



Neutral Citation Number: [2020] EWCA Civ 846

Case No: A3/2019/3013

**IN THE COURT OF APPEAL (CIVIL DIVISION)**  
**ON APPEAL FROM THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS IN MANCHESTER**  
**BUSINESS LIST (ChD)**  
**HH Judge Eyre QC**  
**BL-2019-MAN-000091**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 7 July 2020

Before :

**LORD JUSTICE PATTEN**  
**LADY JUSTICE KING**  
and  
**LORD JUSTICE SINGH**

Between :

(1) AAA  
(2) BBB

**Claimants/  
Respondents**

- and -  
CCC

**Defendant/  
Appellant**

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**PAUL CHAISTY QC (instructed by IPS Law) for the Appellant**  
**MARK HARPER QC (instructed by JMW Solicitors LLP) for the Respondents**

Hearing date : 16 June 2020  
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**Approved Judgment**

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**Lord Justice Patten :**

1. This is an appeal by the defendant, CCC, against an order of HH Judge Eyre QC (sitting as a judge of the High Court) dated 14 November 2019. Paragraph 3 of the order contains a final injunction restraining the defendant from publishing or disclosing to any other persons all or any part of the information contained in Confidential Schedule 1 (“CS1”) to the order (“the Information”). The injunction also prevents the use or disclosure by CCC of any information which is liable to identify the claimants, AAA and BBB, as parties to the proceedings and from making adverse or derogatory comments about them. Paragraph 3(d) of the order also prevents CCC from seeking to damage the business of the claimants or that of any other business controlled by BBB by the release of the Information or the release of “any matter arising out of engagement with the Claimants”. I shall return to the full terms of paragraph 3 later in this judgment.
2. The order contains savings for the disclosure of the Information for the purpose of obtaining legal advice and for disclosure pursuant to Part IVA of the Employment Rights Act 1996 or to one of the prescribed persons under s.43F of that Act. There is also an express liberty to apply to the Court for a variation of paragraph 3 of the order to allow disclosure of the Information in other circumstances which might occur in the future.
3. The background to the order under appeal is the ownership by BBB and CCC of AAA. Both parties were business partners as well as directors and equal shareholders in AAA. A dispute arose between them in part generated by various allegations of sexual harassment that were made against CCC in relation to an employee of AAA. CCC denied the allegations and has himself complained of sexual assault by the employee in question. Those allegations are also denied. But these circumstances contributed to a breakdown in relations between BBB and CCC and the possibility of various claims being made by or against them or against AAA including an unfair prejudice petition under the Companies Act.
4. On 31 August 2017 the parties entered into two agreements which were professionally drafted with the benefit of legal advice from solicitors on both sides. The first was a Settlement Agreement and Release (“the SAR”) to which AAA, BBB and CCC were all parties under which CCC agreed to transfer to BBB his shares in AAA for the sum of £1m. The second was a compromise agreement in relation to CCC’s employment with AAA (“the EC”) made between CCC and AAA to which BBB is not a party.
5. Annexed to this judgment is a Schedule containing the material terms of the SAR and the EC which were relied upon by the claimants in these proceedings. The references

in the agreements to the parties and to other connected persons have been anonymised in accordance with the non-disclosure and reporting restrictions orders in force in relation to these proceedings. As one can see from the Schedule, the SAR contained a definition of Confidential Information in clause 1 which extended to include not merely the “information” exchanged between the parties during the negotiations for the SAR and all information contained in the inter-parties correspondence, but also the terms and existence of the SAR itself. It also extended to “any information regarding [AAA] as a result of any period of employment/directorship at [AAA] and any documentation or information that may be deemed to be confidential to the business of [AAA]”.

