Neutral Citation Number: [2024] EWHC 2821 (KB)

Case No: KB-2024-003508

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 4th November 2024

Before :

HHJ RICHARD ROBERTS,
SITTING AS A DEPUTY HIGH COURT JUDGE

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Between :

(1) PROACTIVE GROUP HOLDINGS INC **(2) BRIGHTER IR LIMITED**	**Claimants/ Applicants**
- and –	
(1) HJ 2024 LIMITED **(2) MR PETER KEVIN MEADOWS** **(3) MR SCOTT MACDONALD-THOMSON**	**Defendants/ Respondents**

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Mr Peter Knox KC and **Ms Alexandra Sidossis** of Counsel (instructed by **Gunnercooke LLP**) for the **Claimants**
Mr Mohinderpal Sethi KC (instructed by **Boodle Hatfield LLP**) for the **Defendants**

Hearing dates: 30th October 2024 & 4th November 2024

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Approved Judgment

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.

.....

HHJ RICHARD ROBERTS, SITTING AS A DEPUTY HIGH COURT JUDGE

HIS HONOUR JUDGE RICHARD ROBERTS :

Contents

Introduction

1. This is the hearing of the Claimants' interim application notice, dated 16 October 2024, for injunctive relief[1].

2. Mr Knox of King's Counsel and Ms Sidossis of Counsel appear on behalf of the Claimants. I am grateful for their skeleton argument, dated 29 October 2024, chronology and dramatis personae. Mr Sethi of King's Counsel appears on behalf of the Defendants. I am grateful for his up-dated skeleton argument, dated 29 October 2024.

3. There is before the Court a bundle of documents of 989 pages. In addition to the bundle there are third and fourth witness statements of Mr Craig Stephen Ribton, both dated 29 October 2024, a second witness statement of the Second Defendant, dated 29 October 2024, and a rebuttal statement of the Third Defendant, dated 29 October 2024.

4. Both parties have provided authorities bundles, and Mr Sethi has also provided a copy of *Prophet v Huggett* [2014] EWCA Civ 1013.

5. Mr Knox and Mr Sethi refer to the parties as Claimants and Defendants, and not Applicants and Respondents, and I will do likewise in this judgment.

Witness statements

6. The Claimants rely upon the following evidence:

    i) First witness statement of Mr Craig Stephen Ribton, Director of both Claimants, dated 3 October 2024[2], and Exhibit CR1[3];

[1] 11-16
[2] 28-51
[3] 52-433

ii) Second witness statement of Mr Craig Stephen Ribton, dated 23 October 2024[4], and Exhibit CR2[5];

iii) Third witness statement of Mr Craig Stephen Ribton, 29 October 2024, and Exhibit CR3[6];

iv) Fourth witness statement of Mr Craig Stephen Ribton and 29 October 2024, and Exhibit CR4[7];

v) Expert report of Mr Rui Fernandes, dated 2 October 2024[8], and Exhibit RF1[9].

7. The Defendants have filed the following witness statements:

i) The rebuttal statement of the Second Defendant, dated 29 October 2024[10], and Exhibit PM1[11];

ii) The second witness statement of the Second Defendant, dated 30 October 2024[12];

iii) The rebuttal statement of the Third Defendant, dated 29 October 2024[13].

Chronology

8. The First Claimant is a Canadian corporation, and the Second Claimant's parent company.

9. Mr Ribton says in his first witness statement at paragraph 9[14],

> "Brighter IR is a wholly owned subsidiary of Group. I am a director and the Chair of Brighter IR and Mr Meadows was the Chief Executive Officer of Brighter IR until his departure. I am a director of Group as was Mr Meadows between 18 January 2018 and 15 October 2021. Brighter IR designs, builds, hosts and maintains effective investor-focused Investor Relations (IR) websites and microsites that operate on the full range of internet connected devices."

10. The Second Defendant says in his rebuttal statement, dated 29 October 2024,[15]

[4] 615-617
[5] 618-622
[6] Not included in the bundle
[7] Not included in the bundle
[8] 434-441
[9] 442-614
[10] 623-634
[11] 635-977
[12] Not included in the bundle
[13] 978-983
[14] 30
[15] Tab 10, 634

> "73. The Second Claimant services around 300 clients on the London Stock Exchange. This is roughly 1/5 of the addressable market of some 1700 listed companies."

11. The Second Claimant is a provider of financial news and "investor coordination services": it designs, builds, hosts and maintains investor-focused "Investor Relations" websites and microsites that operate on the full range of internet connected services. This involves creating dedicated online spaces on websites which its customers and retail investors can visit to gain information about the company, and providing software to enable its clients to publish market share prices and regulatory news automatically on their websites, without the need for regular manual input.

12. Mr Knox says that the Second Claimant employs about 14 staff[16], and it retains its customers by its sales force. Its customers are contracted on an annual basis, with a 30 days' notice period. The list of clients, their details, the products offered to each client, the pricing of such products and the details of their contractual renewal period are retained by the Second Claimant on its Customer Relations Management software, Salesforce.

13. The Second Defendant commenced his employment with the Second Claimant on 6 January 2016[17] as a Director and Chief Executive Officer. The Claimants say that the Second Defendant remained a Director and the CEO of the Second Claimant until his departure on 7 June 2024. This is disputed by the Second Defendant, who says at paragraph 16 of his rebuttal statement that he resigned his Directorship with the Second Claimant on 7 March 2024[18].

14. The Second Defendant entered into a Director Services Agreement (DSA) with the First Claimant on 1 November 2018[19]. The DSA was updated on 24 October 2019[20].

15. On 3 February 2016, the Third Defendant signed a contract of employment with the Second Claimant[21] as "Sales and Operations Director". He began this employment on 1 March 2016. Mr Ribton says in his first witness statement at paragraph 24[22],

> "Mr Macdonald-Thomson was the primary commercial contact for all clients for IR tools, he was charged both with closing new business and ensuring clients renewed the services. The website hosting, IR tools and support is worth in excess of £700,000 per annum."

16. On 11 September 2018, Jacint Virag entered into an employment contract[23] with the Second Claimant as a WordPress Developer. This contract was signed by the Second Defendant on behalf of the Second Claimant.

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[16] Tab 5, 384
[17] See DSA dated 1 November 2018 at clause 2.2 – Tab 5, 72
[18] Tab 10, 625
[19] Tab 5, 69-84
[20] Tab 5, 85-100
[21] Tab 5, 203-209
[22] Tab 4, 33
[23] Tab 5, 331-347

17. In 2018, the Second and Third Defendants and others were parties to a Unanimous Shareholder Agreement with the First Claimant[24].

18. On 29 July 2019, Raghav Varsani entered into an employment contract with the Second Claimant as a WordPress Developer[25]. This contract was signed by the Second Defendant on behalf of the Second Claimant.

19. In 2020, the Second Defendant became Chief Technical Officer of the First Claimant. Mr Ribton says at paragraph 19 of his first witness statement[26] that the Second Defendant remained CEO of the Second Claimant. Mr Ribton says in his first witness statement at paragraph 20[27] that the Second Defendant was primarily responsible for technical aspects and software development. His team included Jacint Vira, Raghu Varsani and Sam Diamond, who were all employees of the Second Claimant and with whom he was in day-to-day contact. The Second Defendant had access to all systems, including to Salesforce (which had all clients, list, products and pricing) and to the Second Claimant's internal systems (including the proprietary code for the IR tools), client hosting arrangements (AWS) and security.

20. In or around January 2024, the Second Defendant entered into discussions with an investment company, Coniston Capital, and with the Second Claimant's employees for a Management Buy Out. The Second Defendant emailed Ian Mclelland, Founder, Director and CEO of the First Claimant, on 22 January 2024 asking[28],

> "So, would you be open to selling Brighter IR to me via a management buy-out?
>
> …
>
> And, while I enjoy my role as CTO for the group, I still miss running my own agency which is where I feel like I shine brighter (!) than anywhere else. Growing my own agency fits with my lifestyle, and I'd like to go back to it if at all possible. An MBO of the business I helped to build that **I am still CEO of** is the quickest route by far.
>
> To that end, I've had initial discussions with a couple of entities and - subject to the usual DD + T&Cs - I have the backing agreed in principle already." (my emphasis)

21. The Second Defendant offered to purchase the Second Claimant for £1.5 million. He had arranged finance with Coniston Capital. Mr Amit Hidocha was the Managing Partner of Coniston Capital[29].

[24] Tab 5, 101-201
[25] Tab 5, 352-367
[26] Tab 4, 33
[27] Tab 4, 33
[28] Tab 5, 323-324 at 323
[29] Tab 5, 327

22. On 31 January 2024, the First Defendant was incorporated. At the time of incorporation, it had one Director and shareholder, Amit Hidocha.

23. By a letter dated 2 February 2024[30] from the First Claimant to the Second Defendant, the First Claimant rejected the Second Respondent's MBO proposal. The First Claimant said,

> "Your admission in the emails regarding sensitive conversations with multiple members of the staff is troubling. Discussing confidential company matters with staff members constitutes a breach of confidentiality, which could potentially undermine the company's integrity.
>
> In light of these serious allegations, a formal investigation would typically be initiated. However, we would like to resolve this matter amicably and swiftly. …
>
> …
>
> As an officer of the company, it is your fiduciary duty to refrain from engaging in conversations with staff that could potentially undermine the company's operations.
>
> To address this matter promptly, we propose scheduling a call between the board and yourself to discuss the specifics of what has been communicated to the staff and to establish a clear communication plan moving forward."

24. On 3 March 2024, the Second Defendant and Mr Simon David Lloyd (who was until 2021 the Second Claimant's Chief Financial Officer) were appointed as Directors of the First Defendant. On the same day, the Second Defendant and his wife became majority shareholders and Mr Hindocha ceased being a person with significant control over the company. His directorship continues.

25. Luminate's domain name https://luminate.works/ was registered on 8 March 2024. Luminate and the First Defendant share the same VAT number GB459104588 and address.

26. The Claimants say that the First Defendant is a direct competitor of the Second Claimant, as it advertises and offers the exact same services.

27. By a letter dated 7 March 2024 from the Second Defendant to Mr Mclelland, Founder Director and CEO of the First Claimant, it is said[31],

> "It's with regret that I tender my three month-notice period and resignation from my role as Chief Technology Officer of Proactive, and my role/Directorship as Chief Executive Officer of Brighter IR."

[30] Tab 5, 330
[31] Tab 5, 202

28. The Second Defendant continued to work during his notice period.

29. The Second Defendant says in his resignation letter, dated 7 June 2024[32],

> "Please accept this letter as formal notice of my resignation as a director of BRIGHTER IR LIMITED, with effect from the date of this letter."

30. The date of the Second Defendant's resignation, namely 7 June 2024, is also stated in the Second Claimant's Minutes of Meeting of the Directors, signed by Mr Ribton and the Second Defendant[33].

31. On 5 April 2024, the First Claimant sent a 'Leaver Letter' to the Second Defendant[34], confirming that the Second Defendant's employment with the First Claimant would end on 7 June 2024. The letter stated,

> "Please keep in mind that you have signed non-compete and non-solicitation clauses as part of your service agreement."

32. On 30 April 2024, the Second Claimant's employee and web developer Jacint Virag resigned by email.

33. On 3 May 2024, the Second Claimant's employee and developer and infrastructure engineer Raghav Varsani resigned by email.

34. On 8 May 2024 the Third Defendant resigned on one month's notice. He too continued to work in the notice period, and his employment, like the Second Defendant's, terminated on 7 June 2024.

