



Neutral Citation Number: [2022] EWHC 1130 (QB)

Case No: QB-2019-001481

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 16 May 2022

**Before:**

**BRUCE CARR QC**  
**(Sitting as a Deputy Judge of the High Court)**

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**Between:**

**MR COLIN CHRISTIE** **Claimant**  
**- and -**  
**CANACCORD GENUITY LIMITED** **Defendant**

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**Mr Gavin Mansfield QC** (instructed by **Gardner Leader LLP**) for the **Claimant**  
**Mr Thomas Croxford QC** (instructed by **Mishcon de Reya LLP**) for the **Defendant**

Hearing dates: 18-21 January 2022  
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**Approved Judgment**

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

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**BRUCE CARR QC**

This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10:30am on Monday 16 May 2022.

## Bruce Carr QC:

### Introduction

1. The Claimant in this case, Mr Colin Christie is a seasoned investment banker who with effect from 1 February 2011 was employed by Hawkpoint Partners Limited (“**Hawkpoint**”), a corporate finance advisory company. Hawkpoint was acquired by a Canadian investment company, Canaccord Genuity Group Inc (“**CGG**”) in 2012 following which the Claimant’s employment transferred to the Defendant (which operates CGG’s investment banking division) pursuant to the provisions of the Transfer of Undertakings Regulations 2006. The Claimant’s employment with the Defendant began on 1 March 2013 and continued until its termination on 10 June 2016. Following that termination, the Claimant brought proceedings against the Defendant in both the High Court and in the Employment Tribunal (“**ET**”) claiming that his dismissal was unfair within the scope of section 98(4) Employment Rights Act 1996 (“**ERA**”). His claims in the ET were resolved through a consent judgment issued by the ET on 9 May 2017 pursuant to which his dismissal was declared to be unfair and compensation awarded in the sum of £82,554.50 (plus issue and hearing fees totaling £1,200).
2. In the High Court he brought claims based on:
  - a. An assertion that, as regards his bonus for 2015 (“**the 2015 Bonus Claim**”), he was entitled to rely on the terms of a letter dated 24 January 2011 (“**the Bonus Letter**”), either as a matter of contract or by way of an estoppel, the effect of which was that the Defendant was prevented from denying that the terms of the Bonus Letter were to be applied in calculating his entitlement. The Bonus Letter had been written by Mr Paul Baines, the Executive Chairman of Hawkpoint and was, on its face at least, intended to provide (in advance of the Claimant commencing employment with them):

“indicative guidance as to our likely approach to determining annual discretionary bonus following your joining us.”
  - b. Alternatively, his bonus for 2015 was said to be outside the scope of permissible contractual discretion available to the Defendant and/or amounted to a breach of the implied term of trust and confidence;
  - c. A claim that the split between cash and equity (in the form of restricted share units (“**RSUs**”) was outside the scope of permissible discretion as was the application of “cliff vesting” to the RSUs, the effect of the award being that the entirety of the shares which were awarded would vest on a single date in June 2018;
  - d. A claim to an entitlement to a bonus for the 2016 financial year (“**the 2016 Bonus Claim**”), again based on a failure to apply the terms of the Bonus Letter and/or the award of zero being outside the scope of the permissible contractual discretion and/or a failure by the Defendant to follow its own processes;

- e. An entitlement to a “retention award” to the value of £1 million (“**the Retention Award**”), based on a discussion which had taken place between the Claimant and Mr Alexis de Rosnay, the Defendant’s CEO, on 16 July 2015. The Claimant alleged that a “binding contract” had been made that day based on the conversation that he had had with Mr de Rosnay. In the alternative, he alleged that the Defendant was “estopped, by proprietary estoppel” from denying that the Claimant was entitled to the Retention Award.
3. In its Defence, the Defendant robustly rejected all of the claims brought by the Claimant and flagged up its intention to apply for summary judgment and/or a strike out of all of them. Such an application was duly made and ruled on by Charles Bourne QC (at that point in his judicial career sitting as a Deputy High Court Judge). Mr Bourne ruled that the 2015 and 2016 Bonus Claims had no reasonable prospect of success but that as far as the Retention Award was concerned, he did not believe that he could:

“...fairly and safely decide the Retention Award issue in the Defendant’s favour on this application. There is a critical issue of fact, namely what was said by Mr de Rosnay at the meeting on 16 July 2015.....The Claimant’s version of events has not been examined in oral evidence. There has been no full disclosure process.

.....

Although there may yet be significant obstacles to this part of the claim (whether based on contract or on proprietary estoppel, the detail of which was not argued before me), I am not persuaded that it cannot succeed.”

4. The Retention Award therefore remained to be determined on both bases on which it was advanced by the Claimant, namely contract and estoppel. Those issues came before me but solely on the question of liability and not quantum, a split trial having been ordered by the court on 17 December 2021.

### **The issues for determination**

5. Subject to one point, the parties agreed that the list of issues for determination were as follows:
  - a. As to the claim based on contract:
    - i. What were the terms of any offer made by Mr Alexis de Rosnay (the Defendant’s CEO) on 16 July 2015 on behalf of the Defendant?
    - ii. Was what was said sufficiently certain to give rise to a contract?
    - iii. Was what was said, assessed objectively, intended, without more, to create legal relations?
    - iv. Was it objectively apparent that any Retention Award was subject to further confirmation, consideration or approval with the Defendant or its parent company, CGG and/or would only be granted by way of an award agreement in writing subject to terms and conditions?

- v. Was any such agreement confirmed or ratified in subsequent correspondence?
    - b. As to the estoppel claim – did a proprietary estoppel arise in the Claimant’s favour as to a proprietary interest in RSUs in the Defendant to the value of £1m? In particular:
      - i. Did the Defendant make sufficiently clear representations orally on 16 July 2015 and in writing on 24 September 2015, 6 November 2015 and 20 December 2015 that the Defendant would make a Retention Award of a value of £1 million?
      - ii. Did the Defendant intend the Claimant to rely on them to his detriment?
      - iii. Did the Claimant rely on those representations?
      - iv. Would it be inequitable for the Defendant to resile from any such representations?
    - c. There was one remedy issue also raised in relation to the estoppel claim, namely whether the Claimant was entitled to damages for the Defendant’s failure to make the Retention Award.
6. The one issue that appears not to have been agreed between the parties is one of acceptance with the Defendant asserting that it is necessary to consider the question of the means by which the Claimant accepted any offer that was made to him. In addition, the reference in the estoppel claim to a proprietary interest in RSUs in *the Defendant* appears to have been agreed prior to an amendment having been made to the Claimant’s Particulars of Claim (in November 2021) so as to plead that the entitlement in respect of RSUs was to shares in the parent company, CGG rather than to any shares in the Defendant. Mr Croxford QC, on behalf of the Defendant, attaches a high level of significance to this amendment whereas Mr Mansfield QC, on behalf of the Claimant, characterises it simply as a drafting error, an obvious mistake which was corrected once it had been identified.
7. In addition to the issues as outlined above, Mr Mansfield put the matter slightly differently in opening in suggesting that, as far as his case in contract was concerned, he put it two ways (the second of which is perhaps not entirely apparent from the List of Issues): first that a contract was concluded on 16 July 2015 and secondly, if not, there was a contract based on an email sent by Mr de Rosnay on 24 September 2015, in the light of the discussion on 16 July. The ‘fallback’ case was predicated on the basis that, if there were any ‘loose ends’ to tie up post-July, this was done by reference to the subsequent correspondence.