6. By clause 11.5 of the SAR both parties agreed to keep the Confidential Information secret and confidential at all times and not to pass it or make it available to any third party except as provided by the agreement. Clauses 11.2 and 11.3 provide for the continuation of CCC’s fiduciary duties to the claimants and that the parties will not seek to damage the business of AAA, BBB or that of any other company controlled by BBB by, amongst other things, the release of Confidential Information as defined.
7. The EC has a separate and different definition of Confidential Information which includes information in whatever form relating to the business, products, affairs and finances of any Group Company and any trade secrets, technical data and know-how. It provides for the return or destruction by CCC of any documents containing such Confidential Information and in clause 10.1 CCC agrees not at any time to use or disclose any Confidential Information to any person, company or other organisation whatsoever. There is a separate covenant in clause 10.5 not to make any adverse or derogatory comment about AAA, its directors or employees or to do anything which may bring AAA, its directors or employees into disrepute.
8. £800,000 of the consideration for the shares was paid to CCC on completion of the SAR but under clause 3.4 the balance became payable only on certain conditions. £100,000 of the balance was payable subject to CCC having complied with the provisions of clause 11 of the SAR at least up to 31 January 2019. The remaining £100,000 was conditional on AAA remaining contracted as at 31 January 2019 to its major client (“X”) at least until 31 January 2020. The claimants’ position is that neither of these conditions has been satisfied so that the balance remains unpaid.
9. The claimants alleged that at various times between 2017 and 2019 CCC breached the terms of the SAR and the EC by making allegations to the police and to HMRC that AAA and BBB have been involved in various instances of sexual misconduct, money laundering, forgery, bribery, tax fraud, racism and anti-Semitism and by disclosing or threatening to disclose various of these matters to the press or on social media. In particular, it is alleged that CCC has threatened to make these allegations known to X, which is AAA’s major client, the result of which might well be the loss of that client and therefore considerable financial and reputational damage to AAA.
10. The claimants issued and served these proceedings in July 2019 and obtained interim injunctive relief preventing disclosure of the allegations I have referred to. The claimants then made an application for summary judgment on the claim which, after an unsuccessful application for an adjournment, came on for hearing in front of Judge Eyre QC on 12 November 2019. Although CCC had acted in person earlier in the

proceedings, he was by then represented by solicitors and counsel although they were instructed very late in the day.

11. There was no real dispute before the judge that CCC had either disclosed or threatened to disclose the alleged misconduct I have referred to. His position as taken earlier in the proceedings was that the allegations of misconduct were true and that the claim for an injunction was intended to hide allegations of serious conduct, some criminal, by BBB which should not be barred from disclosure. The injunction was therefore said to amount to an infringement of CCC's freedom of expression under Article 10 of the European Convention on Human Rights. The claimants' position was that the allegations were untrue and had been fabricated by CCC in order to damage the value of AAA's business and, if possible, to extort money from AAA and/or BBB as the price of his silence.
12. There also seems to be no real dispute on the defendant's side about the source of the information. In his fourth witness statement made on 29 September 2019 (that was his defence to the claim), CCC refers to a number of the disputed allegations in terms which make it clear that these were matters he discovered during the time when he was employed by AAA and had access to the relevant information. He says that he made inquiries (using his access to the financial records of AAA) into the payments which are said to constitute tax evasion and money laundering and that it was as a result of these inquiries that his relationship with BBB broke down. The other misconduct alleged against BBB also relates to the period when CCC was still an employee or director of AAA.
13. Clearly the judge was unable to determine the truth of any of these allegations on an application for summary judgment and he was therefore asked by the claimants to proceed on the basis that they were entitled to summary judgment on their claim even if the allegations were true and were believed to be true by CCC. It is important to emphasise that the claim for the injunction was based on the covenants contained in the SAR and the EC. It was not based on a right to privilege or confidentiality or any other cause of action.
14. It was not part of CCC's defence to the claim that the two agreements were unenforceable on grounds of public policy or for any other reason. It was argued that the agreements had been procured by duress or had been repudiated but the judge rejected both those defences as unarguable. He also rejected CCC's reliance on Article 10 as a reason for refusing an immediate injunction, although he accepted that provision needed to be made in the order in relation to possible future conduct where the balance might lie differently on the issue of disclosure. For that reason, he included the express liberty to apply on notice to vary the terms of the order. Subject to that, however, he gave judgment for the claimants on their application.
15. Permission to appeal was sought on a number of grounds including in relation to the defences based on duress and repudiation. But Lewison LJ has granted permission only in relation to grounds 2(b) and (c) which are:
  - (1) that the contractual provisions relied on by the claimants as the basis for the injunctions did not justify the relief granted and that the judge was wrong in his construction of those provisions which were too uncertain to support the orders made; and

