

Case No: HQ15X04055

[2015] EWHC 4142 (QB)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand
London WC2A 2LL

Friday, 9 October 2015

BEFORE:

MR JUSTICE SPENCER

BETWEEN:

DORMA UK LIMITED

Claimant

- and -

(1) CHRIS BATEMAN
(2) PAUL BAILEY
(3) CHLOE POWER
(4) HOLLY MORTON
(5) ARROW INDUSTRIAL LIMITED

Defendants

MR ADAM SOLOMON and MS CHARLOTTE DAVIES (instructed by **Hill Dickinson**)
appeared on behalf of the Claimant

MR SIMON DEVONSHIRE QC (instructed by **Eversheds**) appeared on behalf of the
Defendants

Judgment
(As Approved)

Digital Transcript of WordWave International Ltd trading as DTI
8th Floor, 165 Fleet Street, London EC4A 2DY
Tel No: 020 7404 1400 Fax No: 020 704 1424
Web: www.DTIGlobal.com Email: TTP@dtiglobal.eu
(Official Shorthand Writers to the Court)

No of words: 13286
No of folios: 185

MR JUSTICE SPENCER:

1. As pleaded, this is an application by the claimant ("Dorma") for a springboard injunction against the first four defendants to restrain them from working for or with the fifth defendant ("Arrow") or anyone else in the business of commercial and industrial doors in the UK market, from soliciting specified customers, from poaching and employing specified employees and from competing with the claimant in relation to specified businesses. The claimant also seeks injunctions against all five defendants for the return and protection of the claimants' confidential information, including the provision of affidavit evidence in relation to the misuse of such information.
2. The claimant seeks an injunction against the first defendant to prevent breaches of his restrictive covenants and an injunction to prevent the fifth defendant, Arrow, from inducing the first four defendants to breach any orders made against any of them.
3. The application notice for this interim relief was issued on 28 September 2015 with a time estimate of one hour. This proved to be grossly inadequate. The application was listed before me on Wednesday 7 October with a revised time estimate of half a day. In the event it lasted a full day. I have had the benefit of skeleton arguments and full oral argument from Mr Adam Solomon and Ms Charlotte Davies on behalf of the claimant and from Mr Simon Devonshire QC on behalf of all five defendants. I am grateful to all counsel for the clarity of their submissions.
4. Because of the urgency of the matter, I indicated that I would give this extempore judgment today, Friday 9 October.
5. It is important at the outset to explain that the parties have agreed on directions for a speedy trial to be heard in December 2015 and this application must be viewed against that background. This is not the occasion for a minute analysis of all the evidence and arguments. I shall therefore concentrate in this judgment on the main issues. However, I make it clear that, although I will not necessarily refer to each and every argument that has been advanced, I have taken into account and considered all the submissions that have been made.
6. The evidence before me on behalf of the claimant is a witness statement from Dorma's regional director for the United Kingdom and Ireland, Mr Craig Gilmour, dated 28 September, producing many documentary exhibits. On 6 October, the day before the hearing, witness statements from all five defendants were served. The statement on behalf of the fifth defendant, Arrow, was made by its managing director Mr Oliver.

Factual background

7. In short summary, the factual background is as follows. Dorma's business is the manufacture, repair, maintenance and installation of automatic commercial and industrial doors for the UK market. The company has a branch in Bridgwater, Somerset, which covers the south west region. In October 2013, Dorma had taken over a company called Ascot Doors Ltd, including the team at Bridgwater. The first defendant had been the regional service manager. He became Dorma's branch manager.
8. In January 2015, his terms of employment were enhanced. He received a substantial pay increase. His terms and conditions were also revised to include various restrictive covenants, including, to adopt the shorthand used during the hearing, a six month non-compete clause and nine month non-solicit, non-poach and non-deal clauses. I shall describe those clauses more fully later in this judgment. As branch manager in Bridgwater, the first defendant had overall responsibility for all aspects of the branch's performance, including managing the team.
9. The second defendant was employed as a service surveyor responsible for generating sales through marketing and business development. The third and fourth defendants

were both employed as service coordinators, responsible for handling customer calls to the branch and co-ordinating visits by engineers to customers.

10. It seems that in late 2014 or early 2015 the first defendant approached the fifth defendant, Arrow, with a view to a possible change of employment. Arrow is a national company whose business is generically similar to the claimant's, that is to say the manufacturer and supply of commercial doors. The precise extent to which Dorma and Arrow are in direct competition for the same business is less clear and may be one of the issues for the trial. There is a suggestion that each caters for different niches within the market.
11. Arrow was already a well-established company but its branch in Bridgwater, only two miles from the claimant's branch, did not open for business until the beginning of September 2015.
12. The claimant's case is that the first defendant, in breach of the restrictions in his contract and in breach of his fiduciary duties to the claimant, effectively engineered an unlawful "team move", by which he and the other three defendants all resigned from their employment with the claimant and took up employment instead with Arrow. It is common ground that they handed in their resignations on the same date, 3 August 2015. On the claimant's case, at the time they tendered their resignations, the defendants were evasive and untruthful with the claimant's regional director, Mr Gilmour, not revealing that they were going to work for Arrow, a competitor. The first defendant, for example, when asked the direct question, lied in denying that he was going to work for Arrow.
13. On 5 August, the first defendant was placed on garden leave. He was reminded of his post termination restrictive covenants. The second, third and fourth defendants were subsequently placed on garden leave on or around 14 August.
14. At the start of his garden leave, the first defendant returned his company mobile phone and company laptop. All information on the devices had been wiped. He was not asked to do this by his employers. The claimant suggests that he must have been covering his tracks. The first defendant, in his witness statement, denies this. He does not remember wiping emails from his laptop or phone and, if he did, he says it would only have been in order to clear a few private emails which would have taken a long time to weed out individually; he did this as a matter of politeness and etiquette when returning the company's property.
15. Before starting her garden leave, but after giving notice, the third defendant, Chloe Power, contacted Mr Gilmour on 10 August asking for a printed version of all service clients. The request was refused. It was not the first such request. On 11 June, she had contacted the claimant's head office, asking for lists of all the company's five star clients, ie those who pay an annual service fee. There would have been 800 or so clients and the information would have run to hundreds of pages. That request had been declined as well.
16. The claimant's case is that these requests must have been made so that the third defendant could take and misuse confidential information in the form of customer lists. During her notice period, before she went on garden leave, it is said that she and the fourth defendant, Holly Morton, were seen carrying out a high volume of photocopy. In her witness statement, the third defendant, Chloe Power, denies that there was anything sinister in her request for customer lists. The June request was so that she could have a list on paper, which she found easier to work with, and although this request came a few days after she had been offered an interview with the fifth defendant, there was no intention of misusing the information. She says that the request on 10 August was for much the same reason. She was trying to get on top of

the outstanding paperwork before she left the company. She found it difficult to work with the information on the screen. She had previously raised a problem with the service director but nothing had been done about it. There was inadequate information about when the last service had been completed for each customer. She said she had also raised it with Mr Gilmour. She and the fourth defendant had obtained this list and were working on it for the benefit of those who would take over their role when they left. She had explained this, she said, in an email to Mr Gilmour on 10 August.