## **Legal Principles**

8. The primary question of law relates to the approach to be applied when a court is asked to rule on the existence of an oral contract. The relevant principles have been usefully summarised in the judgment of Leggatt J (as he then was) in *Blue v Ashley [2017] EWHC 1928 (Comm)* at paragraphs 49-64. I will not repeat the entirety of those passages in this judgment but do make reference in particular to the following observation in paragraph 64:

“What is accepted by counsel on both sides is that where, as here, the court is concerned with an oral agreement, the test remains objective but evidence of the subjective understanding

of the parties is admissible in so far as it tends to show whether, objectively, an agreement was reached and, if so, what its terms were and whether it was intended to be legally binding. Evidence of subsequent conduct is admissible on the same basis. In the case of an oral agreement, unless a recording was made, the court cannot know the exact words spoken nor the tone in which they were spoken, nor the facial expressions and body language of those involved. In these circumstances, the parties' subjective understanding may be a good guide to how, in their context, the words used would reasonably have been understood. It is for that reason that the House of Lords in [\*Carmichael v National Power Plc \[1999\] 1 WLR 2042\*](#) held that evidence of the subjective understanding of the parties is admissible in deciding what obligations were established by an oral agreement.”

9. The judgment in *Blue* then continues with some helpful observations about the significance of evidence of memory based on recollection of what was said in undocumented conversations which may have taken place many years earlier. The Judge (at paragraph 66) revisited and repeated some earlier observations that he had made in *Gestmin SGPS SA v Credit Suisse UK Limited [2013] EWCH 3650 (Comm)* at paragraphs 16-20 before concluding (at paragraph 67) as follows:

“In the light of these considerations, I expressed the opinion in the [\*Gestmin\*](#) case (at para 22) that the best approach for a judge to adopt in the trial of a commercial case is to place little if any reliance on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts.”

10. At paragraphs 68-69, the Judge then made a series of points which tended to reinforce the conclusions that he had come to with regard to the reliability (or otherwise) of evidence based on memory.
11. It is right to observe that the observations made in *Blue* and indeed in *Gestmin* were expressly on the basis that they were said to apply to “commercial litigation”. Whilst both of those cases were litigated in the Commercial Court, the approach is in my view plainly applicable to claims of a commercial nature which are pursued in the ‘ordinary list’ within the Queen’s Bench Division and I did not understand Mr Mansfield QC, who appeared on behalf of the Claimant to be arguing to the contrary.
12. Turning to the particular context relevant to this case. This was a contract of employment in relation to employment in a highly regulated and ‘document heavy’ industry. As the Claimant himself accepted, albeit by reference to transactions between financial institutions (of which the Defendant was one) and their own clients rather than their employees, one would expect the parties to have a full understanding of any transaction into which they entered and to be very careful in the statements that they made in that context. He also accepted that it was an industry in which the recording of substantial share awards was a critical feature. On previous occasions on which bonus payments were made, confirmation of the position was provided in

writing, including terms as to the vesting of stock awards – as to which, 3-year cliff edge vesting was the subject of one of the Claimant’s original complaints in these proceedings. In addition, as the Claimant himself recognised, in his first witness statement (at paragraph 34), “annual bonuses [are] a significant part of [the total remuneration of employees in Investment Banking] even where such bonuses are described as discretionary.” The fact that bonuses do form such a significant part of total remuneration, is also a reason why one would ordinarily expect commitments in respect of them to be made with care (in terms of both authority and the creation of binding commitments) and to be fully documented.

13. Conversely however, it is well recognised in the authorities that an agreement may still be found to be enforceable even if there remained “loose ends” that needed to be finalised. In *RTS v Flexible Systems Limited v Molkerei Alois Muller GmbH* [2010] 1 WLR 753 Lord Clarke, in giving the judgment of the court, stated the following (at paragraph 45):

“Whether there is a binding contract between the parties and, if so, on what terms, depends upon what they have agreed. It depends not on their subjective state of mind, but upon a consideration of what was communicated between them by words, or conduct, and whether that leads objectively to a conclusion that they intended to create legal relations and had agreed upon all the terms which they regarded or the law requires as essential for the formation of legally binding relations. Even if certain terms of economic or other significance to the parties have not been finalised, an objective appraisal of their words and conduct may lead to the conclusion that they did not intend agreement of such terms to be a precondition to a concluded and legally binding agreement.”

14. The point however, should not be overstated – in paragraph 48 of his speech, Lord Clarke referred to the judgment of Lloyd LJ in *Pagnan SpA v Feed Products Ltd* [1987] 2 Lloyd’s Rep 601, in which the Judge had observed that, whilst it was for the parties to decide whether they wish to be bound and if so, by what terms:

“...the more important the term is the less likely it is that the parties will have left it for future decision. But there is no legal obstacle which stands in the way of the parties agreeing to be bound now while deferring important matters to be agreed later. It happens every day when parties enter into so-called ‘heads of agreement.’”

15. As already stated, the claim is also advanced on the basis of proprietary estoppel. Aside from a difference on the relevant status of the ‘property’ in respect of which the estoppel can be invoked, there was little difference between the parties as to the relevant law. The relevant principles are helpfully summarised in *Snell’s Equity* at paragraph 12-038 in which it is stated that proprietary estoppel applies:

“...where A makes a promise that B has or will acquire a right in relation to A’s property and B, reasonably believing that A’s promise was seriously intended as a promise on which B could

rely, adopts a particular course of conduct in reliance on A's promise. If, as a result of that course of conduct, B would then suffer a detriment were A to be wholly free to renege on that promise, A could be under a liability to ensure that B suffers no detriment."

16. The authors then go on to make the point that the practical importance of the principle comes from the fact that it can be used in circumstances in which B does not rely on his current rights but "in reliance on a promise made by A as to A's future conduct". The point is made that the protection:

"..... is available even if there is no contract between the parties as B's claim depends not on showing that A was placed under an immediately binding duty as a result of A's promise but rather, it is submitted, on showing that, having made the promise, it would now be unconscionable for A to leave B to suffer a detriment as a result of B's reasonable reliance on the promise."

17. As to the requisite clarity of the representations made in order to found an estoppel, Lord Walker in *Thorner v Major* [2009] 1 WLR 776 at paragraph 56 said as follows:

"I would prefer to say (while conscious that it is a thoroughly question-begging formulation) that to establish a proprietary estoppel the relevant assurance must be clear enough. What amounts to sufficient clarity, in a case of this sort, is hugely dependent on context. I respectfully concur in the way Hoffmann LJ put it in *Walton v Walton* [1994] CA Transcript No 479.....Hoffmann LJ stated at paragraph 16:

"The promise must be unambiguous and must appear to have been intended to be taken seriously. Taken in its context, it must have been a promise which one might reasonably expect to be relied upon by the person to whom it was made."

18. As to the difference between the parties relating to the nature of the 'property' in respect of which the estoppel is said to arise, Mr Croxford suggests that the principle is applicable only in the case of property owned by the Defendant. He suggests that, given that the shares in respect of which the stock award was said to have been made are the property of the Defendant's parent company rather than the property of the Defendant itself, the principle can have no application. In support of that submission, he refers to *Snell* at paragraph 12-036 and to footnote 277. If one looks at paragraph 12-036, the authors make the point that:

".... it is only the Supreme Court or the legislature that could remove the current proprietary limit to the operation of the principle behind the promise-based strand of proprietary estoppel.....It is...difficult to see why it should be confined to promises relating to property owned or about to be owned by A."

19. Whilst suggesting that it should not be so confined, the authors recognise that that is indeed the current state of the law. However, were this the only obstacle to the Claimant's claim, I would be minded to find in his favour and to the effect that the principle is capable of being applied in circumstances in which the grant or promise of an award represented by shares in the parent company was effected through a relevant representation from the Defendant.