35. On 20 May 2024, the First Claimant sent a 'Leaver Letter' to the Third Defendant[35], in which it said,

> "May I take this opportunity to remind you of the confidentiality and post termination restrictions in your terms and conditions of employment."

36. On 10 June 2024, the Third Defendant began employment with the First Defendant as Sales Director and Jacint Virag began employment with the First Defendant as Head of Development.

37. On 25 June 2024, Raghav Varsani commenced employment with the First Defendant as Head of Infrastructure.

38. On 9 August 2024, Ms Balode, who was employed by the Second Claimant as a website developer, resigned. She commenced employment with the First Defendant on 10 September 2024.

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[32] Exhibit CR4, p. 1

[33] Exhibit CR4, 2
[34] Tab 5, 321
[35] Tab 5, 322

Orders sought by the Claimants

39. The orders sought by the Claimants are set out in a draft Order[36]. They fall into five categories:

i) An injunction restraining the Defendants from using or disclosing to any other person any of the confidential information belonging to the Claimants and which is identified in Schedule 2 to the Order.

ii) An injunction restraining the Defendants from seeking to induce any employee or former employee of the Second Claimant to breach or not comply with their contractual obligations to the Claimants.

iii) An injunction restraining the First and Second Defendants until the earliest of 7 December 2024 or judgment or further order from:

a) For the purposes of any business engaged or interested in any Restricted Business, directly or indirectly, on their own account or on behalf of or in conjunction with any other person, soliciting or enticing away, or trying to solicit or entice away from the Claimants or any Group Company, or dealing with any Restricted Client, or inducing or attempting to induce any Restricted Client to cease conducting any business with the Claimants or any Group Company, or reducing the amount of business conducted with the Claimants or any Group Company, or adversely varying the amount of business with the Claimants or any Group Company;

b) In the course of any business concern which is engaged or interested in any Restricted Business, directly or indirectly, on their own account or on behalf of or in conjunction with any other person, employ, offering to employ, engaging, offering to engage, soliciting, interfering with, enticing away, or trying to entice away from the Claimants or any Group Company any Restricted Person (whether or not this would be a breach of contract by the Restricted Person) or assisting any other person to do so.

iv) An injunction restraining the Third Defendant until the earliest of 7 June 2025 or judgment or further order from:

a) Soliciting or accepting orders for services competitive with the Second Claimant's and/or any Associates from any of the Second Claimant's and/or any Associates' customers with whom the Third Defendant dealt between 7 June 2022 and 7 June 2024;

b) Soliciting away from the Second Claimant or Associates any person who is and was at 7 June 2024 employed by the Second Claimant or an Associate as a director, senior manager or salesperson for whom the Third Defendant was responsible between 7 March 2024 and 7 June 2024.

[36] Tab 3,17-27

v) The Defendants, shall, by 4pm on …

a) deliver up to the Claimants all materials in their possession, custody or control which were made by way of use of the Confidential Information or which contain any part of the Confidential Information;

b) return to the Claimants all correspondence, records, notes, reports and other documents and any copies belonging to the Claimants which are in the Defendants' possession, custody or control;

c) provide to the Claimants a list of all those with whom the Defendants made contact or attempted to make contact since 7 June 2024 falling within the scope of paragraphs iii a), iii b), iv a) and iv b) of this Order;

d) provide to the Claimants copies of all written communications with those persons identified in the list referred to at paragraph v c) of this Order;

e) each provide a witness statement endorsed with a statement of truth (and in the case of the First Defendant, from a properly authorised officer of the company), confirming that they have each complied fully and promptly with the obligations imposed by the preceding paragraphs and that the materials supplied under paragraphs v i) to v iv) are comprehensive.

Law

40. Mr Sethi correctly says that the touchstone for interim relief is whether the grant of such relief would be just and convenient – s.37 Senior Courts Act 1981[37].

41. It is common ground that this application is to be decided by the well-established principles in the *American Cyanamid v Ethicon Limited* [1975] AC 396[38]. The matters that fall to be considered are:

i) Is there a serious issue to be tried?

ii) Will damages be an adequate remedy for either party should they suffer loss as a result of the granting, or not granting, of the injunction?

iii) Is it just and convenient to grant the injunction? In other words, where does the balance of convenience lie?

42. In *Lansing Linde Ltd v Kerr* [1991] ICR 428 (CA)[39] at Staughton LJ said at p. 435D,

> "If it will not be possible to hold a trial before the period for which the plaintiff claims to be entitled to an injunction has expired, or substantially expired, it seems to me that justice requires some consideration as to whether the plaintiff would be likely to succeed at a trial. In those circumstances, it is not

[37] Defendants' authorities bundle, tab 2, 6-8
[38] Defendants' authorities bundle, tab 4, 20-34
[39] Defendants' authorities bundle, tab 6, 49-69 at 56

> enough to decide merely that there is a serious issue to be tried. The assertion of such an issue should not operate as a lettre de cachet, by which the defendant is prevented from doing that which, as it later turns out, he has a perfect right to do, for the whole or substantially the whole of the period in question. On a wider view of the balance of convenience it may still be right to impose such a restraint, but not unless there has been some assessment of the plaintiff's prospects of success. I would emphasize 'some assessment', because the courts constantly seek to discourage prolonged interlocutory battles on affidavit evidence. I do not doubt that Lord Diplock, in enunciating the *American Cyanamid* doctrine, had in mind what its effect would be in that respect. Where an assessment of the prospects of success is required, it is for the judge to control its extent."

43. In *TFS Derivatives Limited v Morgan* [2004] EWHC 3181 (QB)[40],

> "37. Firstly, the court must decide what the covenant means when properly construed. Secondly, the court will consider whether the former employers have shown on the evidence that they have legitimate business interests requiring protection in relation to the employee's employment. In this case, as will be seen later on, the defendant concedes that TFS have demonstrated on the evidence legitimate business interests to protect in respect of customer connection, confidential information and the integrity or stability of the workforce, although the extent of the confidential information is in dispute in relation to its shelf life and/or the extent to which it is either memorable or portable.
>
> 38. Thirdly, once the existence of legitimate protectable interests has been established, the covenant must be shown to be no wider than is reasonably necessary for the protection of those interests. Reasonable necessity is to be assessed from the perspective of reasonable persons in the position of the parties as at the date of the contract, having regard to the contractual provisions as a whole and to the factual matrix to which the contract would then realistically have been expected to apply.
>
> 39. Even if the covenant is held to be reasonable, the court will then finally decide whether, as a matter of discretion, the injunctive relief sought should in all the circumstances be granted, having regard, amongst other things, to its reasonableness as at the time of trial."

44. In *Beckett Investment Management Group Ltd v Hall* [2007] EWCA Civ 613[41], Kay LJ said,

[40] Claimants' authorities bundle, tab 6, 119-143 at 130
[41] Claimants' authorities bundle, tab 2, 17-30 at 29

> "40. In a number of more recent first instance decisions, a threefold test has been applied. In the employment context, its origin is to be found in *Sadler v Imperial Life Assurance Company of Canada Ltd* [1988] IRLR 388. Mr P J Crawford QC, sitting as a Deputy Judge of the High Court said (at paragraph 19):
>
> '… a contract which contains an unenforceable provision nevertheless remains effective after the removal or severance of that provision if the following conditions are satisfied:
>
> (1) the unenforceable provision is capable of being removed without the necessity of adding to or modifying the wording of what remains;
>
> (2) the remaining terms continue to be supported by adequate consideration;
>
> (3) the removal of the unenforceable provision does not so change the character of the contract that it becomes 'not the sort of contract that the parties entered into at all'."

45. In *Tillman v Egon Zehnder Ltd* [2019] UKSC 32 [84-87][42], Lord Wilson said of the second of the three requirements in *Beckett*,

> "86. … In the usual post-employment situation, however, the need to do so does not arise."

46. In *Caterpillar Logistics Services (UK) Ltd v de Crean* [2012] EWCA Civ 156, [2012] ICR 981 (CA)[43], Stanley Burton LJ said,

> "I add that the form of interim relief sought by the claimant is hopelessly wide and vague. It does not specify the confidential information to be the subject of restriction with any certainty, but simply describes it as all or any confidential information acquired by the respondent during her employment with the claimant in whatever form."

47. Mr Sethi says in his updated skeleton argument at paragraph 7.2 that the ingredients of the tort of inducement of breach of contract as summarised in *Aerostar Maintenance International Ltd v Wilson* [2010] EWHC 2032 (Ch)[44], per Morgan J at [163]; *OBG Ltd v Allan* [2008] 1 AC 1 (HL)[45], per Lord Hoffmann at [39]-[44], and Lord Nicholls at [191]-[193] and [202] are:

    i) There must be a contract;

[42] Claimants' authorities bundle, tab 5, 85-118 at 86
[43] Defendants' authorities bundle, tab 17, 474-498 at 495
[44] Defendants' authorities bundle, tab 14, 416-457 at 443
[45] Defendants' authorities bundle, tab 12, 299-392 at 327-329, 360-361 and 362

ii) There must be a breach of that contract;

iii) The conduct of the alleged inducer must have been such as to induce that breach;

iv) The alleged inducer must have known of the existence of the relevant term in the contract or turned a blind eye to the existence of such a term;

v) The alleged inducer must have actually realised that the conduct, which was being induced, would result in a breach of the term (the "intention" element); and

vi) The claimant must have suffered damage as a result (damage being a pre-condition for establishing tort liability).

48. In *Planon Limited v Gilligan* [2022] EWCA Civ 624[46], Nugee LJ said,

> "102. ... First, an application for an interlocutory injunction is not the appropriate occasion to expect the Court to give any definitive answer to the question whether a covenant is enforceable or not. Ever since the seminal decision in *American Cyanamid Co v Ethicon Ltd* [1975] AC 396, it has been established law that the Court should not usually seek to resolve the substantive issues on such an application. At the first stage of the analysis the question is whether there is a serious issue to be tried. This is not a demanding test, and it really only serves to exclude the case where the claim is frivolous or vexatious, or otherwise demonstrably bad. If a restrictive covenant is clearly wider than is reasonably necessary for the protection of the employer's legitimate interests, then the Court can so hold and refuse an injunction, but prolonged examination of the merits at the interlocutory stage is not appropriate and in many cases of this type, as the Judge rightly found here, there will be at least a serious issue to be tried.
>
> 103. It is also well established however that at the third stage of the analysis, when considering the balance of convenience, the Court may, in cases of this type, undertake some assessment of the merits: *Lansing Linde v Kerr* [1991] 1 WLR 251 at 258C per Staughton LJ. But I emphasise, as Staughton LJ did, that this is merely '*some* assessment' or as Bean LJ refers to below, 'a *preliminary* view'. The overall question at the third stage is what is the most just and appropriate way to hold the ring pending trial. Since in many cases there may not be a trial until much of the putative period of restraint has expired, or indeed at all, the Court may take into account such a preliminary view of the merits, particularly perhaps if it has serious doubts about the validity of the covenant. But it remains just that, not a definitive ruling, and it is only one of the factors that goes into the exercise

[46] Claimants' authorities bundle, tab 4, 51-84 at 81

> of the discretion whether to grant an interlocutory injunction or not."

Serious issue to be tried

49. The first question which must be considered is whether there is a serious issue to be tried, and I consider this issue separately in respect of each Defendant, and each injunction sought against them.

