



Neutral Citation Number: [2021] EWHC 1834 (QB)

Case No: QB-2021-001940

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 01/07/2021

Before :

THE HONOURABLE MR JUSTICE SAINI

Between :

(1) THE DELIVERY GROUP LIMITED
(2) POSTAL CHOICES LIMITED

Claimants

- and -

CHRISTOPHER MARK YEO

Defendant

Adam Solomon QC (instructed by Hill Dickinson LLP) for the Claimants
Daniel Tatton Brown QC (instructed by B P Collins LLP) for the Defendant

Hearing dates: 30 June 2021

Approved Judgment

MR JUSTICE SAINI :

This judgment is in 6 parts as follows:

- I. Overview: paras. [1-8]
- II. Outline Facts and the Deed: paras. [9-25]
- III. Non-dealing covenant: paras. [26-41]
- IV. Confidentiality injunction: paras. [42-45]
- V. Ancillary orders: paras. [46-48]
- VI. Conclusion: para. [49].

Annexe: Terms of the Injunction Sought

I. Overview

1. This is an application for an interim injunction, on notice to the Defendant, Mr Christopher Yeo (D), a former employee of the Second Claimant (C2). C2 is a company operating in the mail and parcel delivery services industry. Earlier this year, D joined a competitor in this industry and the application for an injunction concerns alleged breaches of covenants. In the Claim Form issued on 19 May 2021 relief is sought in equity and in contract, seeking to enforce a number of obligations said to be owed by D to C2, and to C2's holding company, C1, as more fully described below. Particulars of Claim and a Defence have been served.
2. For ease of reference, I have annexed to this judgment, the material terms of the draft Order sought against D. That document also contains relevant definitions which I will not set out in the body of this judgment. D has offered undertakings (subject to certain clarificatory points) on the terms of para. 2 of the Annexe (solicitation of Restricted Customers) and paras. 3 and 4 (dealing with and solicitation of Pipeline Customers). D has however refused to provide undertakings in relation to para. 2 insofar as it seeks to restrain him "dealing" with Restricted Customers or, in relation to paras. 1, 5 and 6 of the draft Order (each of which concerns the defined "Confidential Information"). Accordingly, it was the non-dealing with Restricted Customers and confidentiality covenants which were the main matters disputed before me. Cs also sought ancillary orders (delivery up and a disclosure affidavit: Annexe, paras.5 and 6).
3. Oral argument concluded yesterday afternoon but because I had a number of other interim applications to deal with, I could not provide a ruling until the following morning. This is my judgment on the contested aspects of the application.

Serious issue to be tried or consideration of the merits?

4. The relevant non-dealing covenant will expire on 14 December 2021. Subject to the court's agreement, the parties have agreed directions for an expedited trial (4 day time estimate) and have provided for a trial window of 1 November 2021 - 21 December

2021. It is accordingly agreed that the covenants will either have expired, or will probably have only a few weeks to run, by the time a judgment is delivered. Realistically, I consider it is likely that the covenants will have expired by the time of judgment.

5. That gives rise to an issue as to the approach I should take in the injunction application to the merits of the Cs' case, and whether I am required to undertake some assessment of whether they are likely to succeed at trial (contrary to the standard approach which merely requires a claimant to show a "serious issue" to be tried). Leading Counsel for the Cs sought to persuade me that this was not such a case and the merits was not a relevant issue. Leading Counsel for D argued the contrary position.
6. I reject Cs' submission and I propose to adopt the approach taken in P14 Medical v Mahon [2020] EWHC 1823 (QB); [2021] IRLR 39 at [14]-[25], and in Create Financial Management LLP v Lee and another [2020] EWHC 1933 (QB) at [53] - [54]. Those decisions were reached following a full review of the leading authorities including NWL Ltd v Woods [1979] 1 WLR 1294, and Lansing Linde Ltd v Kerr [1991] 1 WLR 251.
7. It has long been recognised that where an interim injunction will give the claimant all or substantially all of the relief sought by way of final injunction (because by the time of trial the period of any final injunction will have expired), there must assessment of the claimant's merits. In short, this is the price a claimant in such circumstances must pay as a condition of obtaining an injunction which creates a risk of an innocent defendant being wrongly enjoined if a claimant only has to overcome the modest "serious issue to be tried" hurdle.
8. Accordingly, I will consider the merits of the Cs' claims (prospects of success). It matters not whether that issue is considered at the "serious issue to be tried" stage or as part of the "balance of convenience", but it probably falls more clearly within the latter question. I will however only undertake "some assessment" of the merits (using Staughton LJ's language in Lansing Linde at 247B), mindful that this is a case where there are disputes of fact, which I cannot resolve on an interim application.