### **The facts**

20. I will set out the facts as I find them to be but in the course of doing so, will as appropriate, identify the relevant inferences or conclusions which I draw from those facts. A suitable point at which to start is, in my view, an email from Mr Peter Kiernan, the then Chairman of European Investment Banking at the Defendant, sent to Mr Steve Gardner, the Defendant's Head of HR, dated 20 April 2015. In that email he reported that he had had a conversation with the Claimant who had been informed that he was not to be paid a bonus in accordance with that which was set out in the Bonus Letter. The email describes the Claimant as having accepted that:

“...life has moved on since the [Bonus] letter not least because that letter did not envisage the IPO franchise that we now have. His opinion is that the fair way to treat his revenues is to take 50% of the gross IPO revenues and 100% of the gross M&A revenues as per his email to Jacques (copied below) and then apply the Baines scale. On that basis, I calculate his ‘ask’ to be £847,788 and he agrees with this calculation.”

21. At the same time, it is clear that FY2015 had been what Mr de Rosnay described as a “very challenging year.” He used those words in an email to Mr David Kassie, the Group Chairman, dated 22 April 2015 in which he made the point that a high fixed cost base coupled with falling revenue meant that the Defendant had had “no bonus pool for Fiscal 15”. The Claimant was described in that same email as a “key producer” who would need to be paid if he was to be retained. Those two themes – a shortage of money but a need to pay key individuals in order to retain them – remained significant problems for the Defendant throughout the 2015 calendar year and beyond. It was clear to Mr de Rosnay from about this time that if that circle was to be squared, it would require some assistance from CGG. On 18 May 2015, Mr de Rosnay had written again to Mr Kassie stating that:

“I think it would be helpful to have some stock which we could distribute “from the House”, if ever we were close to losing a senior person. Would appreciate your support here. This may become applicable for Christie [and two others]. Perhaps we could discuss today or tomorrow.”

22. From the terms of that email, the following is clear:
- a. Mr de Rosnay was becoming increasingly concerned about losing key people from the (Defendant's) business;
  - b. To reduce the risk of that happening, he wanted to be able to offer them a retention award, in the form of stock;



- c. The cost of funding that award would need to come from CGG rather than the Defendant;
  - d. The award would be made on an exceptional basis, timed by reference not to the usual annual bonus cycle but on an ad hoc basis if the departure of a “senior person” was “close”.
23. The following day, 19 May 2015, the Claimant was provided with a letter from the Defendant stating that he was to be awarded the sum of £350,000 in bonus for FY2015, made up of a cash figure of £113,750 (32.5%) and a share award of £236,250 (67.5%) granted in RSUs in CGG, “cliff vesting on the third anniversary of the grant.” The letter went on to record that the grant of the RSUs would be effected “as soon as practicable, expected to be no longer than 30 June 2015.” The bonus was notified to him at a meeting with Mr Jacques Callaghan, the then Co-Head of Investment Banking. The Claimant’s evidence is that at that meeting he raised his objections to the level of the award that had been made to him and restated his view that he had been responsible for revenues of £6.4 million during the relevant financial year. He had of course already put forward his ‘ask’ of £847,788.
24. On 21 May 2015, Mr de Rosnay fed back to Mr Kassie, the reactions that he had received from a number of recipients of bonus awards, giving a 4 out of 10 for Investment Banking (in which the Claimant was employed) and saying again that:
- “We are going to have to throw some stock at several key people. Not a lot. But it will make a difference.”
- He then went on to give four names of those “key people” – although of the four names, only the Claimant was described as “potentially” someone to whom stock was going to have to be thrown. From that I infer that, whilst retention of the Claimant was of importance, it was perhaps less significant an issue than in relation to the other names that had been identified by Mr de Rosnay.
25. Mr de Rosnay finished the email by restating to Mr Kassie that he “would like it if that stock came from the House as an “investment”.” The need for help from CGG was evident from the somewhat gloomy financial picture which Mr de Rosnay presented to the Board of the Defendant at its meeting on 26 May 2015 at which he said that although the 2015 year had started well, there had been a sharp decline in revenue in Q3 and Q4 had been “average”. Mr de Rosnay said that he “felt it appropriate to highlight to the Board that cash remained tight.”
26. The following day, 26 May 2015, the Remuneration Committee of the Defendant met and it was noted under the heading “Exceptional Arrangements/Awards” that:
- “.....the awards proposed by [Mr de Rosnay] at today’s meeting were in an effort to retain key staff after delivering to them disappointing bonuses for Fiscal 2015.”

The names of a number of people within Investment Banking were then identified, with stock awards proposed to at least 2 of the 4 names that had been identified by Mr de Rosnay in his email of 21 May 2015 to Mr Kassie. No award was proposed for the Claimant and the stock awards that were approved for the two named individuals

were £125k and £75k respectively, substantially lower than the figure of £1 million that the Claimant suggests was promised to him by Mr de Rosnay on 16 July 2015.

27. As already stated, the Claimant was clearly disappointed with his remuneration for 2015 as confirmed to him in the letter of 19 May 2015. That much is to be inferred from the fact that on 1 June 2015, he had a discussion with a ‘head hunter’ at Stonehaven International, with a breakfast meeting fixed for 16 June. In addition, on 10 June 2015, he sent an email seeking to follow up on a possible opportunity with Evercore Partners International as he was “keen to find a better platform” and on 11 June 2015, he met with a senior employee of Harris Williams & Co (an investment bank). He also met Mr Dominic Lester at Jefferies investment bank on 7 July 2015 and followed up with an email on 12 July 2015 inviting further discussion about possibilities that might be open to him.
28. On 11 June 2015, the Claimant had also arranged to meet with Mr de Rosnay. In his witness statement, the Claimant states that at this meeting, he set out three issues that needed to be addressed – an increase in his salary, a cash and share top up of his bonus for FY2015 and “further certainty in relation to future bonuses”. This was, said the Claimant, an issue of “trust”, “given that the thing that I had put in place in 2011 to try and help me figure out what bonuses might be seemed to be thrown into the dustbin.” The reference to 2011 is clearly intended to refer to the Bonus Letter which was later to form part of the claims that he brought against the Defendant and which was dismissed at the summary judgment stage as set out above.
29. Some time after that meeting, Mr de Rosnay emailed the Claimant on 29 June 2015 stating that he had “not forgotten our conversation. Still working on it.” In the interim, Mr de Rosnay had commissioned Mr Bridges to undertake some financial analysis of, amongst other things, the revenue generated over the previous 3 years by Investment Bank MD’s (of which the Claimant was one). Mr Bridges sent this analysis to Mr de Rosnay on 19 June 2015, with the message that “this material provides a helpful backdrop to considering retention.” The analysis showed the Claimant’s revenues as being £3.35 million for 2015 as opposed to the £6.4 million advanced by the Claimant himself.
30. On 30 June 2015, the Claimant followed up on a request made by Mr de Rosnay the previous day by providing him with details of his pipeline of work over the next 12-18 months. Most of the prospects set out in the pipeline document provided by the Claimant had a success rate probability of substantially less than 50%. Nevertheless, he suggested that he “will need absolute certainty on my compensation in the event of [projects relating to Clarke Energy and Melrose/Project Damon] completing.” The Claimant also referred to the need for “absolute certainty on future compensation guidance on for other revenues generated”. (sic) It is clear that he held a sense of grievance about the fact that, from his perspective, the ‘certainty’ that had been provided by the Bonus Letter had provided no certainty at all and was not complied with by the Defendant. It is also clear that, in order to prevent a repeat of this, something more “certain” was required – certainty needed to be “absolute”. Again, as the Claimant said in his evidence “the trust was very eroded and the trust with the people was also eroded.” Referring again to the Bonus Letter and his concern that it had not been complied with, he said that “I thought it was a breach of expectation and trust.”