Confidentiality –Second Defendant

50. The Second Defendant's updated DSA, dated 24 October 2019[47], provides,

> "12. CONFIDENTIAL INFORMATION
>
> 12.1 The Employee acknowledges that in the course of the Appointment he will have access to Confidential Information. The Employee has therefore agreed to accept the restrictions in this clause 14.
>
> 12.1.1 The Employee shall not (except in the proper course of his duties), either during the Appointment or at any time after its termination (however arising), use or disclose to any person, company or other organisation whatsoever (and shall use his best endeavours to prevent the publication or disclosure of) any Confidential Information. This shall not apply to any use or disclosure authorised by the Board or required by law;
>
> 12.1.2 any information which is already in, or comes into, the public domain other than through the Employee's unauthorised disclosure."

51. Paragraph 1.1 of the updated DSA defines confidential information as[48],

> "Information (whether or not recorded in documentary form, or stored on any magnetic or optical disk or memory) relating to the business, products, affairs and finances of any Group Company for the time being confidential to any Group Company and trade secrets including, without limitation, technical data and know-how relating to the business of any Group Company or any of their business contacts."

Claimants' submissions

52. Mr Knox submits that the First Claimant had a legitimate interest in protecting the First Claimant's confidential information and trade secrets, both before and after the Second Defendant's updated DSA had ceased, as provided for in clause 12 of the updated DSA.

[47] Tab 5, 85-100 at 91 and 95-96
[48] Tab 5, 86

This also applied to the confidential information and trade secrets of the Second Claimant, as a 'Group Company'.

53. Mr Knox submits that the definition of confidential information goes no further than necessary and the inclusion of trade secrets embraces the Second Claimant's:

    i) Customer prices and discounts structures,

    ii) Customer contract renewal dates;

    iii) Sales statistics, marketing surveys and marketing plans.

54. Mr Knox submits that there is strong evidence that the Second Defendant has breached clause 12. He relies upon the following evidence:

    i) By an email to the Third Defendant dated 29 January 2024[49], the Second Defendant said: "Woo I found the hardcopy on my disk", to which the Third Defendant replied with a thumbs up emoji. The Second Defendant replied: "I know it's a year old already, and things will have changed, but it will come in handy when it comes to migration and making sure we are not missing anything". This spreadsheet contained information about the Second Claimant's clients, the date of renewal of each client's contract, the date by which they should provide a notice of non-renewal and the price of each contract.

    ii) Mr Knox submits the Second and Third Defendants then started contacting the Second Claimant's clients with a view to transferring their custom to the First Defendant, using their knowledge of when the Second Claimant's clients' contracts were to be renewed, and the prices the Second Claimant charged so as to undercut the Second Claimant. Specifically, and not exhaustively:

        a) On 9 July 2024 Asia Strategic Holdings gave notice of cancellation, saying that they were "looking to bring this capability in house or source it at a significantly cheaper price"[50]. Their website now identifies the First Defendant as their provider[51].

        b) On 29 July 2024 Coral Products PLC gave notice of cancellation[52]. Mr Ribton says in his first witness statement at paragraph 65[53] that Coral Products PLC migrated their services to the First Defendant, saying they wished to continue working with the Third Defendant.

        c) Metal NGR gave notice of cancellation and migrated their services to the First Defendant[54].

        d) On 10 September 2024 the Third Defendant contacted the Second Claimant's client DSW Capital and tried to solicit them to move to the

[49] Tab 5, 328
[50] Tab 5, 349-351
[51] Tab 5, 369
[52] Tab 5, 371
[53] Tab 4, 42
[54] Tab 5, 395

First Defendant[55]. When DSW told the Second Claimant about this, the Second Claimant reduced its price and managed to keep DSW Capital as a client.

e) Mr Ribton says in his second witness statement at paragraph 9[56] that on 10 October 2024 Hydrogen One gave notice of termination, saying they had received a lower quotation, which Mr Ribton believes to be from the First Defendant.

f) By an email dated 15 October 2024 Boku gave notice of cancellation, citing a pre-existing relationship with the Second Defendant as the reason[57].

g) Mr Ribton says in his second witness statement at paragraphs 10-11[58] that in October 2024 another two clients of the Second Claimant, Bango.net Ltd and XP Power, indicated that they were considering a move to the First Defendant, who had approached them with attractive offers. After negotiations, the Second Claimant retained both clients on reduced price contracts.

55. Mr Knox says that as at 2 October 2024, the Second Claimant had identified at least 15 clients (including those referred to at paragraph 54 above) who had cancelled their contracts since June 2024 and who it believes have transferred their custom to the First Defendant. Mr Ribton says in his first witness statement at paragraph 74[59] that the damage to the Second Claimant of these cancellations alone is estimated to be in the region of £100,000. Mr Ribton says in his third witness statement, dated 29 October 2024:

> "5. At page 1 of CR3 is a schedule detailing those customers who have cancelled their contracts during the period July to September 2024 and have moved or are moving to Luminate. In this three-month period 22 customers have cancelled to go to Luminate with a total annual contract value of £40,681.
>
> 6. Where we have had feedback from customers they have emphasised that the move to Luminate is not due to dissatisfaction with Brighter IR and I believe that they would have stayed with Brighter IR had they not been solicited by Luminate. We do not know how many customers have been approached by Luminate and how many cancellation notices we will receive as a result so this is only a snapshot."

56. In his first witness statement Mr Ribton said at paragraph 74 that the Second Claimant's historic contract renewal rate over the last five years is 85-90%, and in his third witness

[55] Tab 5, 378-379
[56] Tab 8, 617
[57] Tab 9, 622
[58] Tab 8, 617
[59] Tab 4, 44

statement he says at paragraph 8 that he now believes this is an under-estimate and that the correct percentage is 90-95%.

Second Defendant's submissions

57. The Second Defendant says in his rebuttal witness statement, dated 29 October 2024[60],

> 54. On the weekend of 8 – 9 June 2024 (which was the day and weekend immediately after the termination of my employment with the First Claimant), I deleted all company data from my devices. I went through my hard drive, downloads and documents folders, and deleted all files and folders that related to my employment with both the First and Second Claimant. …
>
> 55. As at my termination date, I was no longer in possession of or have access to the spreadsheet referred to within Mr Ribton's first witness statement. I cannot remember exactly what information the spreadsheet contains. However, I would envisage that it contained a list of the Second Claimant's clients, their contract numbers, renewal dates and renewal values. I do not recall it including contact names or email addresses of the clients. I believe that the spreadsheet listed in the region of 300 to 400 clients of the Second Claimant.
>
> 56. In any event, the information contained within the spreadsheet is in the public domain. This is because the clients contained within the spreadsheet are publicly listed companies and therefore details of the service providers that they use can be found on their website.
>
> …
>
> 64. I nor the First Defendant have in our possession, custody or control any materials which were made by use or [sic of] Confidential Information or which contain any Confidential Information.

58. Mr Sethi submits that:

i) There is no serious issue to be tried as to confidentiality because there is no evidence that any Defendant has acted in breach of confidence and/or is threatening to act in breach of confidence. He submits that there is no evidence that any Defendant has taken, retained, used or disclosed Confidential Information (including the spreadsheet). He submits that this is mere speculation on the Claimant's part. He says that alternatively, if the Court is satisfied that the Claimants have established a case sufficient to get them over the hurdle of a serious issue to be tried, it is clear that such case is largely built upon inference and, for the reasons given above, does not establish that the Claimants are likely

[60] 631-632

to establish misuse of their Confidential Information to justify a final confidentiality injunction at trial.

ii) No attempt is made to exclude information which can be used or disclosed with the Claimants' consent, required to be disclosed by law or as a public interest disclosure, or even that which is innocently in the public domain.

Decision as to confidentiality – Second Defendant

59. I find that:

i) The Claimants have shown on the evidence that the Claimants' confidential information and trade secrets are a legitimate business interest requiring protection in relation to the Second Defendant's employment.

ii) Clause 12 of the Second Defendant's updated DSA, dated 24 October 2019, is no wider than is reasonably necessary for the protection of those interests.

iii) The definition of confidential information in clause 1.1 of the updated DSA is precise and not vague. The Claimants' trade secrets include the Second Claimant's customer prices and discounts structures, customer contract renewal dates and sales statistics, marketing surveys and marketing plans.

iv) Clause 12 of the Second Defendant's updated DSA is proportionate.

60. Whilst I accept that the names of the Second Claimant's clients contained within the spreadsheet are publicly listed companies and that their websites give details of their service providers, I accept Mr Knox's submission that the renewal dates of their contracts and the prices being paid are not in the public domain. The Defendants have adduced no evidence to show that they are in the public domain, and I reject this contention.

61. It is not for this Court to decide whether the Claimants have proved that the Second Defendant has breached clause 12 of the updated DSA. The Second Defendant denies that he is in breach of clause 12 and says that the information in the spreadsheet is in the public domain because the clients are publicly listed companies.

62. I find that there is plainly a serious issue as to whether the Second Defendant has breached clause 12 of the updated DSA. Bearing in mind that the trial is likely to take place after the restraints in the updated DSA expire on 7 December 2024, following the guidance in *Lansing Linde v Kerr* (supra), it is not enough to decide merely that there is a serious issue to be tried. The Court needs to consider whether the Claimants are more likely than not to enforce the confidentiality clause at trial.

63. I find that the Claimants have a strong claim that the Second Defendant has breached clause 12 of the updated DSA for the following reasons:

i) In the Second Defendant's email dated 29 January 2024 to the Third Defendant he says, significantly, "Woo **I found** the hardcopy on my disc." (my emphasis). The words "I found" demonstrate that he was looking for the spreadsheet. The word "woo" indicates that he was very pleased to have found it. The Third Defendant replied with a thumbs up.

ii) The Second Defendant then replied, "It will come in handy when it comes to migration and making sure we're not missing anything". The natural meaning of this would be: when we begin competing with the Second Claimant and want to migrate (i.e. poach) the Second Claimant's clients, the schedule will be handy because it contains the renewal dates of the Second Claimant's clients' contracts and the prices the Second Claimant is charging.

iii) Mr Ribton says in his third witness statement at paragraph 5 that between July and September 2024, 22 of the Second Claimant's customers have cancelled their contract with the Second Claimant and contracted with the First Defendant. He lists these customers in a schedule[61].

iv) I accept Mr Knox's submission that the Defendants have provided no explanation at all as to how they knew the Second Claimant's clients' contract renewal dates or the prices of their contract. In the absence of any explanation from the Defendants I accept Mr Knox' submission that it is reasonable to infer that the Defendants were using the Second Claimant's spreadsheet because:

a) It is common ground that the Second Claimant's spreadsheet contained information about the Second Claimant's clients, the date of renewal of each client's contract, the date by which they should provide a notice of non-renewal and the price of each contract.

b) The Third Defendant was telling the Second Claimant's clients, and in particular DSW Capital[62], that he knew they had two renewal invoices a year, a main one of £2,070 and a smaller one for £260, and the First Defendant could offer a 15% discount over all.

c) I repeat paragraphs 55 – 57 above.

64. I accept Mr Knox's submission at paragraph 56 of his skeleton argument that,

> "Although in the case of D1 and D2 the order sought is of limited duration, that is not a reason for not making it, given the continuing damage that could still easily incur in the period from the hearing to 7 December 2024."

65. Mr Knox said that he was happy to include in the order appropriate exclusions for information which can be used or disclosed with the Claimants' consent, required to be disclosed by law, or as a public interest disclosure.