II. Outline Facts and the Deed

9. C1 is the parent of various companies operating in the mail and parcel delivery services industry, including C2 (which trades as 'ONEPOST') and which specialises in the Downstream Access (DSA) mail marketplace. That is a business area in which commercial organisations with large mailings gain access to wholesale costs for mail delivery. C2 specialises in direct marketing mail and delivery of magazine subscriptions. In its evidence before me, it says it has a unique selling point which is the management of all aspects of mailing from data management, print procurement and delivery based on principles of excellent customer service.
10. C1 is one of the three most prominent operators in the DSA marketplace alongside Whistl and UKMail. Whistl is the largest operator in terms of volume and handles over 3.6 billion mail items per year, and is Cs' main competitor.

11. It is said that neither Whistl nor UKMail currently offer the same full management service which is provided by Postal Choices, and which is its unique selling point, and instead rely on a self-service process. However, the Whistl group is in the process of launching a new service trading as 'Posthub' which mimics C2's full management service business model. In the course of the last 12 months it has targeted a number of C2's senior employees for its Posthub business, and has recruited three of C2's six senior Heads of Department. It is significant that the documents before me show that it is expressly marketing itself to customers on the basis that it has been built "*with the ethos and methodology that was put into building ONEPOST over a number of years*" and has recruited a number of senior individuals from C2.
12. C2 says that it prides itself on its excellent client relationships, and all client contact is managed through a small team of individuals, and the Client Services Team in particular develops day-to-day working relationships with clients.
13. As I have said above, D is a former employee of C2. He was first employed on 6 April 2010 as an Account Manager, and in 2014 became Head of Client Services. His contract of employment included obligations of confidentiality, which expressly continued to apply post-termination. Leading Counsel for D took issue with the description of his client by the Cs as "a senior member of C2's management team" and a "senior manager". He submitted that D was not a board director, nor had any strategic or board level responsibilities. Leading Counsel said that D would (with no disrespect to him) more accurately be described as "middle management". I can express no concluded view on this but would note that in D's own *LinkedIn* profile he describes himself as having experience "for almost 11 years as Head of Client Services [at ONEPOST]" and that he was "also a senior member of the management team". That tends to support the Cs description of his seniority and responsibilities. It was argued for D that in his role as Head of Client Services he was not responsible for winning business or determining the terms on which business was conducted. His role was to ensure fulfilment of contracts that had been already been won. He was simply a "point of contact" for C2's Sales team, answering technical product-related queries. Again, the level of his knowledge and duties are in dispute and there will be an issue for trial as to whether D is right in this regard or whether the Cs' description is correct.
14. In early 2020, in light of the targeting of its staff by Whistl, Postal Choices commenced a process of reviewing staff contracts. The background as to why changes were made to contracts seems to be in dispute, but it is common ground that following discussions between the D and Mr Plant (MD of Postal Choices) on behalf of Cs, it was agreed that:
 - (i) D's notice period would be increased to six months. This was recorded in a letter dated 4 June 2020 from Mr Plant to D confirming a variation to the notice provisions in D's employment contract such that both parties were required to give six months' notice of termination;
 - (ii) D would enter a Restrictive Covenant Deed (the "Deed") containing various post-termination restrictions. The Deed was executed by D and the Group in June 2020.
 - (iii) The Deed included the following express terms:

- (i) A prohibition on D from misusing any Confidential Information, which continues after the termination of his employment (clause 3.1);
 - (ii) A 12 month restriction on soliciting or dealing with any Restricted Customer, or assisting others to do so (clause 4.2.1);
 - (iii) A 12 month restriction on soliciting or dealing with any Pipeline Customer, or assisting others to do so (clause 4.2.2);
 - (iv) A 12 month restriction on poaching any Restricted Employee, or assisting others to do so (clauses 4.2.4 and 4.2.5);
- (iv) The periods for which the restrictions in clause 4 applied would be reduced pro rata by any period that D spent on Garden Leave immediately before the termination of his employment (clause 4.3);
- (v) D expressly acknowledged and accepted in the Deed that his role included access to and knowledge of Confidential Information as defined within the Deed. The Cs says in evidence (and it is in dispute in certain respects) that D he had access to significant amounts of confidential information belonging to Cs as a consequence of his role.
15. D resigned on notice on 12 September 2020 and it was known that he was going to work for a competitor. Initially, he was permitted to work out his notice, albeit he was reminded in writing of the post-termination obligations under the Deed. However, Cs became aware of an email dated 2 December 2020 sent by a former employee of C2 (now employed by Posthub) which stated that Posthub had “been built with the ethos and methodology that was put into building ONEPOST over a number of years” and that “Chris Yeo from Client Services is joining us in a couple of months”.
16. Once that email was received, Cs say it became clear to them that Whistl were setting up a standalone business unit, that was effectively a “carbon copy” of Postal Choices’ operation, staffed by former employees of C2. It was submitted that given that it had been sent to C2’s clients, it was also clear that the new unit was targeting those clients. At that point, a decision was taken to put D garden leave for the remainder of his notice period, and he was again reminded of his post-termination obligations.
17. D’s employment formally terminated on 12 March 2021, as confirmed in a letter from Mr Plant dated 17 February 2020, which again reminded D of his post-termination obligations. He is now employed as Head of Client Services in Whistl’s Posthub business.
18. The Cs argue that notwithstanding that he was repeatedly reminded of his contractual obligations, since the termination of D’s employment he has committed several breaches of the post-termination restrictions in the Deed. Two particular matters are presently relied upon in the Particulars of Claim, the “Warners” breach and the “All About Print” breach. I will summarise the case presently made in this regard below but emphasise that I am not making any findings of fact.

Warners

19. Royal Mail appear to have sent an email in error to D's former email address at C2, which it is said demonstrates that he has acted in breach of the Deed (an email of 16 April 2021). Warners are a client of C2's and were one of the accounts managed by D while at C2. It is argued that the Warners email shows that D had solicited and/or dealt with Warners in respect of a number of magazine subscriptions in his new role. Mr Plant's evidence is that it likely that D is managing that account in his new role on the basis that D had a pre-existing relationship with Warners from his time at C2 where he managed its account, and he is now Posthub's Head of Client Services, and he has been dealing with Warners on behalf of Posthub from at least 16 April 2021.
20. On 22 April 2021, Warners informed C2 that it was in the process of moving all its existing business with C2 to Posthub/Whistl. For D it is said that in January 2021, Mark Temperley (on behalf of Whistl/Posthub) solicited Warners' work. That was before the D joined Whistl. D says that this solicitation was lawful and that D was not involved in it at all. Mr Temperley was also formerly employed by C2.