17. On 13 August, the fourth defendant, Holly Morton, approached the claimant's north west branch coordinator requesting that she be sent the reports showing all the contracts for the Bridgwater branch. This time the reports were sent. They included hundreds of customer names, contract start and end dates and the like. The claimant's case is that this was another attempt, now successful, to obtain confidential information for improper use in their new employment.
18. In her witness statement, the fourth defendant denies this. She explains at length the problems there were with the new computer system, exacerbated by the introduction of a call centre at Hitchin rather than personal contact with customers. She points that, when the covering email was sent, it is stated that Ricky Heere, the business process manager, had requested the same information as her, confirming that they both thought it was the best way to update their service maps system. She spoke to Mr Heere, who asked her to print off the reports and suggested that she and another employee should work through the information. She and another employee, Claire Barrett, worked through the document and, when she finished, she handed the document back to Claire Barrett. She denies that she took any confidential information with her.
19. The case for the defendants is that, although the first four defendants all resigned from their employment on the same date, 3 August, and had been offered employment by Arrow on the same day, 15 July, this was not an unlawful team move.
20. The first defendant, Mr Bateman, says in his witness statement that he had been unhappy for some time with the changes in Dorma's business when they took over Ascot. The call centre at Hitchin was one of the problems. He had met with Mr Oliver of Arrow as long as February 2015 at a hotel in Leeds to discuss the possibility of joining Arrow. He said he had not discussed this with the second, third or fourth, defendants until a few days before he actually resigned.
21. The second defendant, Paul Bailey, says in his witness statement that he left Dorma's employment because he was dissatisfied with the way the company was working. He felt that his competence as a surveyor was being impugned and he had mentioned it to the first defendant, his manager, in June or July, saying he wanted to leave the business. He did not feel he was valued any longer. He says that he emailed a number of companies, including Arrow, but he did not tell the first defendant that Arrow was one of them. He had conversations with the third and fourth defendants about the negative feelings in the Bridgwater office resulting from changes to working practices. Both women confided in him that they were unhappy as well and were thinking of leaving. The second defendant accepts that he told both of them that he had considered applying to Arrow and that they might wish to do the same. He did not try to persuade them to leave the claimant.
22. The third defendant, Chloe Power, says in her witness statement that she too had been unhappy at Dorma. The second defendant, Mr Bailey, gave her and the fourth defendant, Holly Morton, the email address of Mr Oliver at Arrow and she made contact with Arrow to register her interest in working for them. She says she did not discuss this with the first defendant, Mr Bateman, at that point. It was only a few days before she planned to resign that Mr Bateman said that he intended to resign as well.

23. The fourth defendant, Holly Morton, gives much the same explanation for her to decision to leave Dorma and join Arrow. She was unhappy in the job with all the changes, especially the new call centre. She discussed the situation with the second defendant, Mr Bailey, and discovered that he was thinking of joining Arrow. This prompted her to make the same enquiry. She never discussed it with the first defendant, Mr Bateman.
24. The fifth defendant's witness statement from Mr Oliver, the managing director of Arrow, confirms that he received emails from the second, third and fourth defendants on 2 June 2015 enquiring if there were vacancies. He knew the second defendant by reputation and was keen to employ him. It was mainly because the second defendant wanted the third and fourth defendants to work with him as well that they were offered the job. They occupied comparatively unimportant junior administrator roles which could easily have been filled. Mr Oliver insists that the first defendant's approach to Arrow was independent of the approach by the other three defendants.
25. It is important to observe at the outset that, although the first defendant's contract of employment contained post termination covenants and restrictions, there were no such covenants and restrictions in the contracts of the second, third or fourth defendants.
26. On 14 September, the claimant's solicitors wrote letters before action to the first defendant and the fifth defendant requesting undertakings. At that stage no undertakings were forthcoming. On 22 September, the claimant's solicitors wrote pre-action letters to the second, third and fourth defendants. No response had been received from them by the time this application was filed on 28 September. The claimant's case is that evidence has recently come to light that the second defendant has been canvassing Dorma's customers since he has joined Arrow.
27. A day or so before the hearing, limited undertakings were offered by the first defendant but none by the second, third, fourth and fifth defendants. Between the hearing and judgment, as I shall explain later, undertakings have been put forward on behalf of the other defendants as well.

The issues

28. The issues I have to decide are as follows:
 - (1) Should Dorma be granted springboard relief such as would effectively prevent Arrow operating with its current staff of the first four defendants at the Bridgwater office in competition with Dorma until trial?
 - (2) Should Dorma be granted injunctive relief against all five defendants restraining them from using any of Dorma's confidential information?
 - (3) Should the defendants be required to confirm by affidavit what use, if any, has been made of Dorma's confidential information?
 - (4) Should the first defendant, Mr Bateman, be restrained from breaching the restrictive covenants in his contract of employment, including in particular the covenant against competing with Dorma?
 - (5) Should Arrow be restrained from causing, inducing, encouraging or permitting the other defendants to act in breach of orders made against them on this application?

The general approach

29. It is common ground that I should apply the principles in American Cyanamid v Ethicon Ltd [1975] AC 396. I must be satisfied that the claim for relief in respect of each of the issues identified above is not frivolous or vexatious, in other words that there is a serious issue to be tried. If there is a serious issue to be tried, I must then consider the balance of convenience, in particular whether damages would be an adequate remedy on either side if the relief is refused or granted. In the words of Lord Diplock, at page 407H:

"It is no part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature consideration. These are matters to be dealt with at the trial."

30. Mr Devonshire submits, however, that by the time the trial comes on in December a substantial period of any injunction, if granted, will have expired. He submits that I should adopt the approach followed by Silber J in CEF Holdings Ltd v Munday [2012] FSR 35 at paragraphs 25 to 30 and, as Staughton LJ put it in Lansing Linde Ltd v Kerr [1991] 1 WLR 251 at 258:

"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 enough to decide merely that there is a serious issue to be tried."

31. In the present case, the claim for the injunction in relation to non-competition is based on the covenant in the first defendant's contract of employment for six months, and the period in respect of the other covenants is nine months. These periods would expire in February and May 2016 respectively. The date for the speedy trial is only some eight or nine weeks ahead. Mr Devonshire submits that at the very least I should "sift" the evidence carefully rather than simply accept that, because the claimant's case is challenged, there is necessarily a serious issue to be tried.
32. I do not accept that the test I should apply on this application is as high as whether the claimant is likely to succeed at trial. I do accept, however, that in relation to the application for springboard relief in particular I must analyse the evidence carefully to decide not only whether there is a serious issue to be tried but also whether there is any real prospect of success, and whether the court should in its discretion grant the springboard relief sought.

Springboard relief

33. The claimant's case is that there was an unlawful team move orchestrated by the first defendant. Mr Solomon described it in his submissions as a concerted attack on Dorma. It is no coincidence, he submits, that the first four defendants were all offered employment with Arrow on the same date, 15 July, or that all tendered their resignation to Dorma on 3 August. As a result, Arrow acquired a ready-made team, "up and ready" was Mr Solomon's phrase, to operate from their Bridgwater office in direct competition with Dorma, thereby gaining an unfair competitive advantage.
34. Mr Gilmour's evidence is that it could take up to 12 months for a new business setting up in the region to recruit a team with good experience and contacts and to build up a profitable business by legitimate means. It is said that the unlawfulness of the defendants' actions arises in several ways. The first defendant, as a senior manager with Dorma, should have reported the fact that the other defendants were planning to move to a competitor. Had he done so, there would have been the opportunity for Dorma to talk to the defendants and seek to assuage any concerns they had and try to persuade them to stay. Instead, the first defendant colluded in their actions in gross breach of his fiduciary duties to Dorma. The erasing of information from his company laptop and mobile phone, it is said, must have been done to cover his tracks.