- (2) that in any event the orders made are insufficiently clear to operate as injunctions and should not therefore have been made in that form.
16. The relevant part of the order is paragraph 3 which contains the terms of the injunctions complained of. It is in the following terms:

“3. The Defendant must not:

- (a) use, publish, or communicate, or disclose to any other person (other than (i) by way of disclosure to legal advisors instructed in relation to these proceedings (the Defendants’ legal advisers) for the purpose of obtaining legal advice in relation to these proceedings or (ii) for the purpose of carrying this order into effect) all or any part of the information referred to in paragraph 17 of the Confidential Schedule to the Particulars of Claim that is included herein as Confidential Schedule 1 (the Information);
- (b) use, publish or communicate or disclose any information which is liable to or might identify the Claimants as a party to these proceedings and/or as the subject of the Information or which otherwise contains material (including but not limited to the profession) which is liable to, or might lead to, the claimants’ identification in any such respect provided that nothing in this Order shall prevent the publication, disclosure or communication of any information which is contained in this Order other than in the confidential Schedules;
- (c) make any adverse or derogatory comment about the First Claimant (including its directors or employees) or the Second Claimant;
- (d) seek to damage the business of the Claimants, the Second Claimant or the business of any company controlled by the Second Claimant by the release of the Information or release of any matter arising out of engagement with the Claimants.

Provided that if the Defendant wishes in the future to make a comment or disclosure referring to the conduct of the First or Second Claimant occurring wholly after the date of this order that would fall within paragraph 3(a), (c) and/or (d) above, he may apply to the Court on notice to the First and Second Claimant to vary paragraph 3(a), (c) and/or (d) above.”

17. Many but perhaps not all of the allegations of misconduct on the part of AAA and BBB were made for the first time after the SAR and the EC were entered into. The description of the Information contained in CS1 to the judge’s order is (suitably anonymised) in the following terms:

“Any information or purported information that falls within any of the following categories:

(1) Any information relating to the alleged sexual harassment of [ ] by the Defendant or the alleged sexual assault of the Defendant by [ ] and/or the Second Claimant;

(2) Any information relating to the allegations that the Second Claimant has been involved in hate crimes, is racist, is anti-Semitic, is violent, has behaved in a sexually inappropriate manner towards women, and/or was arrested/charged/convicted of a Section 47 assault;

(3) Any information relating to the allegations that the First and/or Second Claimant have been involved in fraud, blackmail and/or bribery, perverting the course of justice, dishonesty, forgery, tax evasion and/or money laundering; the Second Claimant is or has been under investigation by HMRC as a result of his business dealings.”

18. Mr Chaisty QC for CCC submits that none of these matters is expressly included in either of the definitions of confidential information contained in the SAR and the EC and is not therefore caught by the provisions of clause 11.5 of the SAR or 10.1 of the EC so as to be a breach of contract. There is nothing therefore in the contracts which can support the prohibition on disclosure of the information contained in subparagraphs 3(a) and (b) of the order.
19. Paragraph 3(c) of the order is modelled in part of the wording of clause 10.5 of the EC. There is no equivalent provision in the SAR. Mr Chaisty says that since BBB was not a party to the EC he had no cause of action against CCC based on clause 10.5 nor any entitlement to an injunction which effectively enforces the provisions of clause 10.5. Clause 13 of the EC expressly excludes third party rights under the Contracts (Rights of Third Parties) Act 1999. The effect of paragraph 3(c) of the order is therefore to give him the benefit of an order in his favour which he can enforce even though he could not enforce the contract. In relation to paragraph 3(c), Mr Chaisty also points out that on its face the order gives BBB permanent protection from adverse or derogatory comments even though clause 10.5 of the EC restricts the protection to the directors and employees of AAA. The period of protection should not extend beyond the time when BBB ceases to be either an employee or a director.
20. His point in relation to paragraph 3(d) of the order is that although it reflects the wording of clause 11.3 of the SAR, the definition of confidential information contained in that clause does not include the Information contained in CS1. This is the same point as he makes in relation to clause 11.5.
21. More generally, Mr Chaisty takes issue with various terms of the order which he says are vague and unclear in a number of significant and important respects. The term “purported information” in the opening lines of the CS1 is, he says, unclear in its meaning as is the reference in paragraph (2) to “the allegations”. These, he says, are not identified and are vague and uncertain. What allegations, he asks, does it refer to ?