31. On 10 July 2015, Mr de Rosnay emailed Mr Bridges stating that “I think we have a serious retention problem. Can you please come up and see me before 3pm”. Later that day, Mr de Rosnay emailed again at just before 3.00 pm suggesting that they talk over the weekend. He said that he was due to meet with the Claimant the following week and that the key was “to lock down, asap” four individuals, including the Claimant. Mr Bridges then spent some time in an email of 12 July 2015, setting out his thoughts on the retention problem and saying that he was due to meet the Claimant the following day, after which he would report back. In the meantime, he suggested a modest increase in the Claimant’s salary from £175k to £200k. He also identified the Claimant as one of seven people who should be given “retention stock grants”, with the Claimant being one of four that should be prioritised. Whilst no specific amounts were identified, Mr Bridges said of himself that he “would like as large a grant as possible to lock me in and provide the opportunity to earn a material award if we are successful.”
32. The Claimant had during this period continued to pursue alternative employment possibilities and on 13 July had met with Mr Philip Yates of PwC, following which he sent him an up-to-date CV and again invited Mr Yates to follow up and discuss further.
33. Mr Bridges duly met with the Claimant on 14 July 2015. He reported back to Mr de Rosnay by email of that date that whilst the Claimant “believe[d] in the platform and wants to believe it will pay him” he was “now not convinced hence the need for certainty. I said I had recommended to you a salary rise and stock grant. I said you were also a big supporter and would see him later that week.” From the content of Mr Bridges’ email and its report of his meeting with the Claimant, it appears that as at 14 July 2015, whilst Mr Bridges may have recommended a stock grant to the Claimant, no final decision had been made either as to the fact of an award or still less as to any particular amount. The Claimant was uncertain as to whether the email from Mr Bridges properly recorded the conversation that the two of them had had but it seems to me that given that it was written very shortly after the relevant event, its contents are likely to have been accurate. Again, from the contents of Mr Bridges’ email, it is again clear that a key driver for the Claimant in terms of his remuneration was to achieve certainty, something that was required in order to resolve his ongoing issues of trust with his employer.
34. From Mr de Rosnay’s perspective, it is equally clear that, as at mid-July 2015, whilst he may have wanted to secure an investment from ‘the House’ in order to use this as a retention tool to secure the continued employment of key members of staff, he had not by this point achieved that aim and was on the face of it, some distance from obtaining any such contribution from the parent company. In addition, there is no evidence of any approval by CGG or the Defendant’s Remuneration Committee for any awards to be made to any individuals who might fall within Mr de Rosnay’s wish-list of staff to be retained beyond the two modest awards that had been approved on 26 May 2015. So, if Mr de Rosnay were to make a firm commitment at that time to make a £1 million award, whilst he may have had ostensible authority to do so on behalf of the Defendant, he certainly had no actual authority. In addition, given that the promise of stock, if any, was to relate to shares in CGG and to be financed as an ‘investment’ from that entity, he would have been aware that, if he made such a promise, it would not be within his control to deliver on it. In short, he could not be

sure that his promise would be acceptable to CGG and he would therefore need the parent to sign off on the arrangement on an ex post facto basis.

35. The key meeting with Mr de Rosnay then followed on 16 July 2015. The Claimant's case is that he was told at that meeting that he would be given an award of £1 million in stock. He sets out his account of that meeting in some detail in his second witness statement at paragraphs 50-62. I will not recite those paragraphs in full, suffice it to say that he says that Mr de Rosnay had said that he – along with two or three others – would be made a retention award of £1 million and that he would receive a letter in September. He goes on to say that:

“The promise of the Retention Award was far more significant to me [than the salary increase that had been made]. It left me with the impression that Mr de Rosnay had listened carefully to my complaints and acknowledged that I was important to the Defendant's success in its strategy.....As much as anything I felt that in making the promise, Mr de Rosnay had made a significant step in re-building trust and purposefully so on his part.”

36. He accepts that there was no discussion on the issue of vesting – his evidence was that the amount of money in the share award was “so predominant that the vesting is somewhat secondary, particularly for an amount at that level.....one way or another, this was very good news.” He also suggested that he made an assumption that “the vesting schedule would be reasonable.” He says this even though the most recent bonus that he had received for FY2015 was subject to the 3 year cliff-edge vesting that was later to found the basis of one of his claims against the Defendant in these proceedings.
37. It was put to the Claimant that there was no email, text or other communication after that meeting to indicate any reference to what Mr Croxford described as the Claimant's “new found wealth.” The Claimant accepted that this was so but said that there was “the expectation of a follow up meeting in September.”
38. Mr de Rosnay gives his own account of the meeting in his witness statement at paragraph 51. He makes the points that the Defendant did not have the ability to issue any form of equity as all awards were made “at CGG level in CGG stock”. He also suggests, essentially by way of comment, that he would not have made the unconditional award for which the Claimant contends as to do so would not have been consistent with the stated intention of retaining staff.
39. Whilst, in line with the guidance from *Blue v Ashley* and *Gestmin*, to which I have referred above, I attach limited significance to the recollections of either the Claimant or Mr de Rosnay, regarding an unrecorded and undocumented meeting which took place nearly 7 years ago, there is one significant matter on which I should make a finding given the sharp dispute on the evidence between the two protagonists as to whether a figure of £1 million was mentioned at all on 16 July 2015. The Claimant is clear in his evidence that such a figure was mentioned (he in fact goes further and suggests it was not simply mentioned but was promised) – Mr de Rosnay denies making any reference to this figure. I reject Mr de Rosnay's evidence on this point. I have been provided with a transcript of a call between Mr de Rosnay and Mr Bridges

which took place on 22 July 2015, just 6 days after the key meeting. Mr de Rosnay spends the first part of the call updating Mr Bridges on what he has said to the Claimant and in doing so, says as follows:

“So I said to [the Claimant], I said, look, on the stock, you are going to get a tap on the shoulder, ummm, in September at some stage. We are going to write you a letter saying that you’re gonna get a stock award. It’s gonna be substantial, the quantum I’m not sure of, I suspect it will be around the million pound mark, um but I don’t know exactly how much.”

40. Given that this was a report by Mr de Rosnay of a discussion that he had had with the Claimant just a few days before and given that there is no obvious reason why he should mis-report the conversation to Mr Bridges (not least because to do so might lead to Mr Bridges having similar expectations about his own position and potential entitlement), I take the view that his report of the meeting with the Claimant was a true one and that he did make a reference to the figure of £1 million. The fact that the Claimant himself then appears to have referred to that figure in discussion with Mr Bridges in mid-August 2015 (as set out in Mr Bridges’ email to Mr de Rosnay of 18 August 2015), reinforces that conclusion. Whilst Mr de Rosnay may have convinced himself that that was not mentioned, I suspect that he may have been influenced by the way in which matters presented themselves when a claim was first put forward by the Claimant’s then solicitors in their pre-action protocol letter dated 21 July 2016. In that letter Doyle Clayton, on behalf of the Claimant said that:

“Our client has a contemporaneous record of the discussion on 16 July and the value ascribed to the award of £1 million.”

41. In its substantive response to that letter, dated 5 September 2016, Mishcon de Reya on behalf of the Defendant wrote that:

“Mr de Rosnay did not offer your client a stock award of £1 million.... Your client’s recollection of the discussion he had with Mr de Rosnay is wrong. We also note that you have failed to enclose the supposed contemporaneous record of this meeting.”