All About Print

21. This also arises from an email which was sent (again apparently in error) to D's former email address at C2. It is said this email evidences that D has solicited and/or dealt with All About Print, a Restricted Customer, in respect of Restricted Business. By an email dated 14 May 2021 sent from the email address chris.yeo@posthub.co.uk, D sent data files to Dylan Hughes of All About Print (and did so – it is said- using the Data Send UK Limited file delivery service used by C2). On 17 May 2021 Stephens and George Print Group, a mailing house, sent to chris.yeo@onepost.co.uk (presumably mistakenly) an email titled '*Business File Delivery – RCUK Mailing*' requesting that D supply the All About Print data in a different format. It is said by the Cs that D had personally dealt with All About Print on behalf of C2 in the last 12 months of his employment.
22. For his part D denies that he has solicited All About Print and he says that the business was won independently. D admits that he personally dealt with agents of All About Print in the last 12 months of his employment with Postal Choices but he says that he built no meaningful relationship with anyone at All About Print, nor learned any confidential information regarding their business that remained relevant after completion of the contract. D admits that he has dealt with All About Print in respect of Restricted Business on behalf of Posthub/Whistl. D emphasises that his involvement with All About Print on behalf of Posthub/Whistl involved contract fulfilment. He says he was not involved in soliciting or "winning" the work.
23. On the basis of the above, it seems to be that (insofar as the relevant non-dealing covenant is enforceable) D has acted in arguable breach. D does not accept that in these two cases he was involved in any acts of solicitation, but he has in any event offered undertakings to trial in respect of such a restraint for the future.
24. In his evidence D says that at Posthub "I now perform very much the same role as I did at ONEPOST", and states that "all but a handful of clients were already clients of Whistl/Posthub and ONEPOST or were ONEPOST clients who have moved to Whistl/Posthub following approaches by Mark Temperley or Neil Carter". However, D

does contest many of the factual points made by the Cs about his employment and knowledge while at C2.

25. In response to D's evidence, Mr Plant has served a further witness statement which raises a number of factual issues which I cannot resolve. I will set out the substance of the evidence and responses, with some limited observations, where I consider it appropriate and relevant (in particular to the balance of convenience):
- (i) D says he "*rarely*" accessed Cs' confidential pricing information. Mr Plant states this is not correct, and that he had significant access and exposure to sensitive confidential information as part of his day-to-day activities.
 - (ii) D says that his knowledge is generic and part of his skill and experience. But Mr Plant states that this is incorrect and that D knows C2's specific systems and processes, and confidential information.
 - (iii) D says that he had limited client contact. But Mr Plant responds that this is a mischaracterisation and that he downplays the nature of his role. In fact, he had what is said to be a "significant level of contact".
 - (iv) D says that the effect of the non-dealing covenants is that he would effectively be prohibited from working. Mr Plant's evidence is that given the size of Whistl, it is unlikely they cannot redeploy him. In respect of this point, I agree with Leading Counsel for the Cs that D's evidence is mere surmise. It is noteworthy that Mr Temperley does not state that D would not have a job, but merely that it "would make his role difficult". Similarly, when specifically asked this question by Cs, I note that Whistl stated that "no firm decision has been made" and that "it is difficult to see how Mr Yeo would be able to perform his current role in the event the non-dealing clause is enforced". It is right to record that there is no evidence that D would not be redeployed, as Mr Plant indicates would be possible at Whistl, if the non-dealing covenant is enforced.

III. The Non-Dealing Covenant

26. I will adopt the *American Cyanamid* principles with the rider as to the merits being considered in more detail than in standard case. The three stage approach requires examination of:
- (i) Is there a serious issue to be tried?
 - (ii) the adequacy of damages; and
 - (iii) the balance of convenience.
27. In the context of covenants, Cox J reviewed the law on restrictive covenants in TFS Derivatives v Morgan [2005] IRLR 246, and distilled the old authorities as creating a three stage process for a Court to follow (see [36]-[39]): what the restrictive covenant means, whether the employer has shown a legitimate business interest to be protected, and whether the covenant is not wider than is reasonably necessary for the protection of those interests. The Court must then decide whether, as a matter of discretion, the injunctive relief sought should in all the circumstances be granted. In this case there is

no issue about the meaning of the covenants, and the main argument has focussed on the issue of legitimate business interests and width.