22. In relation to paragraph 3(b) of the order, he criticises the phrases “liable to or might identify” and “liable to, or might lead to” as unclear. The same point is made about “adverse” and “derogatory” in paragraph 3(c). What criteria, he asks, are to determine whether comments are adverse or derogatory. The term “employees” is also very wide. Mr Chaisty says that as time goes on his client will find it increasingly difficult to know whether someone is or is not an employee of AAA and therefore runs the risk of accidentally breaching paragraph 3(c) of the order.
23. In paragraph 3(d) Mr Chaisty takes issue with “seek to damage” and questions what it adds to the earlier paragraphs of the order. He also submits that the phrase “release of any matter arising out of engagement with the claimants” is extremely obscure and leaves CCC with no clear idea about what he can and cannot do.
24. Dealing first with the issue of whether the terms of paragraph 3 properly reflect the scope of the contractual provisions, my view is that Mr Chaisty is obviously right that many of the allegations referred to in CS1 are not within the first part of the definition of Confidential Information that one finds in clause 1 of the SAR or within the definition of Confidential Information in the EC. It was not, I think, contended before the judge that they featured in the negotiations and correspondence referred to in the definition of Confidential Information and it is part of the claimants’ case that it was the making of many of these allegations by CCC between 2017 and 2019 that led to the issue of the claim for injunctive relief.
25. But the pleaded claim that the subject matter of the allegations in CS1 is Confidential Information as defined in clause 1 of the SAR is based on that information being obtained “as a result of” CCC’s time as a director and employee of AAA; to the information being confidential to the business of AAA or to its directors and employees and to its disclosure being damaging to the claimants: see [17] of the particulars of claim.
26. There was, as I have said, no real dispute that CCC’s employment or directorship was the source of the information and at one of the interlocutory hearings for an interim injunction Fancourt J accepted that the Information was confidential: see Confidential Schedule (2) paragraph 5 of his order of 4 September 2019.
27. The judge addressed Mr Chaisty’s criticisms about the terms of the contracts as follows:

“33. Are the terms sufficiently clear to be enforceable as a matter of contract? Mr Chaisty placed considerable force on his contention that the terms are too vague to be enforceable as a matter of contract and/or are simply meaningless. In particular he made reference in that regard to the definition of confidential information in the settlement and release agreement saying that it was circular and/or too wide. He made reference to what he said, or what he would say, is the vagueness and uncertainty of references to making adverse or derogatory comments and/or action which might bring the Claimants into disrepute.

34. In deciding whether the provisions of the agreements are sufficiently certain to give rise to contractual rights those provisions must be seen in the context of the overall dealings; of the parties' arrangements; and of the fact that they formed part of an arrangement whereby the Defendant was receiving £800,000 and an entitlement to a further £200,000 for giving up his interest in the First Claimant. The situation is akin to that of a trader agreeing to wide non-competition provisions on selling the goodwill of his business.

35. The court will not enforce terms which are meaningless or are too vague or uncertain to be given effect but it will be slow to conclude that terms contained in a formal agreement are unenforceable on grounds of uncertainty. In my judgement, the clauses here have a wide ambit but they do not fail on grounds of uncertainty. It is possible to give meaning to them in the context of particular actions and in large part they employ in a non-technical sense everyday language to which the court and the parties can give effect in a particular context. It follows that there is no prospect of a finding that the terms are unenforceable as a matter of contract on the grounds of vagueness.

36. Would the disclosure which is alleged by the Claimants amount to a breach? I have already said that I am proceeding today on the basis that the allegations are true and are believed to be true. I cannot say, at least at the summary judgment stage, that there is not a real prospect of establishing their truth. I have already set out the list of the allegations. The Claimants say that even if they are true they are a breach because they are a disclosure of facts which although true are not known to others and can be adverse or derogatory and which can cause disrepute or harm to the Claimants. Mr Chaisty contended that it cannot be derogatory or adverse to someone to reveal the truth nor can a disclosure bring a person into disrepute if in making the disclosure one is simply putting paid to a false or undeserved reputation.