42. Whilst it remains the case that no contemporaneous record of the meeting has been disclosed by the Claimant, it nevertheless appears that from a relatively early stage, the Defendant was disputing the fact of any reference to the figure of £1 million as having been made at the meeting. This then fed into the drafting of the Defence (at paragraph 73) – where there is a denial of the mention of any figures at the July meeting. In those circumstances, the most likely explanation for Mr de Rosnay’s evidence – which on the face of it is contradicted by the contemporaneous or near contemporaneous material to which I have referred above – is that he has aligned himself with the case as originally advanced by or on behalf of the Defendant. I do not regard him as having consciously sought to advance a false case as to what was said to the Claimant on that day but I do conclude that his evidence is wrong on this point. It is perhaps an illustration of the wisdom of the approach set out by Leggatt J in first *Gestmin* and then *Blue v Ashley* with regard to the weight to be given to recollections of things said at undocumented meetings.

43. I do of course note that on 1 September 2015, Mr de Rosnay emailed Mr Daviau and Mr Kassie under the subject heading “Retention – Confidential” and suggested that whilst he had told the Claimant and others that they would “get some stock at year end....I wasn’t specific on the amount but said it would be material.” It might be said that that communication was in turn inconsistent with a finding that a figure of £1 million had been mentioned on 16 July 2015 however it seems to me that in his September email to his superiors, he did not want to ‘scare the horses’ by mentioning the fact that he had dangled a £1 million carrot in his discussion with the Claimant. Had he told Messrs Daviau and Kassie that he had even raised that figure as a possibility, it might well have had the effect of closing down the chance of gaining any investment from the House as a retention tool.
44. Very shortly after the meeting on 16 July 2015, the Claimant sent an email on 20 July 2015 following up on the possibility of a new role with Evercore and confirming his availability to attend a meeting on 22 July 2015. It is clear that, whatever comfort he may have taken from his discussion with Mr de Rosnay just a few days earlier, it was not sufficient to quell his interest in a potential opportunity with Evercore.
45. Perhaps more significantly, on 22 July 2015, he sent an email to Mr Bridges in which he said as follows:

“I am not sure when you are back and able to meet, I thought I would check in on a couple of important items.

Alexis had a constructive conversation last Thursday, I offered a couple of proposals to consider.

Time is marching on and these discussions need to be resolved sooner rather than later. I am very keen to make the Canaccord Genuity project work but I cannot commit without a clear and committed compensation structure that reflects the value that I am bringing and will bring to the firm.

I would also like to understand where the senior advisor contract discussions are getting to (JEC and probably also PAK). In case not already clear, I am strongly against senior advisors having a “click and collect” % arrangement regardless of the nature, extent and frankly necessity of their contribution. It is very concerning that two of our senior management are trying for this route. To be blunt, I am not sure why I need either of them for my practice.

The two topics are not unconnected. Suffice it to say that I would be very unhappy if the firm feels able to sign % banded contracts with senior advisors and cannot provide sufficient certainty for my compensation.

I cannot help also feeling that Alexis is ultimately distracted by the CEO appointment and who knows where he might be come next May.”

46. The Claimant's evidence was that the proposals that he had put forward were in relation to "the bonus catch up relating to salary and a percentage of fees." That may be correct but what I find hard to accept is that these were, as the Claimant claimed in his evidence "separate things" from the £1 million stock award which he said that the "ultimately distracted" CEO had unequivocally agreed to pay him just six days earlier. Mr Croxford described the email to Mr Bridges as an "unhappy" one. It plainly is just that and its tone runs counter to what would in my view have been a substantial degree of satisfaction on the part of the Claimant had he actually been made the award for which he contends and thus given some "certainty" as to his remuneration. As with the Evercore email, sent just after the key meeting with Mr de Rosnay, these are not the actions of someone who has just been given a very substantial award, far exceeding any previous bonuses which had been paid to him.
47. In addition, given that the email to Mr Bridges is plainly about the need for a "clear and committed compensation structure" to reflect his value to the firm, it is surprising to say the least, that in setting out his plea for certainty, the Claimant made no reference at all to what he says was the certainty of a £1 million stock award to which Mr de Rosnay had committed himself. All the more so in circumstances in which he was challenging the basis on which senior advisors were being rewarded. Whilst his alleged stock award may not quite fit the definition of "click and collect", it was on the Claimant's case something that was being given to him 'regardless of contribution.' That being so, the Claimant's failure to make any reference to it at all, is consistent in my view with no such commitment having been made.
48. Before leaving the meeting of 16 July 2015, it is worth reflecting on one point on which Mr de Rosnay and the Claimant were ultimately in agreement, namely that Mr de Rosnay had said to the Claimant that he would get a "tap on the shoulder" in September. Not only is that point accepted by the Claimant but it is also consistent with an email that Mr de Rosnay sent to Mr Kassie on 24 July 2015 in which he said:
- "As discussed, I told Bridges, Arkus, Feneley, Christie that we would approach them in September about a Stock Award."
49. The language of "tap on the shoulder" and the words used by Mr de Rosnay in his email to Mr Kassie, seem to me to provide further evidence that no award of stock had been made at the July meeting. In addition, it is notable that Mr de Rosnay made no reference in that email to having made any sort of commitment to a £1 million award. There are two possibilities here – either Mr de Rosnay had in fact made no such promise to the Claimant or he had made such a promise – without any authority from "the House" to which he had been looking to fund any such award – but was now actively concealing what he had done. In my view, it is the former that is what transpired.
50. Returning to the key elements of the chronology, on 18 August 2015, Mr Bridges and Mr de Rosnay exchanged emails relating to the Claimant's remuneration. In his email, timed at 13.16, Mr Bridges set out a summary of his "last discussion" with the Claimant and set out the suggestions that he had made on this issue. He referenced a suggested "material stock grant in the Autumn" before noting that "he [the Claimant] believes you suggested a grant of £1 million". Whilst this document is a record sent by Mr Bridges to Mr de Rosnay relating to a discussion that he had had with the Claimant, again, I have no reason to doubt that Mr Bridges was capturing the message

that he took from his discussion with the Claimant. In that regard, the language is significant – the language used in relation to the stock award was tentative – it uses the words “belief” and “suggested”, neither of which is consistent with the certainty of an agreed amount for which the Claimant contends. The fact that the Claimant does not appear to have said in terms (or anything like it) that a firm commitment had already been made in the sum of £1 million, provides a yet further indication that this had not been the outcome of the July 2015 meeting. In addition, it is difficult to see why the Claimant’s apparent reaction to the suggestions being put forward by Mr Bridges was “negative” (as recorded by Mr Bridges) if in fact £1 million in stock had already been ‘banked’.

51. On 24 September 2015, Mr de Rosnay sent a further email to the Claimant at 16.37 which contained the following words:

“Further to our meeting and further to my recent discussions with Mr Daviau, I am pleased to confirm that the Firm will grant you a stock award at some stage during this fiscal year. We are still working on the quantum and timing, please bear with us.

I want to insist on the confidential nature of this future award. Only a very select few senior high performers have been approached. Any form of disclosure of this award other than between you and CG would most certainly trigger a cancellation of the award.

We are pleased you have been selected and we will be in touch as soon as practical.”