35. The claimant's case is that the second defendant too was a comparatively senior employee. He encouraged the third and fourth defendants to leave Dorma and to join Arrow. He has been contacted customers of Dorma to solicit business since he has joined Arrow, making use of Dorma's confidential information. The claimant's case is that the third and fourth defendants are close working colleagues and friends. There was an improper attempt by the third defendant to obtain customer lists on 11 June and a further attempt on 10 August. The fourth defendant succeeded in obtaining a customer list on 14 August and, as a matter of inference, it is said this must have been copied and taken with them when they joined Arrow.
36. Although springboard relief is not sought against Arrow as such, the claimant's case is that Arrow has been a very willing beneficiary of the unlawful conduct of the other defendants. There was an obligation, it is said, on the first defendant at paragraph 2.5 of his terms and conditions of employment to inform any new employer of the post-termination restrictions by which he was bound. On the assumption that he did not inform Arrow, it was nevertheless incumbent on Arrow to satisfy themselves that their new regional manager was not subject to such restrictions. It is said that the unfair competitive advantage gained by Arrow is underlined by the fact that they obtained a complete team from Dorma without advertising any vacancies and without any formal interviews, ready to start the new operation on 1 September.
37. The case on behalf of the defendants is in effect that what may on the face of it look suspiciously like a co-ordinated team move is in fact fully explained in the defendants' witness statements and was entirely innocent. For the reasons each defendant separately explains, he or she had become dissatisfied with Dorma. The second, third and fourth defendants were quite entitled to go and work for Arrow, even if it is a competitor. It is submitted that the claimant's case amounts to no more than assertion based on suspicion, which is not sufficient to establish that there is a serious issue to be tried, still less to establish that the claim for a springboard injunction is likely to succeed at trial.
38. Counsel helpfully referred me to a number of authorities in the developing jurisprudence in relation to springboard injunctions. I do not propose to rehearse them at length because, as both counsel acknowledged, every case in the end turns on its own facts. I shall however refer to some passages from these authorities which are helpful in clarifying the principles.
39. First, I gratefully adopt the analysis of Haddon-Cave J in QBE Management Services UK Ltd v Dymoke [2012] EWHC 80; [2012] IRLR 458, where he draws together the principles from the authorities to date at paragraphs 240 to 247 of judgment. I quote from that analysis, omitting the case references:

"First, where a person has obtained a 'head start' as a result of unlawful acts, the Court has the power to grant an injunction which restrains the wrongdoer, so as to deprive him of the fruits of his unlawful acts. This is often known as 'springboard' relief.

Second, the purpose of a 'springboard' order as Nourse L.J. explained in Roger Bullivant v Ellis ... is 'to prevent the defendants from taking unfair advantage of the springboard which [the Judge] considered they must have built up by their misuse of the information in the card index' ... May LJ added that an injunction could be granted depriving defendants of the springboard 'which ex hypothesi they had unlawfully acquired for themselves by the use of the plaintiffs' customers' names in breach of the duty of fidelity'

... The Court of Appeal upheld Falconer J's decision restraining an employee who had taken away a customer card index from entering into any contracts made with customers.

Third, 'springboard' relief is not confined to cases of breach of confidence. It can be granted in relation to breaches of contractual and fiduciary duties ... and flows from a wider principle that the court may grant an injunction to deprive a wrongdoer of the unlawful advantage derived from his wrongdoing. As Openshaw J. explained in UBS v Vestra Wealth ... at paragraphs 3 and 4:

'There is some discussion in the authorities as to whether springboard relief is limited to cases where there is a misuse of confidential information. Such a limitation was expressly rejected in Midas IT Services v Opus Portfolio Ltd, ... although it seems to have been accepted by Scott J in Balston Ltd v Headline Filters Ltd ... In the 20 years which have passed since that case, it seems to me that the law has developed; and I see no reason in principle by which it should be so limited.

In my judgment, springboard relief is not confined to cases where former employees threaten to abuse confidential information acquired during the currency of their employment. It is available to prevent any future or further economic loss to a previous employer caused by former staff members taking an unfair advantage, and "unfair start", of any serious breaches of their contract of employment (or if they are acting in concert with others, of any breach by any of those others). That unfair advantage must still exist at the time that the injunction is sought, and it must be shown that it would continue unless restrained. I accept that injunctions are to protect against and to prevent future and further losses and must not be used merely to punish breaches of contract.'

Fourth, 'springboard' relief must, however, be sought and obtained at a time when any unlawful advantage is still being enjoyed by the wrongdoer ...

Fifth, 'springboard' relief should have the aim 'simply of restoring the parties to the competitive position they each set out to occupy and would have occupied but for the defendant's misconduct' ... It is not fair and just if it has a much more far-reaching effect than this, such as driving the defendant out of business ...

Sixth, 'springboard' relief will not be granted where a monetary award would have provided an adequate remedy to the claimant for the wrong done to it ...

Seventh, 'springboard' relief is not intended to punish the defendant for wrongdoing. It is merely to provide fair and just protection for unlawful harm on an interim basis. What is fair and

just in any particular circumstances will be measured by (i) the effect of the unlawful acts upon the claimant; and (ii) the extent to which the defendant has gained an illegitimate competitive advantage ... The seriousness or egregiousness of the particular breach has no bearing on the period for which the injunction should be granted. In this regard, it is worth bearing in mind what Flaux J, said ...:

'I agree with Mr Lowenstein that logically, the seriousness of the breach and the egregiousness of the Defendants' conduct cannot have any bearing on the period for which the injunction should be granted - what matters is the effect of the breach of confidence upon the claimant in the sense of the extent to which the first defendant has gained an illegitimate competitive advantage. In my judgment, Mr Cohen's submissions seriously underestimate the unfair competitive advantage gained by the defendants from access to the claimant's "customer list" and ignore, in any event, the impact (if the injunction were lifted) of actual or potential misuse of other confidential information such as volume of business or pricing information. It is important in that context to have in mind that the claimant maintains in its evidence that all the information said to be confidential remains confidential ...'

Eighth, the burden is on the claimant to spell out the precise nature and period of the competitive advantage. An 'ephemeral' and 'short term' advantage will not be sufficient ..."

40. Against this framework, it is necessary to analyse in more detail the evidence on which the claimant relies to support the inference of an unlawful team move. As ever, the chronology is instructive.
- (1) The first defendant confirms in his witness statement that he had a meeting with Mr Oliver of Arrow as early as 23 February 2015 to discuss the possibility of joining Arrow, having already sent his CV.
 - (2) On 2 June 2015, the second, third and fourth defendants all emailed Mr Oliver in similar terms, registering their interest in working for Arrow. The first defendant enquired whether there were any current vacancies for a surveyor in the south west area. The third and fourth defendants registered their interest in any opportunities which might arise if Arrow were to open a branch in the south west. All three indicated that they were currently working for Dorma. The third and fourth defendants sent their CVs with their email. The second defendant sent his CV on request.
 - (3) On 6 June 2015 Mr Oliver informed the third defendant that Arrow would be holding interviews in the week commencing 15 June. He sent her an employment application form which she completed, giving the first defendant's name as a referee.
 - (4) On 11 June 2015, the week before Arrow was due to hold job interviews, the third defendant emailed Claire Barrett at Dorma's head office in Hitchin asking for a list of all Dorma's five star clients, ie those paying an annual fee to cover all their breakdowns or repairs throughout the year. When the request was queried, the response was vague. The information was not sent.
 - (5) On 15 July, Mr Oliver wrote to each of the defendants offering them employment and forwarding an engagement letter. I note that the offer letter did not specify the

identity of the Bridgwater office as the place of employment, although that was implicit. He said in his email to the third and fourth defendants:

"I am delighted that we have been successful in bringing together the team for this exciting new venture."