Serious issue to be tried

28. On the evidence before me (specifically that of Mr Plant) I accept that the Cs have legitimate business interests to protect by way of confidential information to which D had access, client connections and workforce stability. Although these matters are disputed in D's evidence (and that of his other witness) I consider that at this interim stage I must accept Mr Plant's evidence. I have not been persuaded that he can be shown to be wrong in any significant respect.
29. Client connections have long been held, by the highest authority, to be protectable by way of post-termination restraints. I will limit myself to a few citations. In East England Schools v Palmer [2014] IRLR 191, the court considered whether a business had a protectable connection with its customers such as to justify non-solicitation and non-dealing covenants in the claimant's (Ms Palmer's) contract of employment. It held that the fact that the relationship between schools and teachers on the one hand and the agency on the other was known to be a fragile one made it more rather than less necessary and legitimate for the employer to seek to protect it, because the prospect of a successful solicitation by the ex-employee was more likely.
30. I agree with the Cs that the case is directly analogous to the present. On the evidence before me, D had important client relationships with C2's clients and had access to Cs' confidential information. This is the very reason why Cs require protection. Indeed, I note that D himself recognises this: "the Downstream Access mail marketplace is very limited with only three players having major national operational capacity to sort mail" and he adds that clients like to "shop around".
31. In Beckett Investment Management Group Ltd v Hall [2007] EWCA Civ 613, [2007] IRLR 793 at [25]-[26], the Court of Appeal (when upholding a 12 month non-dealing clause) approved the general proposition that "The narrower and more specialist the market, thus the more likely it is that a non-dealing covenant will [be] upheld, given that clients will in those circumstances naturally gravitate to the ex-employee who opens a new, competing company in such a case." That dictum explains why non-dealing clauses may be necessary. The specialism in the marketplace, and the fragility of the relationship with clients is part of the reason to uphold such a clause.
32. Further, the difficulties in policing confidentiality clauses, and non-solicitation clauses, are one of the reasons why the Court will uphold more stringent non-dealing clauses (or even non-compete clauses). In Thomas v Farr Plc [2007] EWCA Civ 118, [2007] IRLR 419 the Court of Appeal recognised (at [48]) that a mere prohibition on solicitation of clients would not prohibit the defendant from passing on confidential information to other members of the new employer who were dealing with those clients. And in Landmark Brickwork Ltd v Sutcliffe [2011] EWHC 1239 (QB), [2011] IRLR 976 at [49], a non-dealing clause was upheld in order to protect the claimant from the influence exerted by the former employee over clients, based on his access to confidential information about those clients, notwithstanding that there was no requirement in that case for any personal dealings between former employee and the claimant's clients (unlike the present case).

33. In my judgment, in the present case, the non-dealing clause is (for the purposes of an injunction applying a higher merits standard) capable of being justified by the confidential information arguably possessed by D, in addition to the client contact he had in a specialised marketplace.
34. I was not persuaded by the D's arguments to the contrary. Addressing the main arguments:
- (i) It was said that 12 months is too lengthy a restraint. Mr Plant sets out the reasons why 12 months is required. He says that competition is fierce in this industry, that prices are revised annually and that 12 month (or longer) covenants are commonplace in this industry. In respect of the latter point, notwithstanding that D knew that this was an issue in the case (of his own making), I note that D has refused to provide copies of the restrictive covenants in his current contract, and his Leading Counsel had no instructions on this matter when I asked the question as to the term or nature of his current restraints. The Cs are entitled to ask me to infer that they are at least similar to those in the Deed. Indeed, Mr Plant annexes examples of Whistl's covenants, which I understand they previously attempted to enforce: there are 12 month non-deal and non-solicit covenants, similar to those in the Deed. In any event, the length of the covenant is a classic example of an issue which is unsuitable for determination at the interim stage: Underwriting Exchange Ltd v Newall [2015] EWHC 948 (QB) at [15] (a case in which a 13 month restriction which was said to be common in the industry was held to be a matter for evidence at trial).
 - (ii) Leading Counsel for D made a submission that the restrictions were presented to D on the basis that they protected Cs from competition rather than a legitimate business interest. That is not right: the Deed in terms refers to protecting confidential information, Cs' business connections and the workforce. The terms of the covenants plainly do seek to protect Cs' legitimate business interests.
 - (iii) A tentative argument was made that the adequacy of the consideration given for the covenant(s) is "potentially relevant" to an assessment of their reasonableness. Reference was made to Quantum Advisory Ltd v Quantum Actuarial LLP [2020] EWHC 1072 (Comm) at [78]. It was said that here the only consideration for the suite of restrictions relied upon by the Cs was an increase in the D's notice period (i.e. the notice that he was entitled to receive) from 12 weeks to 6 months. However, since the notice that the D was required to give increased from 1 month to 6 months, the package as a whole was "singularly inequitable" and reflects the fundamental inequality of bargaining power between the parties. Even accepting that consideration may be relevant (a matter for resolution in a case where the point is fully argued) I was not satisfied that the consideration here was in fact inadequate. D's own evidence is that he saw the increase in the notice period as being a real benefit. It is only now that he has reinterpreted matters.
 - (iv) It was argued that the covenants are too wide to be enforceable. That issue cannot be determined at this stage but I note that the definition of Restricted Customer is limited by three qualifiers. First, by the requirement that the Customer must have been a customer of the Company. Second, that it must have been such a customer within the limited retrospective 12 month period ending