Confidentiality - Third Defendant

66. The Third Defendant's contract of employment provides[63],

> "10 Confidentiality

[61] Exhibit CR3, 1
[62] Tab 5, 378-379
[63] Tab 5, 206

> The Employee must not at any time during (except in the course of duties) or after employment disclose or make use of his knowledge of any confidential information of the Company and its Associates. Confidential information includes without limitation) all and any information about business plans, maturing new business opportunities, research and development projects, product formulae, processes, inventions, designs, discoveries or know-how, sales statistics, marketing surveys and plans, costs, profit or loss, prices and discount structures, the names, addresses and contact details of customers and potential customers or suppliers and potential suppliers (whether or not recorded in writing or on computer disk or tape) which the Company or relevant Associate treats as confidential."

Claimants' submissions

67. In his first witness statement Mr Ribton says[64],

> "38. By virtue of his role as Sales and Operations Director, Mr Macdonald-Thomson had access to Salesforce (which contained all clients, lists, products and pricing) and Brighter IR internal systems (including any spreadsheets with client details on).
>
> 39. In Mr Macdonald-Thomson's case we were particularly concerned to protect our commercial interests as, in the example given above, if details of our clients, pricing and bespoke pricing for specific clients are made known to competitors by former employees attempting to grow market share, it will enable them to target those clients and offer better commercial terms. As detailed elsewhere in this statement, Mr Macdonald-Thomson has deliberately targeted our clients before their renewal dates and undercut our pricing to solicit them away from us.
>
> 40. Brighter IR clients are contracted on an annual basis with a 30 days' notice period so the non-compete and non-solicitation clauses are set to coincide with this. Mr. Macdonald-Thomson was reminded of his post-termination obligations in the leaver letter dated 20 May 2024 (page 268), in response to his resignation."

68. The Claimants rely upon an email that the Third Defendant is using the Second Claimant's confidential information. They rely upon an email, dated 10 September 2024, from the Third Defendant to Katie Walston of DSW Capital, in which he says[65],

[64] Tab 4, 38
[65] 378-379

> "It's Scott here, formerly of Brighter IR, who currently provides your share price and RNS services on the Dow Schofield Watts investor website.
>
> …
>
> I am aware the renewal for your current services is due in December and needless to say if you are open to it I'd love to continue working with you for news and prices via our new venture.
>
> Why switch?
>
> Experience - the team that developed your services, managed secure hosting and provided support for your services have pretty much all moved to our business now. This leaves a skill gap with your current provider should any problems with feeds arise. A move to Luminate is essentially moving to a new name but the same faces. We have the team to ensure everything continues as before.
>
> Incentives - although the process of switching is very simple, I do appreciate everyone likes an incentive, especially in challenging Capital markets at the moment. I do recall you had two renewal invoices each year, a main one for £2070 and a smaller added one for £260. I also remember you were very focused on managing costs. **I could offer a 'like for like' service** whilst removing the £260 renewal fee altogether and reducing the main renewal by 5%, saving you over £300 every year in total, about a 15% discount overall." (my emphasis)

Third Defendant's submissions

69. The Third Defendant says in his rebuttal statement, dated 29 October 2024[66],

> "14. As of 7 June, I was no longer in possession of or have access to the spreadsheet referred to in the First Witness Statement of Craig Stephen Ribton. In any event, that spreadsheet was not a document that I regularly accessed as part of my role at the Second Claimant, and the Second Claimant should be able to verify this through its computer systems. The last time I recall seeing the spreadsheet was around January 2024, when the Second Defendant informed me over Slack (which is an instant messaging service) that he had found the spreadsheet for the new CRM system. I did not use the spreadsheet in my day-to-day role.
>
> …

[66] 978-983

> 16. I do not have in my possession, custody or control any materials which were made by use or Confidential Information or which contain any Confidential Information."

Decision as to confidentiality – Third Defendant

70. I find that:

    i) The Claimants have shown on the evidence that the Claimants' confidential information and trade secrets are a legitimate business interest requiring protection in relation to the Second Defendant's employment.

    ii) Clause 10 of the Third Defendant's employment contract is no wider than is reasonably necessary for the protection of those interests.

    iii) The definition of confidential information in Clause 10 of the Third Defendant's employment contract is precise and not vague.

    iv) Clause 10 of the Third Defendant's employment contract is proportionate.

71. I find that there is a serious issue as to whether the Third Defendant has breached clause 10 of his employment contract. Further, as a preliminary view, I find that there is a strong claim that the Third Defendant has breached clause 10 for the following reasons:

72. I repeat paragraphs 55-57 above.

73. I note that the Third Defendant says in his email, dated 10 September 2024, "I do recall you had two invoices", and expressly recalls the precise cost of each invoice. I accept Mr Knox's submission that the Third Defendant has provided no explanation as to how he knew the contract renewal dates or the prices of the contract of the Second Claimant's clients', DSW Capital. In the absence of any explanation from the Defendants I accept Mr Knox' submission that it is reasonable to infer as a preliminary view that the Third Defendant was using the Second Claimant's spreadsheet in order to know when DSW Capital's contract was coming up for renewal and what prices they were paying.

Confidentiality – First Defendant

74. The First Defendant was incorporated on 31 January 2024[67].

75. On 3 March 2024, the Second Defendant and his wife were appointed Directors of the First Defendant. They became majority shareholders. Simon Lloyd, a former chief financial officer of the Second Claimant, is also a Director.

76. On 7 March 2024, the Second Defendant tendered his resignation from the Second Claimant. The next day, 8 March 2024, the Second Defendant registered Luminate's domain name.

[67] Tab 5, 59

77. In his first witness statement, Mr Ribton says[68],

> "49. … A visit to Luminate's website shows blog posts dated 10, 17 and 31 May and 4 June 2024. [See page 64 of the trial bundle]
>
> 50. At the time of these posts (and of all of the activities described above) Mr. Meadows was still a director of Brighter IR, owing contractual and fiduciary duties to it. In Pre-Action correspondence Mr. Meadows has asserted that the blog posts were created after the 7 June 2024 and backdated so that '*Luminate did not appear to its customers as a brand-new company, even though it was*'. He has not provided any evidence for such assertion, or the purported actual date of creation of the posts"

78. The Defendants' solicitors say in their letter dated 29 August 2024[69],

> "Luminate's website did not go live until Thursday 6 June 2024 (the day before the Termination Date).
>
> The blog posts dated 10, 17 and 31 May and 3 June 2024 (the 'Blog Posts') which appear on Luminate's website, were not created by our client until after the Termination Date. Our client backdated the Blog Posts, so that Luminate did not appear to its customers as a brand-new company, even though it was."

79. The issue as to whether the blog posts were as dated and as a consequence the First Defendant was conspiring with the Second Defendant to breach the Second Defendant's fiduciary duty and his duty of fidelity, contract or were backdated, is an issue for trial. The difficulty for the First and Second Defendants is that on their own case they were acting dishonestly with a view to deceiving potential clients.

80. Mr Sethi submits that there is no serious issue to be tried against the First Defendant because it is not bound by the Second Defendant's updated DSA, dated 24 October 2019.

81. Mr Knox submits that there is a serious issue as to whether the First Defendant is conspiring with the Second and Third Defendants to breach their respective contracts.

Decision as to confidentiality – First Defendant

82. I find that having regard to the fact that the Second Defendant and his wife are majority shareholders in the First Defendant, and the Second Defendant is a Director, there is a serious issue as to whether the First Defendant is conspiring with the Second Defendant to breach the express and implied terms of his updated DSA and his fiduciary duty to the Second Claimant.

[68] Tab 4, 40
[69] 413

Injunction restraining First and Second Defendants, if engaged in a Restricted Business, from soliciting any Restricted Client

83. The Second Defendant's updated DSA provides[70],

> "19.1.2 For 6 months after Termination for the purposes of any business engaged or interested in any Restricted Business, either on his own behalf or on behalf of any other person, firm, limited liability partnership, company, or other entity, directly or indirectly solicit or entice away, or try to solicit or entice away from the Company or any Group Company, or deal with any Restricted Client, or induce or attempt to induce any Restricted Client to cease conducting any business with the Company or any Group Company, or reduce the amount of business conducted with the Company or any Group Company, or adversely to vary the amount of business with the Company or any Group Company;"

84. The updated DSA states at clause 1[71],

> "1. Interpretation
>
> 1.1 The definitions and rules of interpretation in this clause 1 apply in this agreement.
>
> …
>
> **Restricted Business**: the provision of financial news and investor coordination services.
>
> **Restricted Client**: any firm, limited liability partnership, company, person or other entity who, at any time during the 12 months before Termination, was a client, customer, prospective client or prospective customer of the Company or any Group Company with whom or which the Employee had material dealings during that period in the course of his employment.
>
> **Restricted Person**: anyone employed or engaged by the Company or any Group Company at any time during the 3 months before Termination and with whom the Employee had material dealings in the 12 months before Termination in the course of his employment."

Claimants' submissions

85. Mr Ribton says in his first witness statement[72],

[70] Tab 5, 95
[71] Tab 5, 70-71
[72] Tab 4, 35, 36 and 47

"28. …

b. **Restricted Business**: the provision of financial news and investor coordination services. By way of explanation this is the umbrella term for what the Group and Brighter IR does - we help companies with their investor engagement strategy and planning. Brighter IR does this specifically by developing investor facing websites on behalf of companies, hosting, supporting them and also by the provision of a suite of SaaS-based website-focused proprietary IR tools to service the needs of public companies. These tools allow clients to augment their website and microsite with recent share price and trade data, interactive charting tools, regulatory newswires, email alerting, and provide other support using raw data feeds and APIs. Our IR tools help keep investors informed, automate certain aspects of market disclosure and help our clients meet regulations specific to their market and geography. Our IR Tools are agnostic to markets and currencies, allowing them to easily scale into new exchanges and geographies. The definition of Restricted Business was always intended to cover all these services.

29. By virtue of his role as Group CTO and CEO of Brighter IR, Mr Meadows had access to all systems. This included access to Salesforce (which contained all clients, lists, products and pricing) and Brighter IR internal systems (including the proprietary code for the IR tools), client hosting arrangements (AWS) and security.

…

34. Mr. Meadows, throughout his employment with Group and Brighter IR, had a client- facing role, and was in contact with Brighter IR's clients daily. A few examples of his direct communications with a range of clients during the period from March to May 2024 (in the three months prior to his last date of employment) are provided at pages 158- 266). These communications are all signed off by Mr. Meadows as 'Co-Founder & CEO'. It is evident by the tone of these communications that Mr. Meadows had cultivated a friendly professional relationship with Brighter IR's clients.

…

88. Mr. Meadows seeks to argue that he is not in breach of clause 19.1.2 of the DSA because, in the 12 months prior to the end of his employment, he did not have any dealing with the Applicants' clients.

89. As discussed at paragraph 34 above, Mr. Meadows had regular contact with the Applicants' clients. In the 12 months prior to the end of his employment Mr. Meadows continued to

> harness the relationship he had built with the Applicants' clients in his role as CEO. As is evident from his exchange with clients seen at pages X-X (which is not intended to be an exhaustive list of communications Mr. Meadows had with the Applicants' clients during this period), Mr. Meadows had cultivated a close professional relationships (sic) with the Applicants' clientele. I disagree completely with his assertion now that he did not have material dealings with any of the Applicants' clients."

86. In his fourth witness statement Mr Ribton says at paragraph 9,

> "Paragraphs 27 to 37 of Mr Meadows' witness statement allege that the business of Luminate is not a "Restricted Business". I refer to pages 3 and 4 of CR4 which are screenshots of the website of a current customer of Brighter IR, Zigup plc Regulatory news - ZIGUP plc and of STV which was a customer of Brighter IR but has moved to Luminate STV | Regulatory announcements | STV. These show the services provided by both Brighter IR and Luminate (which are identical) and that contrary to what Mr Meadows says they fall within that definition."