(6) On 3 August, all four defendants tendered their resignation from Dorma, giving four weeks' notice.

(7) On receipt of the letters of resignation, Mr Gilmour asked the first defendant if he had a job to go to. He said he had three options, only one of which was within the industry. Mr Gilmour asked him in terms if he was joining Arrow. The first defendant said no. The second defendant said he was not prepared to say where he was going. The third and fourth defendants said they had no job to go to, they just wanted to leave. On the face of it, therefore, three of the defendants lied about their true intentions and the other was evasive. None of the defendants address these conversations in their witness statements.

(8) On 6 August, Dorma's HR department emailed the first defendant, placing him on garden leave for the duration of his period of notice until the last day of his employment, Friday 28 August. The letter specifically drew his attention to the restrictive covenant section of his contract.

(9) When he was placed on garden leave, the first defendant returned his company mobile phone and laptop. He had wiped all information from both devices.

(10) On 10 August, the third defendant emailed Mr Gilmour asking for a printed version of the list of Dorma's service clients. It would have run to thousands of pages. She said it would be easier for her and the fourth defendant to see what was needed and that she wanted to break down the information into postcodes. Postcodes were in fact already shown. The request was declined.

(11) On 13 August, the fourth defendant telephoned Claire Dunne, Dorma's north west branch co-ordinator in Bolton, asking her to send reports showing all contracts for the Bridgwater office with the status live, extended or cancelled. She said she needed it to hand over the local information to the national accounts team. The information was sent.

(12) There is some evidence that the third and fourth defendants were observed at the Bridgwater branch engaging in a lot of photocopying at or around the time they were serving out their notice.

(13) On 14 August, the third and fourth defendants were both placed on garden leave until their last day of employment, 28 August.

(14) On 1 September, the first four defendants all began their new employment with Arrow.

(15) On 2nd September, the claimant's solicitors wrote to the first defendant setting out in detail their concerns that the other defendants had joined Arrow and setting out in summary the matters outlined in this chronology. He was warned that legal action might be taken to protect Dorma's interests.

(16) On 4 September, the claimant's solicitors wrote in similar terms to the second defendant.

(17) On 11 September, the claimant discovered Arrow's new office in Bridgwater was advertising on the internet with the first defendant described as regional business centre manager and Paul Bailey, the second defendant, described as business development manager. The website entry included the following:

"ARROW expand their industrial door operation to cover the south west of England

The new super enlarged ARROW Regional Business centre is now open from its regional control centre in Bridgwater covering the whole of the South West of England including South Wales. ARROW is now ready to make the most of ARROW's unique specialist installations. Service and Repair, Planned Maintenance Contracts for all Business Managers, Facility Management Companies, maintenance personnel and to consult with all Health and Safety Officers on all Industrial Doors for the whole of the South West.

All South West businesses will receive the very best attention from their facilities 24/7 365 days every year ...

My team will be in place for all customers, new and old alike..."

Alongside that entry was the second defendant's name and phone number at his place of work and his mobile phone.

(18) On 12 September, the second defendant emailed one of the claimant's customers, Westway Services Ltd, apparently using a specific email address for a employee at that company, Jamie Dale. The email read:

"Good morning. We would just like to introduce you to our new business centre that has opened in Bridgwater, Arrow Industrial Group Ltd. The new centre will focus on supporting all companies to ensure the safety and security on all types of automatic and industrial doors, gates, barriers, windows, dock levellers, access controls, security doors and any new projects. Our teams of fully trained experienced engineers are available 24 hours a day 7 days a week to ensure all client needs are met promptly. No contract is either too small or too big for us to undertake. Please take a look at our website [details were given] and have no he situation in contacting me on m y mobile should you require any further requirements. R egards, Paul Bailey business development manager."

The claimant suggests that this must have been a general email sent to potential customers and probably to other customers of Dorma. I was told at the hearing that another such email sent by the second defendant to another customer of Dorma has recently come to light.

(19) On 18 September, two of Dorma's engineers resigned from their employment, giving only a week's notice. Both of them told the new branch manager who had replaced the first defendant at Dorma's Bridgwater office that they were moving to Arrow. Another engineer, who wishes to remain anonymous, says that he has been asked by the first defendant to join him in the employment of Arrow. The first defendant said he would beat his current pay.

41. In my judgment, these individual pieces of evidence plainly give rise to a strong inference that this was an unlawful team move in the sense that I have outlined. They amount to a powerful circumstantial case. The coincidence of timing in relation to the registering an interest with Arrow (2 June), the offer of employment by Arrow (15 July) and tendering of resignations to Dorma (3 August) is particularly striking. It was not a matter which Mr Devonshire addressed discretely in his submissions and there

was little he could have said. It is also highly significant that when the jobs were offered on 15 July there was not even an office in place. In effect, Arrow recruited a complete team from Dorma under the very nose of the first defendant, who grossly breached his fiduciary duty by conniving in it and not reporting it. There is a proper inference to be drawn that there must have been communication between the first and second defendants prior to June 2, with a view to encouraging the job applications to Arrow. It is telling that the first defendant said on the website that "my team will be in place for all customers new and old alike". His "team" was the team he had brought with him from Dorma. The references to customers "old and new alike", in combination with his own name and phone numbers, could be regarded as aimed at those who would have known him as customers of Dorma. The first, third and fourth defendants lied, on the face of it, in concealing their true intention to join Arrow. The second defendant was evasive. The unusual interest of the third and fourth defendants in obtaining a printout of customers only out of those who approached Arrow at the beginning of June is more than suspicious. Such a list was eventually obtained by the fourth defendant in August and there is an inference that the second defendant had access to some list of customers whom he was circulating as his email to Westway strongly suggests.

42. The defendants all deny the allegations against them. In my judgment, it is plain that there is a serious issue to be tried in relation to the question: was this an unlawful team move? Mr Devonshire submits that the evidence amounts to no more than suspicion and suspicion is not enough. He relies on dicta to that effect in CEF v Munday (supra) at page 255D and in Re Lord Cable; Garret v Walters [1977] 1 WLR at 19F to 20B. In Caterpillar Logistics Services (UK) Ltd v de Crean [2011] EWHC 2154, Tugendhat J said at first instance that a case based only on suspicion does not raise a triable issue. He refused to make an interim confidentiality injunction in the absence of proper evidence to support the charge that the employee had improperly removed and retained confidential information. His decision was upheld by the Court of Appeal: see [2012] EWCA Civ 156. The facts of that case were, however, very different, and I do not consider that it provides more than general assistance in the task I have to perform.
43. Mr Devonshire submits that the explanations given by defendants in their witness statements for what may seem suspicious actions are entirely plausible. He submits that, when the evidence is sifted, the suspicion of impropriety is dispelled. I have considered very carefully and reflected upon the content of the defendants' witness statements. I have already rehearsed the gist of their explanations in my earlier summary of the factual background. It is to be noted, however, that the second defendant in his witness statement does not even address the issue of the email he sent to Westway, a customer of Dorma, soliciting their business. Mr Devonshire makes the point that there is no evidence that any search was made for the product of the downloading of the customer list on 13 August to establish whether or not physically the list had been removed from Dorma's premises. He also makes the point that, although the letters before action sent a month ago refer to an impending forensic analysis of the computer and phone to establish what precisely the first defendant had deleted, there is no evidence of any such examination. I was told, however, that this is neutral in that no independent forensic analysis has yet been undertaken.
44. I am acutely conscious of the need to sift and assess the evidence as a whole and I have done so. I am firmly of the view that there is not only plainly a serious issue to be tried on the question of an unlawful team move but also, if I am required to express a provisional view, that the evidence is strong. It will of course be a matter for cross-examination of the defendants in due course. Suffice it to say that I am sceptical of the

explanations which have been put forward by the defendants, looking at all the evidence as a whole.