52. Again, the language used in this email is significant. Whilst the email is positive as to the grant of an award, it nevertheless refers to it in prospective terms – the firm “will” grant a stock award “at some stage during the fiscal year.” It makes no reference to any agreement already having been reached and again makes no reference to the figure of £1 million. On the contrary, it refers to “quantum” as something that is being worked on. The Claimant’s evidence was that he read the reference to “quantum” in that context as being linked to timing and this was simply a reference to the quantum of shares that would fall to be purchased as at the date on which the award was granted. I do not think that that is the natural or appropriate reading of the reference to “quantum” in the context in which it was used in that email. From the perspective of the Claimant, whilst the particular date of the award might have been of some significance, the amount of shares that he would receive would not have been – from his perspective, the value of the ‘quantum’ lies not in the number of shares that he would receive but the £ sterling value of the award that would be used to purchase those shares. In addition, the “quantum” of shares was not something that the Defendant could be “working on” – the number of shares that would need to be purchased in order to reflect the award of £1 million, would be determined by the share price at the date of grant and that was not something that could be “worked on”. To me, the ordinary and natural meaning of the language used in the email was that the reference to “quantum” was to the amount of the award in £ sterling, not the amount of shares that could be bought with that sum. That in turn is Mr de Rosnay saying something that was entirely inconsistent with the Claimant’s case. On his case,



the “quantum” had been fixed back in July whereas on the face of the email, it was a work in progress.

53. In addition, the Claimant’s own evidence as to his understanding of how an LTIP award would work was as follows:

“My understanding is that the company comes up with the financial amount, which the – I guess it is the trustee then takes and buys shares on the market. So the number of shares that ends up in the award is defined by how many shares are acquired to fulfil the grant.”

54. His pleaded case is to similar effect, the Particulars of Claim at paragraph 72 reading as follows:

“As a stock award, by “quantum” the Defendant was referring to the number of RSU which would need to be awarded to satisfy the promised value of the award (i.e. £1 million). The number of units valuing any given cash amount would vary from time to time depending on CGG’s share price and would typically be calculated by reference to the share price on the date of the grant of the award.”

55. That evidence and the pleaded case, both of which appear to be an accurate description of the process, nevertheless serves to demonstrate that from a “quantum” perspective, the key issue is the “financial amount” – this is then used to buy shares on the open market, a process which does not on the face of it have any or any significant “quantum” issues which would need to be or could be considered in advance of making an award. Indeed it goes further, in that one could not start to address those issues until one was aware first, of the monetary value of the award and secondly, the date of grant at which the award would be ‘used’ for the purpose of purchasing shares in the open market. I therefore reject the Claimant’s evidence that he understood the word “quantum” in the email from Mr de Rosnay, was a reference to the quantum of shares needed for the purpose of the award rather than a reference to the key value for the purposes of the award, namely its £ sterling equivalent. This in turn leads to the conclusion that quantum (in terms of the value of any award in £ sterling) was yet to be determined as at September 2015 which in turn evidences the fact that no commitment to a particular figure had been made in July 2015.

56. Later in the evening of 24 September 2015 (at 19.27), Mr Gardner, the Head of HR, sent an email to Mr Bridges in which he reported on a conversation that he had had with the Claimant and which reads as follows:

“Just bumped into Colin on my way back to the office. He will speak to you but made me aware a) that Alexis had promised him a letter in September which was clearly now not coming and b) Alexis had indicated a 7 figure number to him so that if what was delivered was less than that, there would have been “too much messing about” in his words. He’ll make the same points to you I’m sure.”

57. Again, whilst I have not heard evidence from Mr Gardner, given first, that the email was written within a very short period after “bumping into” the Claimant and secondly that there is no basis on which to presume that he may have deliberately mis-recorded the conversation that the two of them had, I proceed on the footing that the email is likely to be a reasonably accurate record of what was said by the Claimant to Mr Gardner on the evening of 24 September 2015. As to that, it appears to me that what the Claimant was saying to Mr Bridges was that:
- (1) In the July 2015 conversation, Mr de Rosnay had made a commitment that the award of stock would be confirmed in a letter that was to be sent to the Claimant in September;
  - (2) Whilst Mr de Rosnay had mentioned a “7 figure number” he had not made a commitment to the effect that the award would actually be £1 million;
  - (3) The Claimant was frustrated at the continuing lack of certainty – he was being “messed about”.
58. The difficulty of course for the Claimant in relation to this communication is that none of it is consistent with either of the two bases upon which he seeks to found his contractual claim. It does not support his case that by 16 July 2015 or 24 September 2015, he had actually been made a contractually enforceable stock award in the sum of £1 million. It also further undermines his evidence that he read the reference to “quantum and timing” in the email that Mr de Rosnay had sent to him earlier that day as being a reference to the number of shares that would need to be purchased in order to meet the terms of the stock award. It is quite apparent from the conversation as recorded by Mr Gardner that the Claimant’s concern was very much as to the level of the prospective award – he had been given an indication that it would be a 7 figure sum and that he would not be happy if the prospective award was made in a lesser amount. In short, he was plainly concerned with the quantum of the award itself and not the quantum of shares that would derive from it.
59. The Claimant’s evidence was that he did not have any clear recollection of the discussion that had apparently taken place with Mr Gardner but that he believed that any anxiety that he had was not about the certainty of the commitment that he contends had already been made but whether there was a “re-trade” with regard to that award. I do not think that the contents of Mr Gardner’s email are consistent with that position and it appears to me that the Claimant’s evidence is an ex post facto rationalisation of events in the light of the claim that he has made in these proceedings.
60. On 15 October 2015, and consistent with his message to the Claimant of 24 September 2015 that he was “working on” timing and quantum, Mr de Rosnay emailed Mr Daviau asking him to help to progress the stock award, suggesting that he needed to tell “the key guys” – which included the Claimant – when they could expect the stock and hoping that it could be done within the next 4 weeks. Mr Daviau responded to the effect that it would take “several weeks to get this aligned”. He also asked Mr de Rosnay to confirm whether the figure that he had in mind was \$750,000. Mr de Rosnay’s response was to raise the issue of whether it should be the same amount for each of the recipients – Mr Daviau confirmed that he was content for the amounts to be different in each case. Again, if Mr de Rosnay had some months

previously made anything like a firm commitment to grant to the Claimant an award of £1 million, it seems unlikely that he would have been writing to Mr Daviau in the terms that he did – he would have been wanting to push Mr Daviau towards a figure of £1 million in order that he could ‘make good’ on the promise that he had made some months earlier. He would have been being either very forgetful or very Machiavellian and was hoping to manoeuvre Mr Daviau into a position in which “the House” would meet that commitment. Whilst I entirely accept the suggestion that Mr de Rosnay showed himself to be capable of engaging in strategies in order to achieve a particular business outcome, it seems to me unlikely that the email to Mr Daviau was written with any such strategy in mind. The problem is first, that the strategy is one over which he would not have ultimate control – he could not force Mr Daviau to sign up to an award of £1 million – and secondly, there is no evidence that he in fact even attempted to do this at any point before the Claimant’s employment with the Defendant came to an end in June 2016.