with termination of D's employment. Third, that D must have dealt personally with the Customer, or had overall responsibility for the account during the retrospective 12 month period. I also note that the prohibition on the activity conducted by D is limited to Restricted Business, being that which is the same as or similar to or competitive with the Services, which itself is limited to that done by the Company and with which D was substantially concerned or responsible during the retrospective 12 month period.

- (v) It was argued that the non-dealing covenant would prevent D from working on business from Cs' customers which had been won by others. That may be the case but that will also be a facet of any non-dealing covenant. As I have explained above, the difficulty of policing confidentiality clauses and non-solicitation clauses are a reason for upholding non-dealing covenants which may have this effect. There is a legitimate interest (not simply improper restraint of competition) in non-dealing covenants which are often the only practical way to protect client relationships and confidential information.

35. Accordingly, I conclude that even applying an approach where one examines the merits in more detail, the covenants (at this stage and on interim basis) have been demonstrated to be limited, justified and reasonable. There is a serious issue to be tried and I also conclude (for the purposes of the balance of convenience) that the Cs have gone beyond this and shown to a sufficient degree that they are likely to succeed at trial.

Adequacy of damages

36. I agree with the Cs that an award of damages could not adequately compensate Cs for the loss they would suffer if D's arguably unlawful dealing activities were allowed to continue. Damages would be very difficult to quantify. Mr Plant sets out that it has taken years for Cs to create their reputation and market leading services. Further, insofar as I am aware, D has no independent resources and would be unable to meet any damages claim. In employee competition cases, damages are rarely an adequate remedy: Underwriting Exchange Ltd v Newall [2015] EWHC 948 (QB) at [31]).
37. D is however protected by the significant cross-undertaking offered by C and there is no evidential basis to question its value.

Balance of Convenience

38. I have taken into account the merits of the claim in this assessment. The facts before me at this stage, and case law, have satisfied me that the Cs have a case on the non-dealing covenants which is likely to succeed at trial. I emphasise that this can only be a provisional view and the fuller examination at trial may lead to a different conclusion. Absent strong countervailing reasons the balance of convenience justifies an injunction. The greater risk of injustice is presented by not restraining D. The Cs have prima facie valid covenants, damages would not be adequate protection for their legitimate business interests in this marketplace where the aim of D's employer is essentially to replicate Cs business model.
39. I do not consider that there is a strong countervailing reason on the evidence and arguments before me. Leading Counsel for D forcefully argued that if the order sought were made, D will effectively be stopped from working. I was told that his job and/or

his continuing remuneration would be at risk. It is said that is a significant disadvantage and – if the Cs fail at trial – a severe injustice. Leading Counsel submitted that the D’s incipient new career at his new employer will have been profoundly and wrongly interfered with at a time of vulnerability and when he does not have requisite length of service to claim unfair dismissal.

40. I do not accept there is a proper evidential foundation for this submission. I have set out above the nature of the evidence as it currently stands: there is no evidence from D’s new employer to support what Leading Counsel submitted- merely a generalised letter of 18 June 2021 where it is said that “no firm decision” has yet been made and all depends on the court’s determination.
41. The discretionary balance comes down firmly in favour of restraint pending trial.