45. Nevertheless, the mere fact that there has been on the face of it an unlawful team move does not automatically entitle the claimant to springboard relief and certainly not to relief which would effectively prevent Arrow from employing the first four defendants at the Bridgwater office irrespective of whether they are likely to act unlawfully until trial.
46. In this regard, I bear in mind the helpful guidance given by Simler J in De Vere Holding Company Ltd v Belgravia Wealth Management Europe KFT [2014] EWHC 3189. At paragraph 39, she said:

" ... Even if I am satisfied that the defendants, or some of them, have made unlawful use of material belonging to the claimants, that is not enough to found a claim for springboard relief. The claimants must show that the defendants have gained an unfair competitive advantage over the claimants and that that advantage still exists and will continue to have effect unless the relief sought is granted. It is clear from the authorities that the court should exercise considerable caution both as to whether to grant such an injunction at all and, if so, as to its form and duration. In particular, the duration of such an injunction should not extend beyond the period for which the defendants' illegitimate advantage may be expected to continue because such injunctions are granted to protect against and to prevent further loss, rather than being used to punish for past breaches of contract."

47. Mr Devonshire submits correctly that, even if the claimant has raised an arguable case in relation to the unlawfulness of the defendant's conduct, the court must also be satisfied that the relief sought does no more than proportionally negate the springboard advantage improperly obtained in consequence.
48. Mr Solomon accepts that the first paragraph of the draft order to which I alluded in the very first paragraph of this judgment is too widely drawn. That paragraph provided:

"The First, Second, Third and Fourth Defendants must not by themselves, their servants, agents or otherwise howsoever carry on with, be employed or otherwise engaged by or concerned or interested in any capacity (whether for reward or otherwise) or provide any commercial, professional or technical advice to, or in any way assist, any other Defendant in the business of the manufacturing, repair, maintenance and installation of automatic, commercial and industrial doors for the UK market."

That would effectively prevent the defendants from working at all in the industry. Mr Solomon explained that this paragraph was, however, always intended to be an alternative to paragraph 2, which reads as follows:

"The First, Second, Third and Fourth Defendants must not until trial or further Order (whichever is the sooner):

- a. Solicit or endeavour to entice away from the Company or any Group Company the business or custom of a Restricted Customer with a view to providing goods or services to that

Restricted Customer in competition with any Restricted Business;

- b. In the course of any business concern which is in competition with any Restricted Business, offer to employ or engage or otherwise endeavour to entice away from the Company or any Group Company any Restricted Person;
- c. In the course of any business concern which is in competition with any Restricted Business, employ or engage or otherwise facilitate the employment or engagement of any Restricted Person, whether or not such person would be in breach of contract as a result of such employment or engagement;
- d. be involved in any Capacity with any business concern which is (or intends to be) in competition with any Restricted Business, save that this shall not prevent any of them from:
 - i. Holding an investment by way of shares or other securities of not more than 5% of the total issued share capital of any company, whether or not it is listed or dealt in on a recognised stock exchange;
 - ii. Being engaged or concerned in any business concern insofar as his duties or work shall relate solely to geographical areas where the business concern is not in competition with any Restricted Business; or
 - iii. Being engaged or concerned in any business concern, provided that their duties shall relate solely to services or activities of a kind with which they were not concerned to a material extent since in the 12 months before the termination of their employment with the Claimant.
- e. Being involved with the provision of goods or services to (or otherwise have any business dealings with) any Restricted Customer in the course of any business concern which is in competition with any Restricted Business.”

The exceptions I shall refer to a little later.

49. Those four subparagraphs follow the wording of the post termination restrictions imposed upon the first defendant by his contract of employment. The effect of subparagraphs (a), (b) and (c) is to prevent any improper soliciting of Dorma's customers or the enticing away of any of Dorma's staff. Paragraph (d) is different in that it would prevent the first four defendants from working for Arrow at the Bridgwater office, although it would not prevent Arrow from employing them at some other branch. Bearing in mind the location of the office in rural Somerset, it is doubtful whether any of the first four defendants could conveniently be employed at any other

branch of Arrow elsewhere in the country. It would, however, be open to Arrow to continue their contracts of employment pending trial even if they could not continue to perform their duties at the Bridgwater office.

50. For practical purposes, an order in these terms would compel Arrow to engage a new team, at least until trial, building up the customer base from scratch. That is the position they would have been in but for the unfair advantage which, on the face of it, they gained in the presumed unlawful team move. I accept Mr Devonshire's submission that the claimant must show "the precise nature and period of any competitive advantage". I am satisfied that the period of the competitive advantage is still running and, on the evidence at present, it is likely to run for a considerable further period beyond the proposed date for a speedy trial. Mr Gilmour's estimate is that it would have taken 12 months for Arrow to build up the business to this level. It is certainly not an ephemeral or short term advantage such as to disentitle the claimant to springboard relief.
51. I have considered carefully whether it would be sufficient to make an injunction in the terms simply of subparagraphs (a), (b) and (c) of paragraph 2 of the draft order. However, I am persuaded that the evidence does justify making the order in the terms of paragraph (d) as well. For reasons which I shall give later in this judgment, I am satisfied that the restrictive covenant in paragraph (d) is likely to be held to be enforceable and justifies the making of an injunction against the first defendant in any event. It is only paragraph (d) that will have the effect of providing fair and just protection from unlawful harm on an interim basis by preventing further loss from the unfair competitive advantage which is assumed in the order I make.
52. In reaching that conclusion, I also bear in mind the following matters.
 - (1) On the assumption that the defendants are unlawfully in possession of Dorma's customer lists, on which I am satisfied there is a serious issue to be tried and a real prospect of success, it will be very difficult to police the obligations in the proposed order without the inclusion of paragraph (d).
 - (2) If an injunction in these terms is not granted and the alleged unlawful action is established at trial with substantial damages awarded, it is unlikely that the first four defendants will be able to pay such damages.
 - (3) If, on the other hand, an injunction in these terms is granted and the defendant succeeds at trial, the claimant's cross-undertaking as to damages will afford the defendants the necessary protection.
 - (4) If an injunction in these terms is not granted, the assessment of the claimant's loss is likely to be very difficult, although I accept that the same could be said of the defendant's position should they ultimately succeed.
53. In the course of submissions, Mr Solomon explained that the approach of framing the springboard injunction against the second, third and fourth defendants in terms which mirror the first defendant's post termination restrictions is one which found favour with Simler J in the De Vere case. I accept that it is appropriate here as well. On that discrete point, Mr Devonshire made no submission to the contrary. Accordingly, subject to any further refinement counsel may suggest at the conclusion of this judgment, I will grant the springboard relief in the terms of paragraph 2 of the draft order. There are some minor adjustments to the definitions of "restricted customer" and "restricted person" in paragraph 8 of the order to which I shall return.