87. In his first witness statement, Mr Ribton says[73],

> "95. It is not true that the Group '*unilaterally*' reduced Mr. Meadows' salary. Mr. Meadows agreed verbally with the Group at the end of January 2024 to a voluntary deferral of 20% of his salary along with fellow executives. This was further discussed in a Slack conversation between Mr. Ian Mcleland and Mr. Meadows on 24 January 2024 (pages 332- 334).
>
> 96. His full salary was restored as at 1 March 2024 and the outstanding deferral payments for January and February 2024 were paid to him on 28 June 2024, as part of his final pay run.
>
> 97. This was also set out in Mr. Meadow's leaver letter on 5 April 2024 (page 267). At no time did Mr. Meadows dispute that the salary reduction was a voluntary deferral, up until the correspondence dated 27 September 2024.
>
> 98. Mr. Macdonald-Thomson asserts that Brighter IR failed to pay him commission payment rightfully owed to him between the months of December 2023 and June 2024. However, he further states that all outstanding commission payments were paid to him following his termination. Mr. Macdonald-Thomson relies on this to counter the enforceability of his post-termination restrictions.

[73] Tab 4, 48-49

> 99. We explained the rationale for this at the time to Mr Macdonald-Thomson and the other sales staff who were all treated the same.
>
> 100. I believe that Mr. Meadows and Mr. Macdonald-Thomson raise such matters now as an attempt to absolve themselves of the post-termination obligations. For the avoidance of doubt, neither resigned as a result of any alleged breach of contract on the Applicants' part."

88. In a Leaver Letter from Richard Cook, the First Claimant's Chief Operating Officer, to the Second Defendant, dated 5 April 2024, it is said,

> "As you are aware, we verbally agreed to a voluntary deferral of 20% of your salary at the end of January. Your full salary was restored as at 1 March and the outstanding deferral payments for January and February will be paid as part of your final pay run on 28 June 2024."

89. In his formal resignation as Director, dated 7 June 2024[74], the Second Defendant says,

> "I acknowledge that I have no claim for compensation for loss of office, or right of action of any kind outstanding against the company [or any of its subsidiary companies], or against the company's officers or employees."

Second Defendant's submissions

90. Mr Sethi says that there is no serious issue to be tried for the following reasons.

91. Firstly, the restrictive covenants in the updated DSA were not drafted with the Second Defendant's particular circumstances in mind. They appear to be based on a template Canadian agreement.

92. Secondly, the First Defendant is not a restricted business, as defined in the updated DSA. It is said that the First Defendant is not in the business of "the provision of financial news and investor coordination services".

93. Thirdly, it is said that the Second Defendant had no material dealings with restricted clients in the twelve months before termination.

94. Fourthly, the list of allegedly solicited clients includes non-clients such as Tribe Tech Group, DSW Capital and Hydrogen One.

95. Fifthly, it is said that no attempt has been made by the Claimants to justify why six months is considered the minimum necessary period of restriction.

96. Sixthly, it is said that there is no evidence that the Second Defendant has sought to solicit or entice away any particular restricted client.

[74] Exhibit CR4, p. 1

97. Seventhly, it is said that the First Claimant unilaterally reduced the Second Defendant's salary by 20%, and this would make it inequitable to grant an injunction.

Decision on injunction restraining First and Second Defendants, if engaged in a Restricted Business, from soliciting any Restricted Client

Duration of Second Defendant's directorship of the Second Claimant

98. At paragraph 16 of his rebuttal statement the Second Defendant says[75],

> "I resigned from my directorship with the Second Claimant on 7 March 2024 and the records at Companies House were updated on 7 June 2024, which was my last day of employment with the First Claimant."

99. In his first witness statement, Mr Ribton says that the Second Defendant was a Director and CEO of the Second Claimant from 6 January 2016 until his departure on 7 June 2024.

100. The Second Defendant's resignation letter, dated 7 June 2024, states[76],

> "Please accept this letter as formal notice of my resignation as a director of BRIGHTER IR LIMITED, with effect from the date of this letter."

101. The minutes of the Meeting of the Directors, held on 7 June 2024 and signed by Mr Ribton and the Second Defendant, state[77],

> "Resignation of director
>
> A letter from Peter Meadows, resigning as a director of the Company to take on a new position, was presented to the meeting. The board expressed their appreciation for the service Peter Meadows had given to BRIGHTER IR LIMITED and resolved that the resignation be accepted with effect from 07 June 2024."

102. There is an issue as to whether the Second Defendant resigned from his directorship with the Second Claimant on 7 March 2024 or 7 June 2024. This is a matter for trial, but my preliminary view is that the Claimants have a strong claim that the Second Defendant resigned as a Director of the Second Claimant from 7 June 2024, not least because that is what the Second Defendant himself said in terms in his resignation letter, dated 7 June 2024, which he signed. Furthermore, this is also stated in the Minutes of the Meeting of the Directors, held on 7 June 2024[78], which he also signed, as did Mr Ribton.

[75] Tab 10, 625
[76] Exhibit CR4, p. 1
[77] Exhibit CR4, p. 2
[78] Exhibit CR4, 2

Duration of Second Defendant's role as Chief Executive Officer of the Second Claimant

103. The Second Defendant says in his rebuttal statement, dated 29 October 2024[79],

> "13. … As of 1 October 2020, I was the Chief Commercial Officer of the First Claimant, and I was no longer the CEO of the Second Claimant."

104. That is demonstrably not true. There are numerous emails from the Second Defendant to clients after this date, in all of which the Second Defendant signs himself "Co-Founder and CEO Brighter IR". For example, his email to Tim Metcalfe of Investor Focus, dated 28 May 2024[80]; his email to Marston's Projects, dated 5 March 2024[81]; and his emails to Paul Alexander of three thirty studio, dated 11 March 2024[82] and 22 April 2024[83]. Further, by a letter dated 7 March 2024 from the Second Defendant to Mr Mclelland, Founder Director and CEO of the First Claimant, it is said[84],

> "It's with regret that I tender my three month-notice period and resignation from my role as Chief Technology Officer of Proactive, and my role/Directorship as Chief Executive Officer of Brighter IR."

Restrictive covenants from template

105. I find that whether the restrictive covenants have been taken from a Canadian template is irrelevant to the issues before the Court. The issue before the Court is whether the restrictive covenants in the updated DSA as a matter of construction, reasonableness and proportionality provide a basis for interim injunctive relief.

106. The Second Defendant's updated DSA, made on 24 October 2019, provides at paragraph 30[85],

> "**GOVERNING LAW**
>
> This agreement shall be construed and enforced in accordance with the laws of Ontario and the laws of Canada applicable therein"

107. The Claimants have obtained expert evidence of an Ontario lawyer, Mr Rui Fernandes, who says at paragraphs 18 and 19 of his report, dated 2 October 2024[86],

> "18. The provisions set out in 19.1 of the DSA are subject to review for reasonableness. The focus of these provisions is on who is off limits for soliciting, and the definitions of both Restricted Clients and Restricted Persons is clear and

[79] Tab 10, 624
[80] Tab 5, 213
[81] Tab 5, 219
[82] Tab 5, 226
[83] Tab 5, 230
[84] Tab 5, 202
[85] Tab 5, 99
[86] Tab 5, 434-439 at 439

> unambiguous, such that Mr Meadows will be able to determine who he is not supposed to solicit. In addition, a 6-month duration is reasonable and the non-solicitation provisions are enforceable. The duration of the restriction is clear. The restricted activity is clear. For a non-solicit provision a geographic scope is not necessary.
>
> CONCLUSION
>
> 19. I conclude that the Restrictive Covenants set out in sections 19.1.2 and 19.1.3 of the DSA are enforceable under the laws of Ontario Canada."

Is the First Defendant a Restricted Business?

108. A Restricted Business is defined in the Second Defendant's updated DSA as "the provision of financial news and investor coordination services".

109. I find that there is a not only a serious issue as to whether the First Defendant is a Restricted Business, but that the Claimants have a strong claim that the First Defendant is a Restricted Business. Mr Ribton says that the "provision of financial news and investor coordination services" is the umbrella term for what the First and Second Claimants do, which is summarised at paragraph 85 above.

110. The Claimants say that the First Defendant is carrying out the same work as the Second Claimant. This is shown in:

i) The Third Defendant's email, dated 10 September 2024, to DSW Capital, in which he says[87],

> "Experience - ... A move to Luminate is essentially moving to a new name but the same faces. We have the team to ensure everything continues as before.
>
> I could offer **a 'like for like' service** whilst removing the £260 renewal fee altogether and reducing the main renewal by 5%, saving you over £300 every year in total, about a 15% discount overall." (my emphasis)

ii) The screen shots of the Second Claimant and the First Defendant, referred to at paragraph 9 of Mr Ribton's fourth witness statement, dated 29 October 2024.

Did the Second Defendant have material dealings with Restricted Clients in the 12 months before termination?

111. I find that there is evidence before the Court that the Second Defendant has had material dealings with clients of the Second Claimant during the twelve months before the termination of his Directorship on 7 June 2024. There are many examples in emails, for example at pages 213-320 in the bundle, showing the Second Defendant speaking directly to the Second Claimant's clients and having a good relationship with them.

[87] Tab 5, 379

Indeed, the Second Defendant says in his rebuttal statement, dated 29 October 2024, at paragraph 39[88], "I was the first point of contact if someone had a technical issue or problem to resolve".

Schedule contains non-clients of Defendants

112. The schedule of customers who the Claimants allege have moved to the First Defendant, dated 29 October 2024[89], lists 29 customers, of which 22 had cancelled their contracts with the Second Claimant and entered into contracts with the First Defendant. A separate schedule[90] expressly refers to Hydrogen One as retained by the Second Claimant, although a contract had not yet been signed. Tribe Tech Group and DSW Capital were not included in the schedule dated 29 October 2024.

113. For the aforementioned reasons, I find that there is no substance in this point.

Duration of restraint

114. I find that a six-month restraint on soliciting the Second Claimant's clients is reasonable, bearing in mind:

i) The Claimant has disclosed an expert report from Mr Rui Fernandes, a Canadian Barrister, who states at paragraph 18[91],

> "In addition, a six-month duration is reasonable and the non-solicitation provisions are enforceable. The duration of the restriction is clear. The restricted activity is clear."

ii) The Claimants say that the Second Defendant was client-facing in his role as both the Second Claimant's Chief Executive Officer and Chief Technical Officer.

iii) It is clear from the email exchanges between the Second Defendant and the Second Claimant's clients that the Second Defendant had cultivated a close professional relationship with the Second Claimant's clients. For example, Paul Alexander of Thirty Three Studio begins his email of 15 March 2024, "You truly are a King amongst men!"[92]. Lee Russell of Yuzu Agency sent the Second Defendant an email on 8 March 2024 saying[93],

> "Hi Pete,
>
> Thank you so much for executing on this quickly! It is very much appreciated as there is a time pressure to get this live!"

iv) The Claimants' contracts with their clients were for a 12-month period.

[88] Tab 10, 629
[89] Exhibit CR3, p. 1
[90] Exhibit CR3, p. 2
[91] Tab 6, 439
[92] Tab 5, 228
[93] Tab 5, 229

Has Second Defendant sought to solicit or entice any Restricted Client?