37. It is important to bear in mind that the Defendant is not being required to make positive comments. He is not being required to praise or compliment or support the Claimants. He is being required under the agreements to refrain from making adverse or derogatory comments. It is also important to keep in mind the context to which I have already adverted of the Defendant receiving a substantial payment for giving up his interest in the First Claimant. A further factor is that the Second Claimant robustly denies the allegations. This is not a case where he accepts the allegations are true. It might be, though I doubt it would be, that different considerations would apply if the references were to undisputed facts but here Mr Harper is



right to say that there is a real benefit to the Claimants in not having to litigate the question of the truth or otherwise of the allegations and it is legitimate for a party to say, “I don’t accept your allegations but I will agree with you that if you do not disclose them, I will make payment”.

38. So which I proceed on the footing that these are allegations which are true but are disputed. In my judgement, the disclosure of information which is true can be derogatory, adverse, or harmful and can bring a person into disrepute if the information is not otherwise in the public domain. It follows that the truth of the allegations would not be a defence to a claim that the Defendant is in breach. The allegations here are clearly derogatory and adverse and such as to bring the Claimants into disrepute. It follows that notwithstanding their truth the making of the allegations would amount to a breach of the contract.”

28. It seems to me that the judge was entitled to conclude for the reasons he gives at [36] that the information contained in CS1 was confidential and that, by reason of its source, it fell within the definition of Confidential Information contained in the SAR. The claimants were under clause 11.5 of the SAR entitled to require CCC to keep the Information secret and confidential even though the allegations, if true, could amount to unlawful conduct on their part. As I said earlier in this judgment, it is not part of the defendant’s case that the SAR should be declared unenforceable (with the consequence that he should refund the £800,000 to the claimants) nor is it part of the grounds of appeal that the judge’s assessment in [36] that the information was confidential was wrong. It follows that there was a breach of clause 11.5 of the SAR to which there is no arguable defence. I therefore reject Mr Chaisty’s submission that the restriction contained in paragraph 3(a) of the order on the disclosure of the Information contained in CS1 was not within the terms of the SAR.
29. Turning then to paragraph 3(c) which is modelled, as I have said, on clause 10.5 of the EC, I also reject Mr Chaisty’s submission that the reference to “adverse or derogatory comments” is too vague or uncertain to be enforceable by an injunction in like terms. I think that the judge was right when he said at [47] of his judgment that those words are sufficiently clear in meaning and the judge was, I think, entitled to take into account the fact that CCC agreed to the provisions of clause 10.5 with the benefit of legal advice. I would therefore reject Mr Chaisty’s attack upon the language of paragraph 3(c).
30. His main criticism, however, centred on the fact that BBB is not a party to the EC and therefore has no cause of action for the enforcement of clause 10.5. He should not therefore, it is said, be entitled to the benefit of a permanent injunction to enforce that covenant in his favour. It seems to me important to distinguish between the grant of the injunction contained in paragraph 3(c) and its enforcement in the event of a subsequent breach. Although BBB clearly had no right to seek to enforce a contract to which he was not a party, AAA did have that right and could seek by injunctive relief specific performance of CCC’s covenant in its full terms. That included the restraint on making adverse or derogatory comments about AAA’s directors and employees. One can think of examples in other contexts of an employer seeking and

obtaining injunctive relief for the protection of its employees. The parties to the proceedings will not necessarily include the employees but there is little doubt that the court has power to grant an injunction for their benefit which the employer can enforce.