Injunction in respect of confidential information

54. The next issue is whether Dorma should be granted injunctive relief against all five defendants restraining them from using any of Dorma confidential information. As one would expect, the written terms and conditions of employment for each of the first four

defendants contained restrictions on the use of confidential information both during employment and following termination. The precise terms of the restrictions differed as between the defendants.

55. In the case of the first defendant, under the heading restrictive covenants, there was a recital, page 40, of the need to protect the confidentiality of information with which he would be entrusted and that to protect the confidentiality of this information he agreed "not at any time whether during or after the end of your employment with the company to disclose to any person or to make use of any such confidential information".
56. In the case of the second defendant, there was an obligation at paragraph 20.11 of his terms and conditions, which included the following:

"You must not disclose any trade secrets or other information of a confidential nature relating to the Company or any of its associated companies or their business or in respect of which the Company owes an obligation of confidence to any third party during or after your employment except in the proper course of your employment or as required by law."

In the case of the third and fourth defendants, there was an obligation in their terms and conditions under the heading "protection of business" as follows:

"You undertake at all times after the term of your employment to keep secret and not to use or disclose any information obtained by you during the term of your employment which is of a confidential nature and of value to the employer including, without limitation, secrets, the business methods of the employer and confidential lists and particulars of the employer's suppliers and customers whether or not in the case of documents they are or were marked as confidential and all information relating to the business and/or marketing strategy."

57. It follows that it would have been a serious breach of the third and fourth defendants' duty of confidentiality to remove and/or make use of any confidential information which they took with them to Arrow whether they left the employment of Dorma. That proposition is not disputed. I have already concluded, for the reasons that I have explained, that there is a serious issue to be tried as to whether, as part of the unlawful team move, the second, third and fourth defendants were responsible for misappropriation of confidential information, particularly in the form of lists of Dorma's customers. It follows that there is a proper basis also to grant an injunction restraining the first four defendants from misuse of Dorma's confidential information until the trial.
58. The proposed injunction in paragraphs 3 and 4 of the draft order was in these terms:

"3. Until the earliest of trial or further Order, the First, Second, Third, Fourth and Fifth Defendants must not:

 - a. Use for the their own purposes or for the purpose of any other Defendant or any unauthorised third party any Confidential Information;
 - b. Disclose or cause to be disclosed and will not cause or induce the publication or disclosure of any Confidential Information; and
 - c. Reproduce any Confidential Information or any part thereof in any format or media form.

Save that nothing in this paragraph shall apply to information that enters the public domain other than by reason of the Defendants' default, and save that nothing in this paragraph prevents compliance with any other paragraph of this Order.

4. On or before [date] the First, Second, Third, Fourth and Fifth Defendants must return to the Claimant's solicitors, without modification, any property and/or Confidential Information belonging to the Company or any Group Company which is in their possession, custody or control and any copies of the same. Following return of such Confidential Information, the First, Second, Third, Fourth and Fifth Defendants must permanently delete any electronic versions or copies of the same that remain in their possession, custody or control.”

59. At the end of the hearing on 7 October, I invited Mr Devonshire to put in writing the form of any undertaking which the first defendant was prepared to give as there had been some considerable discussion of this during submissions. As I recall, there had been no suggestion during the hearing that the second, third or fourth defendants would be prepared to give any undertakings. Taking up my invitation, Mr Devonshire helpfully forwarded by email yesterday, 8 October, proposed confidentiality undertakings which the first, second, third and fourth defendants were now prepared to give.

60. The proposed undertaking will be in this form:

"Without prejudice to their contentions that they hold no documents belonging to the Company or any Group Company, the First, Second, Third and Fourth Defendants each undertake that they will not until trial of the action or further order in the meantime:-

1. Use for their own purposes or for the purposes of any other Defendant or any unauthorised third party;

2. Disclose or cause to be disclosed or cause or induce the publication or disclosure of;

3. Reproduce (in whole or in part) in any media or format any 'Confidential Information' contained in any documents or records (whether in hard copy or soft copy format) belonging to the Company and any Group Company and retained by them after the termination of their respective employments, save that nothing in this undertaking shall apply to information that enters the public domain other than by reason of the Defendants' default.

Confidential Information for this purpose shall mean information contained in such documents and concerning any of the matters described in paragraph 8 of the draft Minute of Order.”

61. During the hearing, there had been debate in relation to the breadth of that definition of confidential information in paragraph 8 of the draft order, which in turn was taken from the first defendant's terms and conditions. I shall read the definition in paragraph 8:

""Confidential Information" means information (whether or not recorded in documentary form, or stored on any magnetic or optical disk or memory) which is not in the public domain relating to the business, products, affairs and finances of the Company or

any Group Company for the time being confidential to the Company and trade secrets including, without limitation, technical data and know-how relating to the business of the Company or any of their business contacts including in particular (by way of illustration only and without limitation) policies, organisation and management, pricing, pricing policies, future plans and staffing of the Company, the persons with whom the Company has dealings and upon what terms, the nature, origin, and composition of the Company products and services and production techniques.”

62. Mr Devonshire submitted that this was far too wide a definition because it would include information which a employee had retained in his or her head. He relied by way of comparison upon the criticism of a wide definition of confidential information by the Court of Appeal in the Caterpillar case (supra) at paragraph 68. There Stanley Burnton LJ described the relief sought by the claimant as "hopelessly wide and vague" in that it did not specify the confidential information with any certainty but simply described it as "all or any confidential information acquired by the respondent during her employment with the claimant in whatever form". It seems to me, as a starting point, that that is far from the position here.
63. This morning there was a further exchange of emails between counsel, and sent to me, containing further submissions as to the extent to which information about a customer which is retained only in the employee's head should or should not be regarded as confidential information which the employee should not be permitted to use. That arose from the fact that the proposed undertaking which I have read seemed to confine the definition to confidential information contained in any documents or records.
64. In this regard, Mr Solomon relies upon the observations of Staughton LJ in Lansing Linde Ltd v Kerr (supra) at page 425J:

"It appears to me that the problem is one of definition: what are trade secrets, and how do they differ (if at all) from confidential information? Mr. Poulton suggested that a trade secret is information which, if disclosed to a competitor, would be liable to cause real (or significant) harm to the owner of the secret. I would add first, that it must be information used in a trade or business, and secondly that the owner must limit the dissemination of it or at least not encourage or permit widespread publication.

That is my preferred view of the meaning of trade secret in this context. It can thus include not only secret formulae for the manufacture of products but also, in an appropriate case, the names of customers and the goods which they buy. But some may say that not all such information is a trade secret in ordinary parlance. If that view be adopted, the class of information which can justify a restriction is wider, and extends to some confidential information which would not ordinarily be called a trade secret.”

Immediately before that passage, Staughton LJ had been considering the case of Faccenda Chicken Ltd v Fowler [1987] 1 Ch 117. At page 135H, Neill LJ said, in the course of stating the principles which the court derived from the authorities:

"While the employee remains in the employment of the employer the obligations are included in the implied term which imposes a

duty of good faith or fidelity on the employee. For the purposes of the present appeal it is not necessary to consider the precise limits of this implied term, but it may be noted: (a) that the extent of the duty of good faith will vary according to the nature of the contract ... ;(b) that the duty of good faith will be broken if an employee makes or copies a list of the customers of the employer for use after his employment ends or deliberately memorises such a list, even though, except in special circumstances, there is no general restriction on an ex-employee canvassing or doing business with customers of his former employer: see Robb v Green [1895] 2 QB 315 and Wessex Dairies Ltd v Smith [1935] 2 KB 80."