115. I find that there is not only a serious issue as to whether the Second Defendant has sought to solicit or entice away any Restricted Client but a strong claim, for reasons already given in this judgment. But to summarise:

i) By an email dated 29 January 2024[94], the Second Defendant told the Third Defendant: "Woo I found the hardcopy on my disk", to which the Third Defendant replied with a thumbs up emoji. The Second Defendant replied: "I know it's a year old already, and things will have changed, but it will come in handy when it comes to migration and making sure we are not missing anything". This spreadsheet contained information about the Second Claimant's clients, the date of renewal of each client's contract, the date by which they should provide a notice of non-renewal and the price of each contract.

ii) Mr Ribton says in his third witness statement at paragraph 5 that in the three-month period July – September 2024, 22 of the Second Claimant's customers have cancelled to go to the First Defendant, with a total annual contract value of £40,681.

iii) The Second Defendant and his wife are majority shareholders in the First Defendant and the Second Defendant is a Director of the First Defendant.

iv) The Second Defendant has offered no explanation as to how the Defendants knew the dates upon which the Second Claimant's clients' contracts expired, or the contract prices. This information was contained in the Second Claimant's spreadsheet.

Decision as to delayed payment of salary to Second Defendant

116. I find that there are questions of fact as to whether:

i) The Second Defendant agreed to a voluntary deferral of 20% of his salary;

ii) The Second Defendant by his resignation letter dated 7 June 2024[95] released the Second Claimant from any liability with regard to all such claims which may exist;

iii) The Second Defendant waived any claim he may have or affirmed his contract of employment when he accepted payment of unpaid salary on termination of his employment.

117. The resolution of these issues must await trial. I find that these issues are not relevant to the question of whether there is a serious issue as to whether there should be a restraint on the Second Defendant soliciting the Second Claimant's clients.

[94] Tab 5, 328
[95] Exhibit CR4, page1

Conclusion

118. I conclude that there is a serious issue as to whether the Second Defendant has breached clause 19.1.2 of his updated DSA. My provisional view is that the Claimants have a strong claim that the Second Defendant has engaged in a Restricted Business, namely the First Defendant, to solicit or entice away Restricted Clients to cease conducting business with the Second Claimant.

119. I find that:

i) The Claimants have shown that their need for an injunction restraining the First and Second Defendants from soliciting their Restricted Clients is a legitimate business interest requiring protection in relation to the Second Defendant's employment.

ii) Clause 19.1.2 of the Second Defendant's updated DSA is no wider than is reasonably necessary for the protection of those interests.

iii) The duration of the restraint of 6 months is reasonable.

iv) Although the injunction will only be in force until 7 December 2024, I find that it is reasonable and proportionate to grant it, bearing in mind the damage to the Claimants if there are breaches of Clause 19.1.2 of the Second Defendant's updated DSA.

v) Clause 19.1.2 of the Second Defendant's employment contract is proportionate and only protects the Second Claimant's legitimate business interests.

Restriction on competition - Third Defendant

120. The Third Defendant's contract of employment provides[96],

> "12 Restrictions on competition
>
> 12.1 The Employee will not for the first 12 months after the end of his employment with the Company either on his own account or on behalf of any other legal person and in competition with the Company or any Associate directly or indirectly engage in, or be concerned with, or employed in, any trade or business competitive with that carried out by the Company or any Associate at the end of his employment.
>
> 12.2 The Employee will not for the first 12 months after the end of his employment with the Company solicit or accept orders for services competitive with the Company's and/or any Associates from any of the Company's and/or any Associates customers with whom the Employee dealt during the last 24 months of his employment with the Company.

[96] Tab 5, 206

Claimant's submissions

121. Mr Ribton says in his first witness statement, dated 3 October 2024, at paragraph 38[97],

> "38. By virtue of his role as Sales and Operations Director, Mr Macdonald-Thomson had access to Salesforce (which contained all clients, lists, products and pricing) and Brighter IR internal systems (including any spreadsheets with client details on).
>
> 39. In Mr Macdonald-Thomson's case we were particularly concerned to protect our commercial interests as, in the example given above, if details of our clients, pricing and bespoke pricing for specific clients are made known to competitors by former employees attempting to grow market share, it will enable them to target those clients and offer better commercial terms. As detailed elsewhere in this statement, Mr Macdonald-Thomson has deliberately targeted our clients before their renewal dates and undercut our pricing to solicit them away from us.
>
> 40. Brighter IR clients are contracted on an annual basis with a 30 days' notice period so the non-compete and non-solicitation clauses are set to coincide with this. Mr. Macdonald-Thomson was reminded of his post-termination obligations in the leaver letter dated 20 May 2024 (page 268), in response to his resignation."

122. The Claimants rely upon an email from the Third Defendant to DSW Capital, dated 10 September 2024[98], as an example, they say, of the Third Defendant soliciting the Second Claimant's clients using his knowledge of the Second Claimant's prices and clients' renewal dates, which were trade secrets. In this email, the Third Defendant says,

> "It's Scott here, formerly of Brighter IR, who currently provides your share price and RNS services on the Dow Schofield Watts investor website.
>
> …
>
> I am aware the renewal for your current services is due in December and needless to say if you are open to it I'd love to continue working with you for news and prices via our new venture.
>
> Why switch?
>
> Experience - the team that developed your services, managed secure hosting and provided support for your services have pretty much all moved to our business now. This leaves a skill gap with your current provider should any problems with feeds arise. A move to Luminate is essentially moving to a new name

[97] Tab 4, 38
[98] Tab 5, 378

> but the same faces. We have the team to ensure everything continues as before.
>
> Incentives - although the process of switching is very simple I do appreciate everyone likes an incentive, especially in challenging Capital markets at the moment. I do recall you had two renewal invoices each year, a main one for £2070 and a smaller added one for £260. I also remember you were very focused on managing costs. I could offer a 'like for like' service whilst removing the £260 renewal fee altogether and reducing the main renewal by 5%, saving you over £300 every year in total, about a 15% discount overall."

123. On 20 May 2024, the First Claimant sent a 'Leaver Letter' to the Third Defendant[99], in which it said,

> "May I take this opportunity to remind you of the confidentiality and post termination restrictions in your terms and conditions of employment."

124. In his first witness statement, Mr Ribton says[100],

> "98. Mr. Macdonald-Thomson asserts that Brighter IR failed to pay him commission payment rightfully owed to him between the months of December 2023 and June 2024. However, he further states that all outstanding commission payments were paid to him following his termination. Mr. Macdonald-Thomson relies on this to counter the enforceability of his post-termination restrictions.
>
> 99. We explained the rationale for this at the time to Mr Macdonald-Thomson and the other sales staff who were all treated the same.
>
> 100. I believe that Mr. Meadows and Mr. Macdonald-Thomson raise such matters now as an attempt to absolve themselves of the post-termination obligations. For the avoidance of doubt, neither resigned as a result of any alleged breach of contract on the Applicants' part."

Third Defendant's submissions

125. The Third Defendant says in his witness statement, dated 29 October 2024[101],

> "I have been advised by my solicitors that the post-termination restrictions are likely to be found void and unenforceable by any court for the following reasons:

[99] Tab 5, 322
[100] Tab 4, 48-49
[101] Tab 12, 978-983

> a) Regarding the non-compete restriction at clause 12.1 of the Employment Contract:
>
> (i) The duration of the non-compete (being 12 months) is excessive and widely drafted such that it goes further than is reasonably necessary to protect any legitimate business interest that the Second Claimant seeks to rely upon;
>
> (ii) The non-compete contains no definitions as to what may amount to a competitor of the Second Claimant and therefore places a blanket ban on me being able to obtain alternative employment in the same field. This is unreasonably onerous and places me in restraint of trade;
>
> (iii) The Second Defendant (former Chief Technology Officer of Proactive Group Holdings Inc) was subject to a six month non-compete post termination restriction. I was employed by the Second Claimant in the role of Sales and Operations Director, a position which holds significantly less seniority and affords considerably less access to confidential information, strategy and data than the Second Defendant. Against this context, it is entirely unreasonable that I be subjected to a non-compete which is twice as long in duration;
>
> (iv) The non-compete is disproportionate. Under Clause 3.2 of the Employment Contract, I was only subject to a one-month notice period; and
>
> (v) I repeat paragraph 9 regarding the Second Claimant's breach of the Employment Contract by its failure to make any commission payments to me until after my employment was terminated. I resigned from my employment for this reason. This fundamental breach of contract renders the post-termination restrictions unenforceable."

Decision on restriction on competition - Third Defendant

Duration of restraint

126. I reject Mr Sethi's assertion in his skeleton argument at paragraph 11.2 that,

> "No explanation let alone justification is evidenced as to why 12 months is considered necessary for D3, when 6 months is considered appropriate for D2."

127. I find the non-solicitation clause reasonable in duration because it protects the legitimate business interest of the Second Claimant:

i) I accept the evidence of Mr Ribton at paragraph 40 of his first witness statement that the Second Claimant's clients are contracted on an annual basis with a 30-day notice period, so the non-solicitation clause coincides with this.

ii) As Mr Knox says in his skeleton argument at paragraph 34(2),

> "Without this protection, D3 would be entitled to approach C2's clients (including those who had just contracted or renewed before termination of his employment) during the course of that 12 month contract or renewal, and it was reasonable for C2 to protect itself against such an event. Further, as said in Gunnercooke's correspondence at [420/4], C2 operates in a narrow sector, and there would plenty of employment opportunities for D3 elsewhere."

Non-compete

128. I reject the Third Defendant's submission that the absence of a definition of a "competitor" of the Second Claimant renders clause 12 of the Third Defendant's contract of employment unduly onerous. As Mr Knox says in his skeleton argument at paragraph 34, the Second Claimant operates in a narrow sector and it is very clear who the competitors are. As the Second Defendant says in his rebuttal statement at paragraph 73[102],

> "The second claimant services around 300 clients on the London Stock Exchange. This is roughly 1/5 off the addressable market of some 1700 listed companies."

Different duration of restraint for Second and Third Defendants

129. It is easily understandable why the duration of the Third Defendant's restraint on soliciting the Second Claimant's clients is greater than that of the Second Defendant, bearing in mind the Third Defendant's client facing role as Sales and Operations Director (see clause 2.1 of his contract of employment[103]), and his consequent access to Salesforce and the Second Claimant's internal systems, including spreadsheets containing client details.

Proportionality

130. I find that the 12-month duration of the restraint is proportionate. The fact that the notice period at clause 3.2 of the Third Defendant's contract[104] is one month is of no relevance to whether the 12-month period is reasonable because the notice period and the restraint clause are dealing with distinct and separate matters.

Delayed commission payments to Third Defendant

131. I find that there are questions of fact as to whether:

i) The Third Defendant agreed to a voluntary deferral of commission;

[102] Tab 10, 634
[103] Tab 5, 203
[104] Tab 5, 203

ii) The Third Defendant waived any claim he may have or affirmed his contract of employment when he accepted payment of unpaid commission payments on the termination of his employment.

132. The resolution of these issues must await trial. I find that these issues are not relevant to the question of whether there is a serious issue as to whether there should be a restraint on the Third Defendant soliciting the Second Claimant's clients.

Conclusion

133. I find that:

i) The Claimants have shown that the Claimants' restraint on the Third Defendant soliciting the Second Claimant's clients is a legitimate business interest requiring protection.

ii) Clause 12 of the Third Defendant's employment contract is no wider than is reasonably necessary for the protection of those interests.

iii) Clause 12 of the Third Defendant's employment contract is precise and not vague.

iv) The duration of the restraint of 12 months is reasonable.

v) Clause 12 of the Third Defendant's employment contract is proportionate.

