



Neutral Citation Number: [2024] EWHC 1209 (Ch)

Case No: BL-2022-MAN-000075

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN MANCHESTER
BUSINESS LIST (ChD)

Manchester Civil Justice Centre
1 Bridge Street West,
Manchester M60 9DJ

Date: 21 May 2024

Before :

HHJ CAWSON KC
SITTING AS A JUDGE OF THE HIGH COURT

Between :

ETTA HEALTHCARE LIMITED **Claimant**
- and -
(1) STEVEN AIMSON
(2) REBECCA HIGGINS (NEE FROGGATT)
(3) RÓISÍN GANNON
(4) KIMBERLEY AIMSON
(5) HIVE RESOURCING GROUP LIMITED
(NOW DISSOLVED) **Defendants**

Andrew Vinson (instructed by **Freeths LLP**) for the **Claimant**
The **First Defendant**, the **Second Defendant**, the **Third Defendant** and the **Fourth Defendant**
appeared in person, in the case of the **Fourth Defendant** only from 15 April 2024

Hearing dates: 11-12, 15-17 April 2024

Approved Judgment

This judgment was handed down remotely at 10.30am on 21 May 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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HHJ CAWSON KC:**Contents**

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Introduction

1. The Claimant was incorporated on 22 October 2019 and traded until May 2021 in the field of healthcare recruitment. The essence of the present case is an allegation by the Claimant that the Defendants conspired together to, effectively, steal the business of the Claimant in order that it could be taken over and conducted by the Fifth Defendant, a company of which the Fourth Defendant was the sole shareholder and director. The Fifth Defendant has, itself, subsequently failed and thus now takes no part in the proceedings.
2. The claims against the remaining active Defendants include claims of unlawful means conspiracy (against the First to Fourth Defendants), procuring breach of contract (against the First, Second and Fourth Defendants), breach of directors' fiduciary duties (against the First Defendant), breach of contract (against the First, Second and Third Defendants), misuse of confidential information/breach of equitable duties of confidence (against the First Defendant, the Second Defendants and the Third Defendant), and breach of statutory database right (against the First Defendant, the Second Defendant and the Third Defendant).
3. Mr Andrew Vinson of Counsel appeared on behalf of the Claimant. The First to Fourth Defendants all appeared in person although, as explained below, the Fourth Defendant was absent for the first and second days of the trial and for part of the fourth day thereof.

Personalities and definitions

4. The following table sets out the individuals and entities relevant for present purposes:

Etta Healthcare Limited (“ Etta ”)	The Claimant. A company incorporated on 22 October 2019.
Steven Aimson (“ Mr Aimson ”)	The First Defendant. Appointed as a director of Etta on incorporation on 22 October 2019. Managing director of Etta until he was dismissed on 26 April 2021. From incorporation, holder of 150 B Ordinary Shares in the share capital of Etta. Married to but separated from Mrs Aimson.
Rebecca Higgins (née Froggatt) (“ Mrs Higgins ”)	The Second Defendant. Employed by Etta as Head of Nursing and Care as from November 2019. Resigned from Etta on 2 March 2021, by which time she was involved in Hive.
Róisín Gannon (“ Ms Gannon ”)	The Third Defendant. Employed by Etta as a Recruitment Consultant from July 2020. Resigned from Etta on 4 March 2021, and subsequently worked for Hive.
Kimberley Aimson (“ Mrs Aimson ”)	The Fourth Defendant. Sole director of, and shareholder in Hive from its incorporation on 16 February 2021. Married to but separated from Mr Aimson. From incorporation of Etta, holder of 150 C Ordinary Shares in the share capital thereof.
Hive Resourcing Group Limited (“ Hive ”)	A company incorporated on 16 February 2021, of which Mrs Aimson was, at all relevant times, the sole shareholder and director. It was struck off the Register of Companies on 11 October 2023, and dissolved on 17 October 2023.
James Nicholas Torkington (“ Mr Torkington ”)	Runs and operates First2Group together with Mr Goluguri. Appointed as a

	director of Etta on incorporation on 22 October 2019. Holder of 175 A Ordinary Shares in the share capital of Etta, his wife, Debbie Smyth also holding 175 A Ordinary Shares. Witness for the Claimant.
Murali Satyanarayana Reddy Goluguri (“ Mr Goluguri ”)	Runs and operates First2Group together with Mr Torkington. Appointed as a director of Etta on incorporation on 22 October 2019. Holder of 175 A Ordinary Shares in the share capital of Etta, his wife, Usha Goluguri, also holding 175 A Ordinary Shares. Witness for the Claimant.
First2Group Limited (“ First2Group ”)	Company operated by Mr Torkington and Mr Goluguri for the purpose of investing in recruitment companies such as Etta.
Manchumu Christian Birindwa (“ Mr Birindwa ”)	IT Manager for First2Group. Witness for the Claimant.