31. Much of Mr Chaisty's argument on this point rests on an assumption that BBB would himself be able to enforce paragraph 3(c) of the order independently of AAA. I question whether this is right. We were referred to the commentary in 3C-17 of the White Book with its reference to what Sir Robert Megarry V-C said in *Clarke v Chadbourn* [1985] 1 WLR 78. Although BBB was a party to the claim which sought to enforce the provisions of both the SAR and the EC, the Court cannot have granted the injunction contained in paragraph 3(c) on his application for the reasons of lack of privity on which Mr Chaisty relies. I therefore doubt whether BBB could in his own right seek committal of CCC for a breach of that part of the order. But ultimately that is a matter to be debated if at all should enforcement become an issue. It seems to me that it cannot affect AAA's entitlement to an order which enforces the terms of the contract it has entered into.
32. I do, however, accept Mr Chaisty's point about the injunction not continuing beyond the time when BBB is still a director or employee of AAA. Although I can see that the terms of paragraph 3(c) were drafted with the present very much in mind, the injunction is capable of enduring permanently. I would therefore amend that part of the order by adding after the reference to the Second Claimant the words "so long as he remains a director or employee of the First Claimant".
33. Part of the challenge to paragraph 3(d) of the order falls away in the light of my conclusion that the contents of CS1 are Confidential Information within the meaning of the SAR. But it is convenient to deal at this stage with Mr Chaisty's other point about the meaning of the phrase "or by way of release of any matter arising out of [CCC's] engagement with [AAA]". Clause 11.3 is concerned with preventing damage being caused to AAA, BBB or another of his companies by the release of Confidential Information as defined or the release of this other category of information. The words "arising out of CCC's engagement" with AAA is to be contrasted with the definition of Confidential Information which refers to CCC's period as an employee or director of AAA. I have to say that it is difficult to see what the disputed words add or mean given the wide definition of Confidential Information and I think that Mr Chaisty is right that their inclusion in the order is likely to create uncertainties in relation to what other information is intended to be covered by these words. I would therefore delete the final part of paragraph 3(d) after the words "the release of the Information".
34. I can deal with the criticisms relating to the terms of the order more shortly. The word "purported" in CS1 probably adds nothing but in my view does not make the terms of CS1 uncertain. The information whose disclosure is prohibited is set out in paragraphs (1)-(3) without any reference to "purported". I would also reject the criticism made about the use of the phrase "the allegations". This is to be read as a reference to allegations of the kind described in the paragraphs of CS1. The definite article adds nothing. It means any allegations of that kind which have been made. But it is the content of the allegations that CS1 is intended to identify.

35. In paragraph 3(b) Mr Chaisty has criticised “liable to” or “might lead to” but, as Mr Harper points out, the wording follows that in the Model Order for Interim Non-Disclosure and Anonymity Orders (see Practice Guidance (Interim Non-Disclosure Orders) [2012] 1 WLR 1003. There is nothing ambiguous about these terms.
36. I have already dealt with the phrase “adverse or derogatory comment” as it appears in paragraph 3(c). On the difficulties which the use of the word “employees” is said to create I would only say that this was a term of clause 10.5 of the EC and that the potential problem which it is said to create is not one of ambiguity or uncertainty but rather one of CCC knowing when he is in breach. I am not persuaded that that is a sufficient objection to an order in these terms. As Singh LJ pointed out during the hearing, the making of an adverse comment against someone whom CCC did not know was an employee is unlikely to amount to a contempt.
37. Paragraph 3(d) of the order is, as I have explained, a problem in relation to its concluding words which I would delete from the order. Otherwise I can see nothing obscure about its terms.
38. In conclusion, therefore, I would dismiss the appeal save for making the two small amendments to the order which I have indicated.

**Lady Justice King :**

39. I agree.

**Lord Justice Singh :**

40. I also agree.

## THE SCHEDULE

### The Settlement Agreement and Release dated 31 August 2017

1. In this agreement, unless the context otherwise requires, the following words and expressions have the following meanings:

...

Confidential Information: means all information exchanged between the parties during the negotiations of the agreement and all information contained within the correspondence, both open and without prejudice, passing between the parties and their legal representatives; the contents and terms of this agreement, the fact of its existence, including the transfer of shares by the Defendant to a company formed by the Second Claimant and the payment made in respect of those shares, the terms of the shareholder's agreement; any information regarding the First Claimant as a result of any period of employment/directorship at the First Claimant and any documentation or information that may be deemed to be confidential to the business of the First Claimant or its suppliers, clients, employees, directors, or shareholders.

...

- 11.2 It is hereby agreed that the Defendant's fiduciary duties to the First Claimant and the Second Claimant, including but not limited to his duty to act in the best interests of the First Claimant and the Second Claimant shall continue following the date of execution of this agreement and the transfer of shares indefinitely.