134. I conclude that there is a serious issue as to whether the Third Defendant has acted in breach of clause 12 of his contract of employment. My provisional view is that the Claimants have a very strong claim that the Third Defendant has acted in breach of clause 12 of his contract of employment for the reasons given above.

Restricted person non-solicitation injunction – First and Second Defendants

135. The Claimants seek an injunction restraining the First and Second Defendants, whether by themselves or any other person, from engaging in any Restricted Business which employs or solicits any Restricted Person from the Second Claimant or any group company.

136. The Second Defendant's updated DSA provides[105],

> "19.1.3 For 6 months after Termination in the course of any business concern which is engaged or interested in any Restricted Business, either on his own behalf or on behalf of any other person, firm, limited liability partnership, company, or other entity, directly or indirectly employ, offer to employ, engage, offer to engage, solicit, interfere with, entice away, or try to entice away from the Company or any Group Company any Restricted Person;"

[105] Tab 5, 95

137. The Second Defendant's updated DSA defines Restricted Person at 1.1 as[106],

> "Anyone employed or engaged by the Company or any Group Company at any time during the 3 months before Termination and with whom the Employee had material dealings in the 12 months before Termination in the course of his employment."

Claimants' submissions

138. The Claimants' case is that the Second Defendant resigned from being a Director of the Second Claimant, as he states in his resignation letter, from 7 June 2024[107] and as stated in the Minutes of the Directors held on 7 June 2024[108].

139. The Claimants say that the First and Second Defendants' breach of clause 19.1.3 of the Second Defendant's updated DSA can be seen from an email to the First Claimant's CEO, Mr Mclelland, from the Second Defendant, dated 27 January 2024. The Second Defendant says[109],

> "Speaking of people, I'd like to take Sam [Diamond], Ragu [Varsani] and Jacint [Virag] with me to re-join Brighter IR. They are very much in support of the concept.
>
> …
>
> That said, I'll confess some of the others are aware of my proposal. **I've spoken at length with Scott** [the Third Defendant], and a little with Erika and Zoli, all of whom are in full support (and sworn to secrecy). I'm sure the remaining devs [developers] know and trust me well enough to follow when the time comes, too." (my emphasis)

140. Raghav Varsani was employed by the Second Claimant as a Developer and Infrastructure Engineer from November 2021. Prior to the Second Defendant resigning his directorship and role as CEO of the Second Claimant on 7 June 2024, Mr Varsani handed in his resignation notice on 31 May 2024[110], in which he says,

> "I have been offered a job in another firm which more aligns with what technology I want to work with and plan to accept it."

141. Mr Varsani's last day with the Second Claimant was 3 June 2024 and he commenced employment with the First Defendant as Head of Infrastructure on 25 June 2024[111].

[106] Tab 5, 71
[107] Exhibit CR4, p. 1
[108] Exhibit CR4, p. 2
[109] Tab 5, 325
[110] Tab 5, 368
[111] Second Defendant's rebuttal statement at paragraph 47, tab 10, 630

142. Jacint Virag was employed by the Second Claimant from 11 September 2018 as a WordPress Developer[112]. His resignation notice is dated 30 April 2024[113]. He is now employed by the Second Defendant as Head of Development.

143. Erika Balode was employed by the Second Claimant. She resigned on 9 August 2024 and commenced employment with the First Defendant as a Website Developer on 10 September 2024.

144. Mr Ribton states in his first witness statement, dated 3 October 2024[114],

> "58. Further, I have good cause to believe that Mr. Meadows enticed the above employees to resign from Brighter IR and work for Luminate. My belief is supported by the fact that Mr. Meadows 'confessed' to having spoken to various employees in the past (as discussed above at paragraph 42 above), and stated he was confident that Brighter IR employees trusted him well enough to follow him '*when the time comes*'.
>
> 59. Further, I believe that the timing of Mr. Macdonald-Thomson's resignation was planned so as to coincide with that of Mr. Meadows; the last date of employment for both was the 7 June 2024, which was a Friday. Mr. Macdonald-Thomson commenced employment with Luminate the following Monday, 10 June 2024. I believe that any assertion that Mr. Meadows did not discuss Luminate with Mr. Macdonald-Thomson, and therefore did not entice him to resign from his employment with Brighter IR to join Luminate, to not be credible."

Second Defendants' submissions

145. The Second Defendant says in his rebuttal statement, dated 29 October 2024[115],

> "49. I had no material dealings with Mr Macdonald-Thompson within the 12 months prior to the termination of my employment. …
>
> 50. I also had no material dealings with Ms Balode within the 12 months prior to the termination of my employment. …
>
> …
>
> 53. I did have material dealings with Mr Virag and Mr Varsani. However, I reiterate my comments that the First Defendant is not a Restricted Business and therefore there has been no breach of this restriction by me."

[112] Tab 5, 330-347
[113] Tab 5, 348
[114] Tab 4, 41
[115] Tab 10, 630-631

Decision – restricted person non-solicitation injunction – First and Second Defendants

146. I find that:

i) The Claimants have shown on the evidence that the integrity or stability of the Second Claimant's workforce is a legitimate business interest requiring protection in relation to the Second Defendant's employment.

ii) Clause 19.1.3 of the Second Defendant's updated DSA is no wider than is reasonably necessary for the protection of those interests.

iii) Clause 19.1.3 of the Second Defendant's updated DSA is precise and not vague.

iv) Clause 19.1.3 of the Second Defendant's updated DSA is proportionate.

147. I have already made a preliminary finding that a restraint of six months is a reasonable period. The expert, Mr Rui Fernandes states at paragraph 18[116],

> "In addition, a six-month duration is reasonable and the non-solicitation provisions are enforceable. The duration of the restriction is clear. The restricted activity is clear."

148. I have already found that the First Defendant is a Restricted Business. The Second Defendant is with his wife a majority shareholder of the First Defendant, and is a Director.

149. I find that the Claimants have shown that there is a serious issue as to whether the Second Defendant is in breach of clause 19.1.3 of the updated DSA. My provisional view is that the Claimants have a strong claim that the First and Second Defendants are in breach of clause 19.1.3 of the Second Defendant's TSA for the following reasons:

i) In his email to Mr Mclelland dated 27 January 2024, the Second Defendant says that Mr Varsani and Mr Virag want to re-join Brighter IR, and that they are in support of the concept of the Second Defendant's Management Buy Out.

ii) At the time that Mr Varsani and Mr Virag handed in their resignation notices on 31 May 2024 and 30 April 2024 respectively, the Second Defendant was a Director of the Second Claimant and therefore bound by clause 19.1.3.

iii) The Second Defendant says that he has had no material dealings with the Third Defendant. However, in his email dated 27 January 2024, he says he has "spoken at length with Scott".

iv) The Second Defendant says that he has had no material dealings with Ms Balode. However, in his email dated 27 January 2024, he says he has spoken "a little with Erika" and she is "in full support (and sworn to secrecy)".

v) Based upon the Second Defendant's email of 27 January 2024 to Mr Mclelland, it is a reasonable inference that from January 2024 onwards, the Second Defendant was engaged with the First Defendant, who I have found was a

[116] Tab 6, 439

Restricted Business, in soliciting and employing Restricted Persons, namely Mr Varsani, Mr Virag, Ms Balode and the Third Defendant.

150. Whilst I acknowledge that the email of 27 January 2024 was in relation to the proposed Management Buy Out:

i) It shows that the Second Defendant had had material dealings with Mr Varsani, Mr Virag, Ms Balode and the Third Defendant in the 12 months before the termination of his directorship of the Second Claimant on 7 June 2024;

ii) It makes it likely that he would have continued to have material dealings with them, particularly bearing in mind that the Third Defendant, Mr Varsani, Mr Virag and Ms Balode all terminated their contracts with the Second Claimant in April and May 2024, and became employees of the First Defendant.

151. I find that having regard to the fact that the Second Defendant and his wife are Directors and majority shareholders in the First Defendant, there are serious issues as to whether the First Defendant is conspiring with the Second and Third Defendants to breach their respective contracts by soliciting, enticing or employing etc former employees of the Second Claimant to terminate their contracts with the Second Claimant and join the First Defendant.

Employee non-solicitation injunction – Third Defendant

152. The Claimants seek an injunction restraining the Third Defendant, whether by himself or any other person, until the earliest of 7 June 2025 or judgment or further Order from offering to employ or entice away from the Claimants any Restricted Person.

153. The Third Defendant's contract of employment provides[117],

> "12 Restrictions on competition
>
> 12.1 The Employee will not for the first 12 months after the end of his employment with the Company either on his own account or on behalf of any other legal person and in competition with the Company or any Associate directly or indirectly engage in, or be concerned with, or employed in, any trade or business competitive with that carried out by the Company or any Associate at the end of his employment.
>
> 12.2 The Employee will not for the first 12 months after the end of his employment with the Company solicit or accept orders for services competitive with the Company's and/or any Associates from any of the Company's and/or any Associates customers with whom the Employee dealt during the last 24 months of his employment with the Company.
>
> 12.3 The Employee will not for the first 12 months after the end of his employment with the Company solicit away from the Company or Associates any person who is and was, when the

[117] Tab 5, 206

> Employee's employment ended, employed by the Company or an Associate as a director, senior manager or salesperson for whom the Employee was responsible during the last months of employment."

Claimants' submissions

154. The Claimants submit that the Third Defendant formed the First Defendant with the Second Defendant and Simon Lloyd, a former chief financial officer of the Second Claimant and as a consequence it is a reasonable inference that he was involved in enticing etc. the Second Claimant's employees to terminate their contracts with the Second Claimant and join the First Defendant, thus breaching clause 12.3 of his contract of employment. The Claimants rely upon an email to one of the Second Claimant's customers, DSW Capital, dated 10 September 2024, in which the Third Defendant says[118],

> "I've now moved on, **forming a new business**, https://luminate.works/, **with some colleagues**. Unfortunately **we** became the 'Bank of mum and dad' for our previous backers' company, forcing **us** into a rethink. The formation of Luminate allows us complete control over strategy, growth and of course finances for the business...." (my emphasis)

Third Defendant's submissions

155. In his rebuttal statement, the Third Defendant says[119],

> "24. I acknowledge that on 10 September I said to a perspective customer that I was involved in 'forming a new business […] with some colleagues' (referred to at paragraph 69 of the First Witness Statement of Craig Stephen Ripton). By this I meant in very high-level summary that I was an early employee of the First Defendant. It was the turn of phrase used by a salesman when pitching for new business and not evidence of any involvement in the formation of the First Defendant or the creation of its brand, identity, products, or service offering. I repeat my position that I was not involved in the setting up of the First Defendant."

Decision re. employee non-solicitation injunction – Third Defendant

156. I find that:

i) The Claimants have shown on the evidence that the integrity or stability of the Second Claimant's workforce is a legitimate business interest requiring protection in relation to the Third Defendant's employment. I bear in mind that the Second Claimant only has about fourteen employees, and so loss of any of the employees is a serious matter.

[118] Tab 5, 378
[119] Tab 12, 983

ii) Clause 12.3 of the Third Defendant's employment contract is no wider than is reasonably necessary for the protection of those interests.

iii) Clause 12.3 is precise and not vague.

iv) Clause 12.3 is proportionate.