65. My attention has been drawn by counsel to a recent decision of the High Court in Halcyon House Ltd v Baines [2014] EWHC 2216. There the judge, HHJ Seymour QC, sitting as a judge of the High Court, was concerned with the issue of whether a customer's name in itself was or was not properly to be regarded as a "trade secret". The judge was referred to the passage I have just quoted from Lansing Linde v Kerr but (at paragraph 185) expressed his preference for what might be termed the traditional approach in Robb v Green, quoting the judgment of Hawkins J in that case at pages 12 to 13:

"Great stress was laid by the learned counsel for the defendant upon the fact that a servant having left his master may, unless restrained by contract, lawfully set up in the same line of business as his late master, and in the same locality; and that he may, without fear of legal consequences, canvass for the custom of his late master's customers, whose names and addresses he had learned, bona fide accidentally, during the period of his service. I do not suppose that anybody, with any knowledge of the law, would seriously contend the contrary."

In the Halcyon case, Judge Seymour went on to say:

"It seems to me that that principle extends to making contact with customers of the former employer whose names the former employee can recall because they have been learned accidentally during the course of the former employment, after having researched their contact details through publicly available information – classically telephone directories or electoral rolls, but now obviously including utilising the resources of the internet."

66. In reply to Mr Devonshire's submission based upon that authority, Mr Solomon acknowledges that customer names in themselves are not confidential but the combination of a customer's name and contact details would or certainly could be confidential. Here the concern was that there has been a misuse of information by the second defendant on the face of it in contacting the customer Westway which shows a degree of precision in the contact details. Moreover, Mr Solomon submits that the second defendant in particular may be in a position to know the requirements a customer of Dorma may have for goods or services and the price that he has paid before.
67. I do not propose to express any concluded view on this issue, Suffice it to say that there is still a difference between the parties in the terms of any acceptable undertaking that

could be proffered. It seems to me that the definition in paragraph 8 of the order is sufficiently precise and I propose to adopt that definition and make the injunction in the appropriate terms as set out in the order.

68. So far as the fifth defendant is concerned, no undertaking has been volunteered. However, I have already found that there is a serious issue to be tried in relation to the alleged unlawful team move with a real prospect of success. It follows that there is a serious issue to be tried as well that the fifth defendant has been the unlawful beneficiary of the breaches of confidentiality on the part of the first four defendants. That is sufficient to make it appropriate that the fifth defendant also be subject to an injunction in the same terms. So I propose to make the injunction in the terms of paragraph 3 and 4 of the draft order against all five defendants.

Confirmation by affidavit

69. The next issue is whether the defendants should be required to confirm by affidavit what use, if any, has been made of Dorma's confidential information. The order sought at paragraph 5 of the draft order is in these terms:

"By 4pm on [date], the First, Second, Third, Fourth and Fifth Defendants will each provide to the Claimant's solicitors an affidavit, which for each Defendant:

a. Confirms that he has complied fully with his obligations as set out above under this Order;

b. Setting out each and every use or disclosure, save on behalf of the Claimant, that has been made of the Confidential Information by himself or, to the best of his knowledge or belief, any other third party; and

c. If he had but no longer has in his possession or control any item which falls within paragraph 4 of this Order, stating (save in relation to any disclosure on behalf of the Claimant):

i. What date the particular piece of information or property was disclosed;

ii. To whom it was disclosed (providing names and addresses);

iii. The means or medium by which it was disclosed;

iv. Insofar as he is aware, the current whereabouts of the information or property."

70. Mr Devonshire submits that such an order is inappropriate for three reasons. First, he submits the order falls on the wrong side of the line, so to speak, by reference to the guidance given by Mackay J in Aon Ltd v JLT Reinsurance Brokers Ltd [2009] EWHC 3448; [2010] IRLR 600. He relies on the observation by Mackay J at paragraph 26 in particular:

"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.'"

Without going into detail, it is right to observe that the relief sought in that case and the disclosure which was required went far beyond what is sought here.

71. Second, Mr Devonshire submits that there is in any event no purpose in requiring such disclosure by affidavit when the information has already been given by the defendants in each of their witness statements: each denies removing or misusing any such confidential information. Third, Mr Devonshire submits that the timetable of directions for the speedy trial in December envisages pleadings closing within the next fortnight and the defendants would be required to serve their witness statements for the trial within the next month, but by then disclosure will have taken place so that all relevant documents which would show, for example, the names of customers who have been approached by Arrow will in any event have become apparent. He also makes the point that on the timetable the claimant will have to be pleading its case very shortly indeed before any affidavit could reasonably be expected to be filed. Mr Solomon submits that the order should nevertheless be made. He says it is perfectly standard and if, as the defendants insist, they have done nothing wrong, they would simply have to repeat in very brief terms what they have said in their witness statements.
72. Although I accept that the proposed request is on the right side of the line and does not fall foul of the criticisms in Aon, in the exercise of the court's discretion I do not consider that such an order is necessary or appropriate on this occasion. The information has already been provided in the witness statements. If it proves to be false, the remedy of contempt is available just as much for an untruth told in a witness statement as it is for an untruth told in an affidavit. It seems to me the parties will have enough to do in preparing their cases for this speedy trial without the additional burden on the defendants of preparing separate affidavits, but all the relevant documentary evidence will emerge on disclosure. Accordingly, I do not propose to make an order for disclosure by affidavit in the terms of paragraph 5 of the draft order.

First defendant's restrictive covenants

73. The next issue is whether the first defendant should be restrained from breaching the restrictive covenants in his contract of employment, including in particular the covenant against competing with Dorma. There is a substantial measure of agreement in relation to the restrictive covenants. By the conclusion of submissions on 7 October, Mr Devonshire had conceded that all but one of the covenants should be the subject of an undertaking or an injunction, although there was some slight issue still with the wording of the related definitions of "restricted customer" and "restricted person". I deal with the covenants in turn.
74. Paragraph 6a of the draft order provides that the first defendant must not "solicit or endeavour to entice away from the company or any group company the business or custom of a restricted customer with a view to provide goods or services to that restricted customer in competition with any restricted business".
75. Mr Devonshire takes issue with the definition of restricted customer in paragraph 8 of the draft order, which is:

""Restricted Customer" means any firm, company or person who, during the 12 months before the termination of the Defendant's employment, was a customer or prospective customer of the Company or any Group Company with whom the Defendant had contact or about whom he became aware or informed in the course of his employment."

Mr Devonshire submits that the words "or about whom he became aware or informed" make the definition far too broad and that, rather than the phrase "had contact", the

word "dealt" would be more appropriate. Mr Solomon did not take issue with those proposed amendments.