IV. The Confidentiality Injunction

42. I can deal with this aspect of the application more briefly because I do not consider there is a serious issue to be tried on the basis of the evidence before me. I have considered the pleaded case (which asserts no more than an “inference” that D used the Claimants’ Confidential Information in order to solicit and/or deal with Warners and All About Print). I have also considered the specific parts of Mr Plants’ statements to which my attention was drawn by Leading Counsel for the Cs. Those statements are speculative and do not establish a proper evidential basis to support a claim for an injunction. They are no more than assertions it “seems” that D is “likely” to have misused Cs’ confidential information.
43. That is not a sound basis to obtain injunctive relief backed by contempt powers. I also do not consider it appropriate for the Cs to assert that there was some need for D to come forward and offer some form of tailored confidentiality undertaking if he found the terms of the draft too wide. He is under no such obligation. It was for the Cs to satisfy the Court that there was existing or threatened breach of confidentiality. That argument can of course be made in an appropriate case by way of inference, but even an inferential case needs a bare minimum of factual underpinning.
44. In my judgment, Leading Counsel for D is right to argue that the evidence that the D has retained documentation containing confidential information and/or that he threatens to misuse it is non-existent. There is no evidence of his copying confidential documents or his using information derived from confidential documents. The fact that he has dealt with customers of his former employers does not in and of itself establish a case of misuse of confidential information in the acts of dealing with them.
45. In my judgment, that is a sufficient reason not to make the orders sought. An employer (or ex-employer) is not entitled to relief just because he seeks it: Capita Plc and another v Darch and others [2017] IRLR 718 Ch at [29] and [81]. There is no arguable case that D has breached or intends to breach any obligation of confidentiality, and I reject this aspect of the injunctions sought on that ground. I do not need to address the further objections made by the D. The injunction I propose to grant in relation to non-dealing covenant will also give a measure of confidentiality protection to the Cs.

V. Ancillary Orders

Delivery up

46. I reject this application. There is no evidence to indicate that the D has “copies notes or memoranda of Confidential Information” (Annexe, para.5). There is therefore no serious issue to be tried as to whether the D has documentation of the sort referred to, and a fortiori the court cannot have a high degree of assurance that the Cs will establish the right to such relief at trial. I refer again to Capita at paras. 40-42.

Disclosure by Affidavit

47. I also refuse this application. The law is summarised in Al Hajeri v Bennett [2013] EWHC 2552 (QB), citing Mackay J’s judgment in Aon Limited v JCT Reinsurance Brokers Limited [2009] EWHC 3448 (QB); [2010] IRLR 60. I was also taken to Visage Limited v Mehan [2017] EWHC 2734 (QB) at [58].
48. In my judgment this is not one of those exceptional cases where an affidavit requiring the D to provide the listed information is justified. The relief is not necessary to enable the Cs to plead their case; it will add to expense; and it wrongly puts the onus on the D to disprove wrongdoing rather than for the C to prove its case. It is an oppressive and unjustified application on the basis of the evidence of limited arguable wrongdoing presently before the Court. There is not even a prima facie case of misuse of confidential information let alone a basis for such an intrusive order.

VI. Conclusion

49. For the reasons given above, I will grant the application for the non-dealing injunction until the expedited trial. I refuse the other contested applications. The parties have agreed to provide an agreed mechanism for D to be able to identify a Restricted Customer and Pipeline Customer for the purposes of the undertakings and Order. If that cannot be agreed I will determine the procedure following further argument.