- 11.3 It is hereby agreed by all parties that they shall not seek to damage the business of the First Claimant, Second Claimant, or the business of any company controlled by the Second Claimant, whether by way of release of confidential information or by way of release of any matter arising out of the Defendant or his son or another person's engagement with the First Claimant or the Second Claimant or by any such manner that a reasonable person would consider would cause damage to the First Claimant, Second Claimant, or any company controlled by the Second Claimant. Should any party directly or indirectly cause any damage whatsoever to the business of the Claimant, the Second Claimant, or any company controlled by the Second Claimant, then the indemnity provided by the Defendant at clause 12(3) should prevail.

...

- 11.5 All Parties ... agree to the following restrictions in respect of confidentiality:

- 11.5.1 To keep the Confidential Information secret and confidential at all times and not to pass any Confidential Information to any third party whatsoever;

- 11.5.2. Not to directly or indirectly use, disclose, exploit, or make available any confidential information in whole or in part to any person, except as expressly

permitted by or in accordance with this agreement or by agreement in writing between the parties.

...

- 12.3 The Defendant hereby indemnifies and shall keep indemnified the First Claimant, the Second Claimant and any Company Controlled by the Second Claimant against all or any future actions, claims or proceedings that may arise as a result of any breaches by any Parties of clause 11 of this Agreement including costs and damages (including the entire legal expenses of the First Claimant, the Second Claimant or any Company Controlled by the Defendant.

### **The Employee Compromise dated 31 August 2017**

- ...1. The following definitions and rules of interpretation apply in this agreement.

- 1.1 Confidential Information: information in whatever form (including, without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to the business, products, affairs and finances of any Group Company for, the time being confidential to any Group Company and trade secrets including, without limitation, technical data and know-how relating to the business of any Group Company or any of their suppliers, clients, customers, agents, distributors, shareholders or management, including (but not limited to) information that the Employee created, developed, received or obtained in connection with his employment, whether or not such information (if in anything other than oral form) is marked confidential.

Copies: copies or records of any Confidential Information in whatever form (including, without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) including, without limitation, extracts, analysis, studies, plans, compilations or any other way of representing or recording and recalling information which contains, reflects or is derived or generated from Confidential Information.

...

- 5.1 If the Employee breaches any material provision of this agreement ... he agrees to indemnify the Company for any losses suffered as a result thereof including all reasonable legal and professional fees incurred.

- 6.1 The Employee shall, before the Termination Date, return to the Company:

- (a) all Confidential Information and Copies;
- (b) all property belonging to the Company...
- (c) all documents and copies (whether written, printed, electronic, recorded or otherwise and wherever located) made, compiled or acquired by him during his

employment with the Company or relating to the business or affairs of any Group Company or their business contacts;

in the Employee's possession or under his control.

6.2 The Employee shall, before the Termination Date, erase irretrievably any information relating to the business or affairs of any Group Company or its business contacts from computer and communications systems and devices owned or used by him outside the premises of the Company, including such systems and data storage services provided by third parties (to the extent technically practicable).

...

10.1 The Employee acknowledges that, as a result of his employment as Director, he has had access to Confidential Information. Without prejudice to his common law duties, the Employee shall not (except as authorised or required by law or as authorised by the Company) at any time after the Termination Date:

- (a) Use any Confidential Information; or
- (b) Make or use any Copies; or
- (b) Disclose any Confidential Information to any person, company or other organisation whatsoever,

...

10.3 The Employee and the Company confirm that they have kept and agree to keep the existence and terms of this agreement and the circumstances concerning the termination of the Employee's employment confidential, except where such disclosure is to HM Revenue & Customs, his professional advisers or required by law.

...

10.5 The Employee shall not make any adverse or derogatory comment about the Company, its directors or employees and the Company shall use reasonable endeavours to ensure that its employees and officers shall not make any adverse or derogatory comment about the Employee. The Employee shall not do anything which shall, or may, bring the Company, its directors or employees into disrepute and the Company shall use reasonable endeavours to ensure that its employees and officers shall not do anything that shall, or may bring the Employee into disrepute.

10.6 Nothing in this clause 10 shall prevent the Employee from making a protected disclosure under section 43A of the Employment Rights Act 1996 and nothing in this clause 10 shall prevent the Company from making such disclosure as it is required by law to make.