157. I have already found that a restraint period of 12 months is reasonable.

158. Clause 12.3 says in the final sentence "for whom the Employee was responsible during the last months of employment" without stating the number of months. I accept Mr Knox's submission and make a preliminary finding that the number "24" has been accidentally omitted after the word "last", because this is the number in clause 12.2, and both clause 12.2 and clause 12.3 are drafted in similar terms in that they restrain the Third Defendant for the first 12 months after the end of his employment with the Second Claimant. Mr Sethi referred the Court to the case of *Prophet v Huggett* [2014] EWCA Civ 1013. I find that this case is entirely distinguishable because the Court found that the meaning of the proviso was clear, whereas in the present case the meaning of "months" is ambiguous. For these reasons, I reject Mr Sethi's submission at paragraph 11.1 of his updated skeleton argument that clause 12.3 is void for uncertainty, or uncertain in scope or unreasonably wide.

159. Further and in any event, clause 12.3 refers to the last "months" and so is on any construction more than one month.

160. I find that there is plainly a serious issue to be tried as to whether the Third Defendant is in breach of clause 12.3 of his employment contract. In his email of 10 September 2024 to DSW Capital, he says that he has moved on, "forming a new business with some colleagues", which would make him jointly liable with the First and Second Defendants. My preliminary finding is that the Claimants have a strong claim that the Third Defendant was in breach of clause 12.3. As was said by Males LJ in *Simitra Global Assets Limited v Ikon* [2019] EWCA Civ 1413,

> "48. In this regard I would say something about the importance of contemporary documents as a means of getting at the truth, not only of what was going on, but also as to the motivation and state of mind of those concerned. That applies to documents passing between the parties, but with even greater force to a party's internal documents including emails and instant messaging. Those tend to be the documents where a witness's guard is down and their true thoughts are plain to see. Indeed, it has become a commonplace of judgments in commercial cases where there is often extensive disclosure to emphasise the importance of the contemporary documents."

Would damages be an adequate remedy for the Claimants?

161. I find that damages would not be an adequate remedy for the Claimants for the reasons given by Mr Ribton in his first witness statement, dated 3 October 2024[120]:

[120] Tab 4, 45

> "80. As discussed above, the Applicants are aware of a number of clients who have migrated their services to Luminate from Brighter IR. Further, a number of other clients have tendered non-renewal notices. Brighter IR might never be in a position to confirm whether such clients migrated to Luminate, and if so whether they did so following solicitation by the Respondents, with the use of confidential information.
>
> 81. It is therefore simply not possible for the Applicants to know how much damage it may suffer as a result of the breaches by Mr. Meadows and Mr. Macdonald-Thomson, with the encouragement of Luminate."

162. Further, the solicitation is resulting in customers seeking to reduce their renewal prices (as in the case of DWS Capital), which will be difficult to calculate.

163. Finally, damages for loss of staff cannot easily be assessed. First, it involves having to take into account the time spent in looking for replacements; and second, it is difficult if not impossible to assess the impact of loss of staff on staff morale on those remaining, and loss arising because the replacements are not as good as those lost.

Would damages be an adequate remedy for the Defendants?

164. I find that damages would not be an adequate remedy for the Defendants as it would be very difficult for them to quantify their loss.

Balance of convenience

165. In considering the balance of convenience, the Court can consider the relative strength of each party's case. I have found that the Claimants have a strong claim against all three Defendants in respect of all injunctions sought. This militates very strongly in the scales coming down in the Claimants' favour.

166. I accept Mr Knox's submission that the impact on the Claimants of not granting the injunction is likely to be severe, given that it is apparent from the above history that the Defendants' actions have not been tempered by the Leavers Letters, the receipt of pre-action letters or these proceedings.

167. Whilst I bear in mind the Second and Third Defendants have claims that their salary and commission respectively were paid late in breach of contract, I find that they are not sufficient to prevent the balance of convenience coming down in the Claimants' favour because:

i) They were not raised by either the Second or Third Defendants until the Claimants brought the present claim.

ii) When the Second and Third Defendants received their late payments, they made no complaint.

iii) The Second Defendant said in his formal resignation as Director, dated 7 June 2024[121],

> "I acknowledge that I have no claim for compensation for loss of office, or right of action of any kind outstanding against the company [or any of its subsidiary companies], or against the company's officers or employees."

168. For these reasons, I conclude that the balance of convenience comes down in favour of granting the interim injunctions sought by the Claimants.

Delay

Defendant's submissions

169. The Third Defendant says in his rebuttal statement, dated 29 October 2024[122], at paragraphs 6 – 11 that there has been significant delay on the part of the Claimants in bringing these proceedings. He says this has a two-fold significance. Firstly, as at the date of the hearing on 30 October 2024, there were only five weeks left until his post-termination restrictions expired and the injunction proceedings were disproportionate. Secondly, he says that it was not until 16 October 2024 (four months after he left employment and nearly two months after writing to the Defendants) that the Claimants issued proceedings.

Claimants' submissions

170. Mr Ribton says in his fourth witness statement, dated 29 October 2024, at paragraphs 5-8:

i) The Claimants sought legal advice when it became apparent that a high volume of cancellation notices were being received and it was only on 13 August 2024 that the existence of HJ 2024 Limited and the Second Defendant's involvement in that company was discovered by the Claimants' solicitors by matching the VAT number displayed on Luminate's website to that company.

ii) Detailed letters were then sent by the Claimants' solicitors to the Defendants on 16 and 19 August 2024.

iii) Responses were received on 29 August 2024 which had to be considered.

iv) During this time urgent efforts were being made to find out the nature of the solicitation of the Second Claimant's customers and it was not until 11 September 2024 that the email correspondence from the Third Defendant to DWS of 10 September was obtained, which was the first direct evidence of the activities of the Defendants which the Claimants had seen.

v) The Claimants' detailed response was sent by their solicitors on 18 September 2024.

[121] Exhibit CR4, p. 1
[122] 623-634

vi) There then followed an exchange of without prejudice correspondence conducted in an effort to avoid this application which concluded on 11 October 2024 and the application was filed on 16 October and sealed on 23 October by the court (with the date of 16 October 2024 when it was filed). The hearing was then listed as soon as possible.

Decision on delay

171. The evidence provided by Mr Ribton is supported by documentation and I find that it shows there has been no delay on the part of the Claimants. On the contrary, they have added with all due expedition.

Adequacy of Claimants' cross-undertaking in damages

172. Mr Sethi says in his updated skeleton argument at paragraph 16:

i) The parties' combined legal expenditure at the time of this Application hearing is many times the net cash position of the Second Claimant (which stands at just £27,000 according to the Second Claimant's draft statutory accounts). Accordingly, the Second Claimant's net assets will be/are already exhausted by the legal costs, leaving insufficient sums to compensate the Defendants under the cross undertaking in damages.

ii) The evidence before the court does not clearly establish the Claimants' ability to meet any cross-undertaking in damages. In his rebuttal statement, the Second Defendant says at paragraph 68 a[123],

> "In/ around November 2023 I received an alarming call from HMRC indicating that around £250,000 was owed by the Second Claimant in unpaid PAYE and VAT. Further in/ around November 2023 I was also subsequently informed by Mr Ribton that the First Claimant also owed unpaid PAYE and VAT to HMRC."

173. I find that the Claimants' cross undertaking in damages is adequate for the following reasons:

i) The Second Claimant's draft statutory accounts for the year ending 30 June 2024 show that[124]:

a) The Second Claimant made a profit of £642,868;

b) Retained earnings at the year were £955,177;

c) The balance sheet shows a net asset position of £955,228.

ii) It has to be borne in mind that the value of the contracts made between the Claimants and their customers is between £750 and £3,060, and most are around £1,500. The 22 customers who have cancelled their contracts with the Second

[123] Tab 9, 634
[124] Tab 8, 620

Claimant to make contracts with the First Defendant have a total annual value of £40,681. The profit would obviously be significantly less than this. Therefore, even if the Claimants were to be unable to contract with 44 customers of the Claimants at present, the total annual contract value would be likely to be about £80,000, with the loss of profit significantly less than that. It would be well within the Second Claimant's financial ability to pay those damages, having regard to their draft statutory accounts for 2024.

Conclusion as to interim injunctions

174. I find that the interim injunctions sought by the Claimants should be granted because:

i) The Claimants have demonstrated that the principles in the *American Cyanamid* are satisfied in respect of all of the interim injunctions they seek;

ii) I have found that not only are there serious issues to be tried, but my preliminary view is that the Claimants have a strong claim for all the injunctions they seek.

175. I have stood back and considered whether as a matter of discretion the injunctions should be ordered, and have concluded that in the light of the strength of the Claimants' claims, it is both just and proportionate that they are.

Order to deliver up

176. The Claimants seek an order that the Defendants:

i) Deliver up to the Claimants all materials in their possession, custody or control which were made by way of use of the Confidential Information or which contain any part of the Confidential Information;

ii) Return to the Claimants all correspondence, records, notes, reports and other documents and any copies belonging to the Claimants which are in the Defendants' possession, custody or control;

iii) Each provide a witness statement endorsed with a statement of truth (and in the case of the First Defendant, from a properly authorised officer of the company), confirming that they have each complied fully and promptly with the obligations imposed by the preceding paragraphs and that the materials supplied under subparagraphs i) to iii) herein are comprehensive.

177. I have found that the Claimants have a strong claim that the Defendants have breached the restraints in the updated DSA of the Second Defendant and the employment contract of the Third Defendant in respect of confidential information and the enticing etc. of clients of the Second Claimant and the enticing etc. of former employees of the Second Claimant. I reject Mr Sethi's submission that such an order is fishing. I find that having regard to my findings, as a matter of discretion such orders are both just and proportionate. If, as the Defendants now say, they have no such materials in their possession, custody or control, they can say so in their witness statements. As a matter of discretion, I so order.

Provision of client list and communications

178. The Claimants seek an order that the Defendants provide to the Claimants:

i) A list of all those with whom the Defendants made contact or attempted to make contact since 7 June 2024 falling within the scope of the restraint orders in respect of former employees and former clients of the Second Claimant.

ii) Copies of all written communications with former employees and former clients of the Second Claimant.

179. I accept Mr Sethi's submission that whilst there is jurisdiction to make the order sought by the Claimants, such orders for disclosure are an exceptional and not routine order, and should not be made as a matter of course where prohibitory injunctions are made. In *Aon v JLT* [2010] IRLR 600 (QB). Mackay J said at paragraph 26(1)[125]:

> "… there is already a case, and after all the claimants themselves currently call it a good one, against the defendants which could be pleaded now. It would, of course, be incomplete and partial, but it would serve to set in motion the proceedings within which, dependent on the terms of any defences forthcoming, disclosure and further information can be sought in the normal way. I see no reason here to subvert the normal accusatorial basis of our litigation, where the horse precedes the cart, into an inquisitorial one starting from an assumption that guilt has been proved, and saying to the defendants, "Tell us everything you and others have done which was wrong." I remind myself that all that has been shown to date is a good arguable case, no more and no less."

Decision as to provision of client list and communications

180. I accept Mr Sethi's submissions and find that the Second Claimant has sufficient information to plead the claim against the Defendants and that as a matter of discretion, disclosure of further information should be sought in the normal way in the claim.

181. Therefore, I refuse the application for provision of a client list and communications.

Order

182. I leave it to Counsel to perfect the Order in the trial bundle[126]. When I made my order on 30 October 2024 restraining the Defendants from using or disclosing to any other person the Claimants' confidential information, I did not include any exceptions for information which can be used or disclosed with the Claimants' consent, required to be disclosed by law or as a public interest disclosure because the injunction was only to last until 4 November 2024 and it was highly unlikely that any of the exceptions would apply in such a short timeframe. However, when perfecting the injunction, I direct that Counsel add to the confidentiality injunction the appropriate exclusions.

[125] Defendants' authorities bundle, tab 15, 463
[126] Tab 3, 17-27