61. In the meantime, the Claimant continued to follow up on potential employment elsewhere. On 19 October 2015, a contact of the Claimant – Adrian Haxby of Peel Hunt LLP, a competitor business of the Defendant – put him in touch with John Hughes, the Chairman of Spectris Plc (“**Spectris**”). Spectris is a supplier of precision instruments. Mr Haxby had previously worked with the Claimant at the Defendant. The Claimant suggested that Spectris was a potential client of the Defendant. If that were right, it seems strange to say the least, that Mr Haxby would have been pointing them in the direction of a competitor of the business in which he was employed. In addition, all of the communications with the Claimant were via his personal email address rather than his business one. Furthermore, the introductory email from Mr Haxby describes that introduction as having been made on the basis that the Claimant was “thinking about possibilities on the corporate side.” Whilst the nature of the potential opportunity is unclear, it is apparent that it was to be a personal one for the Claimant rather than a business one for the Defendant. That being so, it provides further evidence of the Claimant continuing to examine opportunities for employment outside the Defendant which in turn is somewhat inconsistent with his position that he had by this time been given a binding commitment which would lead to him receiving £1 million in stock from CGG.
62. On 6 November 2015, Mr de Rosnay emailed the Claimant again to let him know that the Defendant was “hoping to approach you formally about the Stock Award in 3 or 4 weeks”. The Claimant thanked Mr de Rosnay for the update and whilst he suggested that it would be worthwhile to have a catch up, this was with regard to a review of “activity/ progress on my part”. He did not challenge any of the contents of Mr de Rosnay’s email to him which spoke of a formal approach being made shortly thereafter.
63. The Claimant sent a further email to Mr de Rosnay on 2 December 2015 in which he asked for an update on the stock award, expressing the hope that it would be “unveiled shortly”. He then wrote as follows:

“I believe I have been very patient since our initial conversation in July and the prospective award is fundamental for me.”
64. Again, the language used by the Claimant is significant – his email is on the face of it, a communication from someone who is still waiting for a formal commitment to be

made to fulfill the expectations that had been raised back in July. He uses the word “prospective” to describe the award which he had been waiting patiently to receive. Again, had he understood that a contractual commitment had been made in July or alternatively in September, it seems to me unlikely that he would have expressed himself in the way in which he did. The “prospective award” is described by the Claimant as being “fundamental” to him which I read as being fundamental to his trust in the Defendant and his continued employment by it, that trust having not yet been rebuilt. It is also of course entirely consistent with him having felt that he was “being messed about” by not having been given the certainty for which he was looking.

65. Mr de Rosnay contacted Mr Daviau again on 8 December 2015 – he described the Claimant as being one of the “pissed off guys” who felt that they had “been waiting since July”. He suggested that Mr Daviau could calm the situation by writing to the individuals concerned and giving each of them a letter as soon as possible, even if the award was only to be made the following May. Again, Mr de Rosnay’s communications are consistent with the position being that there had been no formal commitment at that stage and that the lack of such commitment was causing him a loss of credibility. Again, I do not believe that Mr de Rosnay was playing some elaborate game designed to get Mr Daviau to come good on any ill-advised promise that he (Mr de Rosnay) had made to the Claimant earlier in the year. The same goes for the telephone conversation between Mr de Rosnay and Mr Daviau on 9 December 2015 (of which I have been provided with a transcript) in which the former again urged the latter to call those who were “pissed off” at the situation with regard to the stock award.
66. Mr Daviau did indeed contact the Claimant, emailing him on 20 December 2015. The email describes Mr de Rosnay as “contemplating a share issuance scheme” and says that:
- “Alexis was trying to get some kind of indicative note out to you as soon as possible. Given I am trying to integrate the process with the other regions and any such award needs to integrate with the broader picture on compensation, we are still a couple of months away from formalizing the exact details.”
67. The Claimant’s case is that the detail, at least as to the fact and amount of the award did not need to be formalised. If that were so, it is again surprising that he did not respond to either Mr Daviau or to Mr de Rosnay to express that view having received the email from the former which clearly contains a substantial degree of uncertainty as to any award that was in the contemplation of Mr de Rosnay, this was inconsistent with a firm commitment that had already been made.
68. The Claimant’s examination of personal opportunities in the market continued into 2016. On 26 January 2016, and following a meeting that they had had on the previous Wednesday, the Claimant forwarded his CV to John Hughes – any doubt as to whether the potential opportunity with Spectris was personal is resolved by this email. If Spectris was a potential client of the Defendant rather than a potential employer of the Claimant, there is no obvious reason why Mr Hughes would be provided with a copy of the Claimant’s personal CV – the Claimant conceded in his evidence that this

was him “looking at opportunities” but suggested that this was because of a “niggle of [mis]trust” following the email from Mr Daviau of 20 December 2015.

69. On 21 February 2016, the Claimant again sent his CV to an external party, this time to recruiters acting for Jefferies. Whilst the Claimant suggested that this had been done following an approach that had been made to him rather than the other way around, it is plain from the contents of the email of that day that he was putting himself forward as being available for other employment and was prepared to meet with other potential employers. The evidence however goes a little bit further than that as the Claimant accepted in evidence that if he took up employment with a competitor – such as Jefferies would appear to be – he would lose his entitlement to any unvested LTIP shares. By May 2016, he had got to a position where he was considering the possibility of a “team move” to a competitor. He had also lined up a series of “introductory calls” with recruiters/potential employers on 13 April 2016. Mr Christie’s explanation for this was again that he suspected that there was a “re-trade” by which in the context of his claim, must be taken to mean that the Defendant was planning to renege on a contractual commitment that it had made. I think the better interpretation is that he felt that he had been strung along by the promise of “jam tomorrow” and was looking to leave the Defendant. The difficulty with his argument is that even if he was right, that there was evidence of a “re-trade” the effect of him going to a competitor would very likely be that he put at risk any entitlement that he may have had to receive the benefit of a stock award, thus taking away the need for any “re-trade” – in short, he would have extinguished any loss that would have flowed from the re-trade as he would be a ‘bad leaver’ who would lose any entitlement to unvested stock. I do not think it is likely that he would have been prepared to risk losing an entitlement by moving to a competitor – conversely, I do think he would have been prepared to move to a competitor if sufficiently “messed about” by the Defendant.
70. The Claimant wrote to Mr Daviau on 23 May 2016 in the hope of having a meeting with him on a visit that the latter was making to London. In his email, the Claimant said as follows:
- “As you know, Alexis made a verbal commitment last July on a grant of stock, he mentioned a £1m award saying that I would receive a letter in September for grant in May this year.
- .....
- During 2016 to date and last week’s bonus discussion, no mention was made of any award. Indeed I got the impression from Simon that during February/March I had been considered for possible cost rationalization.”
71. He then set out some information about his performance/pipeline before saying:
- “...Alexis in particular has decided to make very significant representations to me that he has not delivered on and even worse he is barely communicating with me. Investment banking is built on trust, with clients and colleagues.”

72. Again, the language used by the Claimant falls short of the case that he seeks to advance in these proceedings – the difference is subtle but significant. He does not say “I was granted an award of £1 million in stock to which I am entitled.” Rather he says that a £1 million award was “mentioned”. He also refers to Mr de Rosnay not having delivered on his “representations.” It seems to me that, if the Claimant had ‘banked’ £1 million in July (or September) of the previous year, he would have expressed himself in more robust terms with regard to his entitlements which were due from the Defendant. Instead the email again reads to me much of a complaint that he had been strung along with promises (falling short of contractual ones) of ‘jam tomorrow’ and the jam had not been delivered.
73. Mr Daviau was clearly unimpressed with the Claimant’s communication. He replied the following day stating that he was “not aware of any explicit amount of promise that was made on a share award.” Whilst in his response which followed, the Claimant slightly firmed up his position, he nevertheless referred to the figure of £1 million as something that Mr de Rosnay was “initially indicating” at the July 2015 meeting. Mr Daviau replied in robust terms, describing the Claimant’s emails as being “self-serving.”
74. The Claimant was dismissed from his employment with the Defendant shortly thereafter on 10 June 2016 and in circumstances in which the Defendant accepted that it had acted unfairly within the scope of section 98 ERA. As already stated, the Defendant consented to a judgment to that effect in the ET issued on 9 May 2017. Although these facts were pleaded as part of the Particulars of Claim served on behalf of the Claimant, they shed no light on the issue before me as to the status and effect of the July 2015 meeting between the Claimant and Mr de Rosnay and the email from the latter to the former dated 24 September 2015.
75. In the light of those findings, I turn to the specific issues set out at paragraph 5 above, dealing first with the claim based on contract.