76. There is however a more fundamental dispute as to whether, for the avoidance of doubt, the claimant should provide a list of the customers in question so that the injunction can be framed by reference to that list. Mr Devonshire submits that such a list would make for clarity: everyone would know exactly where they stood. He submits that that is particularly important for the fifth defendant, Arrow, who will be giving an undertaking or submitting to an injunction not to cause, induce, encourage or permit any breach of the order by the first defendant.
77. Mr Solomon submits that with the removal of the words "or about whom he became aware or informed" and the substitution of the word "dealt" for "had contact", there is perfect clarity. The first defendant knows perfectly well who the relevant customers are with whom he dealt in his last 12 months. If the fifth defendant, Arrow, permitted the first defendant to solicit such a customer unwittingly, that would not constitute a contempt. Mr Solomon also submits that there would have to be a cumbersome procedure in place for such a list to be held by the defendants' solicitors on a confidential basis. It would be quite inappropriate to present to any defendant himself a list of the customers in question.
78. I have considered this matter carefully. In the end, I accept Mr Solomon's submissions and I propose, subject to any further submissions there may be at the conclusion of this judgment, to make an injunction in the terms of paragraph 6a. I say immediately that it may be that it is far easier for there to be injunctions in respect of this part of the restriction rather than undertakings, commendable as it is that undertakings have been proffered at a late stage. I say that because of the differences in the wording of the various covenants and undertakings and the importance of consistency and ease of interpretation of the order. That is a matter to which we can return if necessary.
79. As to paragraph 6b of the draft order, there is no dispute about the proposed terms. It provides that the first defendant must not "in the course of any business concern which is in competition with any restricted business offer to employ or engage or otherwise endeavour to entice away from the company or any group company any restricted person". Nor is there any dispute about the terms of paragraph 6d of the draft order, provided the definition of restricted person in paragraph 8 is amended. As drawn at present in the draft order, that definition reads as follows:

""Restricted Person" means anyone employed or engaged by the Company or any Group Company and who could materially damage the interest of the Company or any Group Company if they were involved in any Capacity in any business concern which competes with any Restricted Business and with whom the Defendant dealt in the 12 months before the termination of the Defendant's employment."
80. What is proposed is that the words from "and who could materially damage" through to "Restricted Business and" should be deleted and the word "dealt" in the penultimate line replaced by the word "worked". Mr Solomon was content with those proposed amendments by Mr Devonshire during the course of submissions and I am content to make the injunction in those terms.
81. Nor is there any dispute over the terms of paragraph 6e, although an alternative formulation has been provided by undertaking. Paragraph 6e provides that the first defendant must not "be involved with the provision of goods nor services to (or otherwise have any business dealings with) any Restricted Customer in the course of

any business concern which is in competition with any restricted business". I am content to make the injunction in that form, subject to any further discussion.

82. The restrictive covenant which remains the subject of dispute is paragraph 6d of the draft order, by which the defendant must not:

"... d. be involved in any Capacity with any business concern which is (or intends to be) in competition with any Restricted Business, save that this shall not prevent him from:

i. Holding an investment by way of shares or other securities of not more than 5% of the total issued share capital of any company, whether or not it is listed or dealt in on a recognised stock exchange;

ii. Being engaged or concerned in any business concern insofar as his duties or work shall relate solely to geographical areas where the business concern is not in competition with any Restricted Business; or

iii. Being engaged or concerned in any business concern, provided that his duties shall relate solely to services or activities of a kind with which he was not concerned to a material extent in the 12 months before the termination of his employment with the Claimant."

83. This restriction is of only six months duration. As the exceptions make clear, it restricts the first defendant only from involvement in a competing business in the geographical area served by Dorma's south west regional office. Mr Solomon accepted that proposition in the course of submissions and indeed he relies upon it as indicative of the reasonableness of the covenant. So too the exception in paragraph (iii) that there is no prohibition on activities of the kind with which the first defendant was not concerned to a material extent in the last 12 months of his employment with Dorma.

84. The starting point, of course, is that any covenant in restraint of trade is presumed to be unlawful. It is for the party who seeks to rely upon it to show that it is reasonably justified. Mr Devonshire relies upon the guidance given by the Court of Appeal in Office Angels Ltd v Rainer-Thomas [1991] IRLR214. There it was held that if a covenant between an employer and an employee designed to prevent competition by an employee after termination of the contract of employment is to be upheld as valid, it must be shown that there is an advantage or asset in the business which can properly be regarded as the employer's property and which it would be unjust to allow the employee to appropriate for his own purpose; the court must be satisfied that the restriction is no greater than is necessary in protecting the employer's legitimate interest. Mr Devonshire relies in particular upon a passage in the judgment of Sir Christopher Slade at paragraph 49:

"The court cannot say that a covenant in one form affords no more than adequate protection to a covenantee's relevant legitimate interests if the evidence shows that the covenant in another form much less far reaching and less potentially prejudicial to the covenantor would have afforded adequate protection."

85. Mr Devonshire submits that in the present case the interests requiring protection are customer connection and work force stability. He suggests that this is apparent from paragraph 44 of Mr Gilmour's witness statement, which describes the risks to the business of Dorma if an injunction is not granted by reference to those interests. However, as Mr Solomon points out, that is an incomplete reading of Mr Gilmour's evidence and of the terms of the restrictive covenant as a whole. In particular, it is important to note the recital to the post termination restrictions at paragraph 2.1 of the terms and conditions, at page 42 of the bundle:
- "In order to protect the confidential information and business connections of the company and each group company to which he has access as a result of the employment, the employee covenants with the company ... [etc]"
86. In other words a critical legitimate interest requiring protection is the employer's confidential information. This ties in with subparagraph (d) under the heading restrictive covenants, at page 40 of the bundle, in the first defendant's contract of employment, which provides:
- "In the normal course of employment with the company you will have access to and be entrusted with information as to the policy, organisation and management pricing, pricing policies, future plans and staffing of the company as to the persons with whom the company has dealings and upon what terms as to the nature, origin and composition of the company products, services and production techniques, all of which information is confidential."
87. Mr Solomon submits that non-competition covenants are often the only practicable solution to the difficulty of policing or enforcing confidentiality provisions. He cites the approach of the Court of Appeal in Thomas v Farr Plc [2007] EWCA Civ 118. At paragraph 42, Toulson LJ said:
- "As was observed by Lord Denning MR in Littlewoods Organisation v Harris [1977] 1WLR 1472 at 1479 and by Waller LJ in Turner v Commonwealth and British Minerals Limited [2000] IRLR 114 at para 18, it is because there may be serious difficulties in identifying precisely what is or what is not confidential information that a non-competition clause may be the most satisfactory form of restraint, provided that it is reasonable in time and space."
88. The court went on to identify pricing and financial information as clear examples of information to which the employee was exposed during the course of his employment and which the employer was entitled to require to be kept confidential after termination of the employment. In this context it is relevant to observe that part of the evidence relied upon by claimant is that the first defendant has recently approached one of Dorma's engineers inviting him to join Arrow and has promised to beat the pay that that engineer was receiving at Dorma. The first defendant's special knowledge of the overall details of Dorma's business in the south west makes this, in my judgment, a classic case for the enforceability of a non-competition restriction. It is on the face of it reasonable "in time and space". I stress that it is not for me at this stage to decide the issue finally but there is certainly a serious issue to be tried, with a reasonable prospect

of success in relation to the enforceability of this covenant. I therefore grant the injunction in the terms of paragraph 6d as well.

Restraint against Arrow

89. The final issue is whether Arrow should be restrained from causing, inducing, encouraging or permitting the other defendants to act in breach of orders made against them in this application. Very properly, Arrow have indicated that they are prepared to give an undertaking in this regard and, subject to any further submissions, it seems to me that that would be an appropriate way of dealing with that particular part of the relief sought.
90. That concludes my judgment. I repeat my gratitude to counsel for their very considerable assistance.