Procedural Chronology

5. The present proceedings were commenced on 9 September 2022. Defences were served by all of the Defendants in October and November 2022, at which stage all of the Defendants, apart from Mrs Higgins, were legally represented. Etta served Replies to the Defences in March 2023. Directions were given by DJ Woodward by her Order dated 4 May 2023 made on the hearing of a Costs and Case Management Conference. By the date of this latter hearing, all of the Defendants had all ceased to have legal representation and acted in person.
6. Mr Aimson and Mrs Aimson both failed to provide disclosure as required and, on 1 November 2023, DJ Banks made an Order providing that unless they respectively provided disclosure as ordered by 4 PM on 17 November 2023, then their Defences would be struck out and that Etta would be entitled to judgment against them. Mr Aimson and Mrs Aimson both failed to provide disclosure as required notwithstanding the terms of the Order dated 1 November 2023. Consequently, as from 4 PM on 17 November 2023, their respective Defences have stood struck out. By his Order dated 10 January 2024, DJ Banks ordered that judgment be entered for Etta against Mr Aimson and Mrs Aimson for damages to be assessed, and he directed that the assessment of damages take place at trial.

7. A Pre-Trial Review took place on 21 March 2024. At this hearing, I heard and determined formal applications made by each of Mr Aimson and Mrs Aimson to set aside DJ Banks' Order dated 10 January 2023. I treated the applications as including applications for relief from sanction in respect of the earlier Order dated 1 November 2023. I dismissed the applications for reasons given in an extempore judgment. There has been no appeal against any of the relevant Orders. Consequently, the position remains that Etta has judgment against Mr Aimson and Mrs Aimson for damages to be assessed, and their Defences stand struck out. I address the significance of this below.
8. A further issue arose during the course of the Pre-Trial Review with regard to the ability of Mr Aimson and Mrs Aimson to obtain childcare for their children for the first week of the trial, which was due to commence on Monday 8 April 2024, when their children were due to be on school Easter holiday. In order to accommodate them as best as I could, following the hearing, I directed that the trial should not start until 11 April 2024, having directed at the hearing that any application to vacate the trial, or to alter the trial dates, should be made by 4 PM on Tuesday, 26 March 2024. No such application was made.
9. Mrs Aimson did not attend on the first day of the trial on 11 April 2024, and I was told that that was because of a difficulty in finding childcare for her children. I was told that she would be attending the following Monday, 15 April 2024, when the children were back at school. No application was made for an adjournment and, bearing in mind that Mr Aimson and Mrs Aimson remain in contact with one another for the purposes of the present case and had common cause in seeking to minimise the quantum of any award of damages against them, I decided that I should proceed with the trial, but on the basis that Mrs Aimson would be given the opportunity to question Etta's witnesses when she was able to attend.
10. After Mr Vinson had opened the case, Mr Torkington, Mr Goluguri and Mr Birindwa gave evidence on Etta's behalf, and Mr Aimson, Mrs Higgins and Ms Gannon each cross-examined each of them.
11. Mrs Aimson did attend on Monday 15 April 2024, and she put a number of questions to Mr Torkington and Mr Goluguri, who were re-called to the witness box.
12. As Mr Aimson's and Mrs Aimson's Defences had been struck out, and as they had not filed or served any witness statements by the extended date in January 2024 for filing and service of witness statements, neither of them gave evidence.
13. Mrs Higgins and Ms Gannon each gave evidence on 15 April 2024. Mrs Higgins confirmed the contents of her Defence and witness statement, and Ms Gannon confirmed the contents of her witness statement. They were each then cross-examined by Mr Vinson on behalf of Etta.
14. I heard submissions on 16 and 17 April 2024 from Mr Vinson on behalf of Etta, and then from Mr Aimson, Mrs Higgins, Ms Gannon and Mrs Aimson. The latter had each typed up their submissions and subsequently provided me with copies thereof. Mr Aimson's and Mrs Aimson's submissions were essentially limited to the question of damages.

