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> 125. I accept that the appropriate approach to the question of recovery of such management time is that set out by Gloster J. in R+ V Verischerung AG v Risk Insurance and Reinsurance Solutions SA [2006] EWHC 42 (Comm) and I respectfully adopt the approach. At para 77 Gloster J said that:
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> "As a matter of principle, such head of loss (i.e. the costs of wasted staff time spent on the investigation and/or mitigation of the tort) is recoverable, notwithstanding that no additional expenditure "loss", or loss of revenue or profit can be shown. However, this is subject to the proviso that it has to be demonstrated with sufficient certainty that the wasted time was indeed spent on investigating and/or mitigating the relevant tort; i.e. that the expenditure was directly attributable to the tort — see per Roxburgh LJ in British Motor Trades Association at 569. This is perhaps simply another way of putting what Potter LJ said in Standard Chartered namely that to be able to recover one has to show some significant disruption to the business; in other words that staff have been significantly diverted form their usual activities. Otherwise the alleged wasted expenditure on wages cannot be said to be "directly attributable" to the tort."

Recognising, and conceding, the need for an appropriate discount, as referred to by Ramsey J in paragraph 124,, Mr Crammond submitted that this should not be more

than 10%. I agree. Although the discount in *Bridge -v- Abbey Pynford* was higher, this took into account hours wrongly included and any such hours in the present case have already been taken into account by the concessions which Mr Crammond has made. The reduced claim is for just over £20,000 and the award of damages I make under this head of claim is £18,000.

Interest

55. In his skeleton argument, Mr Crammond has claimed interest on damages at 8%. I note, however, that the management time for which the claim for damages is made accrued over the period from 25 January 2022 until, in the main, the end of July 2022. I therefore consider that interest should be awarded at 4% from 25 January 2022 to 31 July 2022 and at 8% from 1 August 2022 until judgment.

56. In addition to the award of damages and interest, the claimant is also entitled to a permanent injunction against the defendant and the terms of this injunction have been agreed and will be incorporated in the Order.