ANNEXE: TERMS OF THE INJUNCTION SOUGHT

1. The Defendant shall not make use of, copy, divulge or communicate to any person, company or other organisation whatsoever any Confidential Information, save that this restriction shall not apply to Confidential Information ordered to be disclosed by a court of competent jurisdiction or otherwise required to be disclosed by law or to any Confidential Information which is or comes into the public domain other than through the Defendant's unauthorised disclosure.
2. The Defendant shall not, until the earliest of trial, further order or 14 December 2021, in any Capacity and whether directly or indirectly either: (a) conduct Restricted Business; or, (b) canvass or solicit, procure or assist with canvassing or soliciting or by any other means seek to conduct Restricted Business; or (c) transact or otherwise deal or procure or assist with transacting or otherwise dealing in respect of Restricted Business; with any Restricted Customer.
3. The Defendant shall not until the earliest of trial, further order or 14 December 2021, in any Capacity and whether directly or indirectly either: (a) conduct Restricted Business; or (b) canvass or solicit, procure or assist with canvassing or soliciting or by any other means seek to conduct Restricted Business; or (c) transact or otherwise deal or procure or assist with transacting or otherwise dealing in respect of Restricted Business; with any Pipeline Customer.
4. The Defendant shall not until the earliest of trial, further order or 14 December 2021, directly or indirectly for the benefit of any person, company or other organisation whatsoever which conducts Restricted Business:
 - (a) offer employment to or employ or offer or conclude any contracts for services with, or solicit or entice the employment or engagement of, or enter into partnership with; or
 - (b) assist any third party so to offer, employ, engage, solicit, entice or enter into partnership with any Restricted Employee, whether or not this would constitute a breach of contract by such person.
5. The Defendant must deliver up to the Claimants' solicitors by no later than 4pm on [DATE] any copies, notes or memoranda of Confidential Information.
6. The Defendant must serve an affidavit on the Claimants' solicitors by no later than 4pm on [DATE] 2021:
 - a. Setting out each and every use or disclosure, save on behalf of the Claimants, that has been made of the Confidential Information by him or, to the best of his knowledge or belief, any other third party;
 - b. If he had but no longer has in his possession or control any Confidential Information:
 - i. What date the particular piece of Confidential Information 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 Confidential Information; and
 - v. Confirming that he has complied fully with his obligations as set out above under this Order.
7. For the purposes of this Order, the following words have the following meanings: "Associated Company" shall mean a company or undertaking (which is not a Subsidiary or Holding Company of the Claimants or either of them or of a Group Company) of which more than 20 percent of the Equity Share Capital is for the time being owned by the Claimants or either of them or a Group Company or which for the time being owns more than 20 per cent of the Equity Share Capital of the Claimants or either of them or a Group Company. "Capacity" shall mean as an employee, director, principal, agent, consultant, partner or in any other capacity whatsoever. "Confidential Information" shall mean information which is not in the public domain relating to the Claimants or either of the Claimants' business for the time being confidential to the Claimants or either of them and any Group Company, trade secrets and includes in particular the following such information of the Claimants or either of

them...."Restricted Business" shall mean any business or activity which is the same as, similar to or competitive with the Services. "Restricted Customer" shall mean any person, firm, company, association or other entity which at any time within the Relevant Period was a customer, being a person, firm, company, association or other entity with whom the Defendant dealt personally on behalf of the Claimants or either of them, or for whose account the Defendant had overall responsibility during that period. "Pipeline Customer" shall mean any person, firm, company or other organisation or entity which at any time within the Relevant Period was engaged in negotiations with the Claimants or either of them with a view to engaging the Claimants' or either of their services and with whom the Defendant dealt personally or for whom the Defendant was responsible on the Claimants' behalf or either of their behalf during that period. "Restricted Employee" shall mean anyone employed or engaged by the Claimants or either of them in a sales, account management, advisory or managerial role and who could materially damage the interests of the Claimants or either of them 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 Relevant Period in the course of the Defendant's employment. "Relevant Period" shall mean the twelve month period preceding the Termination Date, ending on that date. "Restricted Period" shall mean the period of twelve months after the Termination Date. "Services" shall mean any services of a kind carried out, sold or supplied by the Claimants or either of them during the Relevant Period (including, but not limited to, services provided to Restricted Customers and/or proposed to Pipeline Customers) and with which the Defendant was substantially concerned or for which the Defendant was responsible at any time during that period. "Termination Date" shall mean 12 March 2021.