### **Contractual claim – Issues for determination.**

#### **(1) What were the terms of any offer made by Mr Alexis de Rosnay (the Defendant’s CEO) on 16 July 2015 on behalf of the Defendant?**

76. I place limited reliance on the recollections of the two protagonists as to the detail of the conversation that took place on 16 July 2015. Looking at the documentary evidence which is available relating to the period both before and after that meeting, it seems to me that Mr de Rosnay offered no more than the prospect of a ‘tap on the shoulder’ later on in the year and that whilst he may have floated the possibility of a seven-figure sum, he was circumspect enough to realise that he could not offer any form of certainty as to that figure and therefore did not do so. In reaching that conclusion I bear in mind in particular that:
- a. Any stock award would have needed the agreement of CGG and sign off from the Defendant’s Remuneration Committee – neither of those were in place as at July 2015. Mr de Rosnay is in my view an experienced and canny operator who would not have ‘overpromised’ anything to the Claimant that day;

- b. There is a substantial amount of contemporaneous material which, as set out above, is inconsistent with the Claimant's case on this issue. In particular:
- i. The Claimant's email to Mr Bridges of 22 July 2015;
  - ii. Mr de Rosnay's email to Mr Kassie of 24 July 2015;
  - iii. Mr Bridges' email to Mr de Rosnay of 18 August 2015;
  - iv. Mr de Rosnay's email to the Claimant of 24 September 2015;
  - v. Mr Gardner's email to Mr Bridges of 24 September 2015;
  - vi. The Claimant's email to Mr de Rosnay of 2 December 2015.

**(2) Was what was said sufficiently certain to give rise to a contract?**

77. The short answer to this is no. Whilst the question of whether a contract has been formed is an objective one, the subjective understanding of the parties, evidenced in particular by their post-'contract' communications provides guidance from which appropriate inferences can be drawn as to whether objectively, a contract was concluded on 16 July 2015. The Claimant was disappointed with his remuneration as evidenced by the award made to him for FY2015. This had caused him to lose trust in the Defendant. In order to rebuild that trust and to persuade him to commit himself to continued employment with the Defendant, he wanted certainty. The meeting of 16 July 2015 gave him no such certainty – that fact is demonstrated by his reaction to that event as evidenced in the correspondence to which I have referred immediately above. Mr de Rosnay, who was undoubtedly facing a retention problem at this time, was shrewd enough to dangle the carrot of a prospective award of an indeterminate amount as a means of keeping his key members of staff (of which the Claimant was one) whilst he worked on securing the help of CGG in financing that prospective award.

**(3) Was what was said, assessed objectively, intended, without more, to create legal relations?**

78. Again, the answer is 'no' – this was an indication of 'jam tomorrow' which objectively viewed, fell short of any intention to create legal relations. Both the Claimant and Mr de Rosnay left the meeting on the basis that there was work still to be done and that any intention to create legal relations would only arise at a point at some time in the future after the 'tap on the shoulder' had taken place.

**(4) Was it objectively apparent that any Retention Award was subject to further confirmation, consideration or approval with the Defendant or its parent company, CGG and/or would only be granted by way of an award agreement in writing subject to terms and conditions?**

79. The answer is 'yes' – any award that was to be made was to be the subject of confirmation if and when the 'tap on the shoulder' took place. Not only was that objectively apparent but it was also subjectively apparent to the Claimant who had not

achieved the desired ‘certainty’ as to his future compensation or the rebuilding of trust that he saw as having been broken at the point at which his bonus for FY2015 was made.

**(5) Was any such agreement confirmed or ratified in subsequent correspondence?**

80. The only subsequent correspondence which might have amounted to a confirmation or ratification of any agreement reached on 16 July 2015, is the email from Mr de Rosnay to the Claimant dated 24 September 2015. Mr Mansfield relies on this document as being confirmatory given the use of the words “pleased to confirm” and the reference to “cancellation”. In my view, whilst that document may have provided some additional comfort to the Claimant, it cannot be regarded as either confirmation or ratification of any earlier agreement. Neither Mr de Rosnay nor the Claimant regarded the figure of £1 million as having been agreed and the email of 24 September 2015, with its reference to “quantum” as something that was still being worked on, cannot objectively be read as confirming the existence of any prior agreement in that amount.
81. Nor can it be said that this email tidied up the ‘loose ends’ of any incomplete agreement which had been reached in July 2015. In July, Mr de Rosnay had notified the Claimant of the likely ‘tap on the shoulder’ in the early autumn. By September, it is evident that the ‘tap’ as it was at that point, was not at that time going to take the form of a commitment to pay any particular award of stock. Not only was that objectively the position but it was exactly how it was understood by the Claimant who, as evidenced by the email from Mr Gardner to Mr Bridges, was still hoping that, when the tap actually came, it would be a seven figure tap and that anything less would be “too much messing about.”
82. In relation to the issue to which I referred in paragraph 6, on the findings that I have made, the need to identify some act of acceptance by the Claimant does not arise.

**Estoppel claim – Issues for determination**

**(1) Did the Defendant make sufficiently clear representations orally on 16 July 2015 and in writing on 24 September 2015, 6 November 2015 and 20 December 2015 that the Defendant would make a Retention Award of a value of £1 million?**

83. Taking each of the dates in turn:
- (i) Whilst on 16 July 2015 Mr de Rosnay did refer in general terms to the possibility of a stock award being made in the autumn and that it could be as much as £1 million, he did not make a representation to the effect that the Defendant would make such an award still less that it would be in that sum.
  - (ii) Whilst on 16 July 2015 Mr de Rosnay did refer in general terms to the possibility of a stock award being made in the autumn and that it could be as much as £1 million, he did not make a representation to the effect that the Defendant would make such an award still less that it would be in that sum.



- (iii) The email from Mr de Rosnay of 6 November 2015 did no more than alert the Claimant to the fact that the Defendant was “hoping to approach” him within the next 3-4 weeks. In other words, he was being told that the ‘tap on the shoulder was being put back, hopefully to late November/early December 2015;
- (iv) The email from Mr Daviau to the Claimant dated 20 December 2015 was no more than an update on progress towards the making of an award. It is clear from its terms that there was still significant work to be done before any award could be made, not least ensuring that any such award fitted in with what Mr Daviau referred to as “the broader picture on compensation.”

84. On this basis, the remaining questions set out in the List of Issues relating to the estoppel claim do not arise. Had I found that the Defendant had made sufficiently clear representations, I would in any event have gone on to find that they were not made with the intention that the Claimant should rely on them to his detriment and in any event, he had not so relied on them. What the Defendant gave was no more than indications of what it hoped to be able to offer at a point further down the line when it was possible to execute the ‘tap on the shoulder’. Whilst of course these statements were intended to provide some comfort to the Claimant that, in due course, an award would be made, it was not intended that they should be relied on by the Claimant to his detriment. They were not intended to limit the scope of any search for alternative employment – that remained a matter that the Claimant was free to explore. In addition, the fact is that he continued to push for the stock award to be made as he knew that it had not been – his email to Mr de Rosnay of 2 December 2015, with its reference to him having been very patient in waiting for the award provides evidence of him being firmly of the understanding that matters had not been resolved and that this needed to be done as the prospective grant was fundamental to him, is a clear example of that. In the meantime, he continued to explore other employment options through the remainder of 2015 and into 2016.

## **Conclusion**

85. I therefore dismiss the claims brought by the Claimant on either of the two bases – contract and estoppel – on which it was advanced.