15. Unfortunately, Mrs Aimson had further childcare issues during the course of 16 April 2024 and therefore missed part of Mr Vinson's submissions, including in relation to damages, as well as missing the submissions of Mrs Higgins and Ms Gannon. Mrs Aimson was able to attend on 17 April 2024, when I heard from her and a brief reply from Mr Vinson. Mrs Aimson informed me that Mr Aimson had been able to recount to her what had been said by Mr Vinson in submissions regarding damages.
16. I reserved judgment following submissions. This is my reserved judgment.

Background

17. Etta was incorporated on 22 October 2019 as the vehicle for a joint venture between Mr Torkington and Mr Goluguri on the one hand, and Mr Aimson on the other hand, as a recruitment start-up in the field of healthcare. It is common ground that Etta was incorporated on the basis that Mr Torkington, Mr Goluguri, and Mr Aimson would all be directors and shareholders therein, with Mr Torkington and Mr Goluguri providing or procuring the funding, and Mr Aimson acting as managing director and being the only director playing an active role in Etta's day-to-day business.
18. The basis of the arrangements between Mr Torkington, Mr Goluguri, and Mr Aimson was first set out in a letter of intent dated 3 October 2019 from Mr Goluguri to Mr Aimson ("**the Letter of Intent**").
19. The Letter of Intent referred, amongst other things, to:
 - i) The parties entering into a Shareholders' Agreement;
 - ii) Mr Aimson entering into a contract of employment, and to him also receiving: "*a monthly regular dividend payment calculated to bring your monthly net income to £4600 per month*";
 - iii) Mr Torkington and Mr Goluguri collectively receiving a monthly fee equivalent to Mr Aimson's regular dividend and salary payment, but sacrificed for the first six full months;
 - iv) Shares in Etta's share capital being subscribed for as to 30% by Mr Aimson, and as to 35% each by Mr Torkington and Mr Goluguri;
 - v) First2Group being responsible for providing all funding needs of Etta "*where reasonably required*", as well as being responsible for the setup and management of all back office operational arrangements.
20. Mr Torkington, Mr Goluguri and Mr Aimson were all duly appointed as directors of Etta on incorporation, and shares were allotted as referred to in paragraph 4 above.
21. Mr Aimson had been involved in healthcare recruitment for a significant number of years prior to the incorporation of Etta, at a senior management level. In that capacity, he had got to know, and had worked with Mrs Higgins, although it was Mrs Higgins' evidence that she had ceased to work with Mr Aimson and in the healthcare recruitment sector earlier in 2019. Prior to the incorporation of Etta, Mrs Higgins was approached by Mr Aimson with a view to her joining him at Etta, and she was introduced to Mr Torkington and Mr Goluguri.

22. On 29 November 2019, Mrs Higgins signed an employment contract with Etta (“**the Higgins Contract**”). This referred to her employment starting on 21 November 2019, serving in the capacity of “*Head of Nursing & Care*”. Clauses 17, 18 and 21 of the Higgins Contract, headed respectively “CONFIDENTIALITY”, “POST TERMINATION RESTRICTIONS” and “DATABASE POLICY” provided as set out in Schedule A to this judgment.
23. Etta commenced trading shortly after its incorporation.
24. A five year plan produced by Mr Aimson in October/November 2019 showed projected EBITDA of £189,140 in year one, £614,280 in year two, £1,072,260 in year three, £1,867,810 in year four and £3,101,520 in year five. The relevant figures for year one showed sales of £159,140 in respect of work on temporary placements, and £259,000 in respect of work on permanent placements (total £418,140), and the equivalent projected figures for year two were £412,280 and £512,000 (total £614,280).
25. The business of Etta involved advertising for and generating clients seeking employees, whilst at the same time advertising for and generating names of “*candidates*” seeking employment in the health sector. Etta operated and built up a database of clients and candidates so generated (“**the Database**”) and did so using a database management software system known as “*JobAdder*”.
26. It was Mrs Higgins’ evidence that the Database will have included names that derived from her own contacts made before joining Etta, and also that Mr Aimson had purchased data in January 2020 which was added to the Database. Although it was alleged by Mr Aimson in paragraph 16 of his Defence that he had personally purchased the data outside the scope of any engagement with Etta, there was no evidence before the Court to support this, and it is difficult to see the basis upon which Mr Aimson might have purchased data in a personal capacity only to add it the Database in early 2020 when Etta was developing and building up its business with Mr Aimson acting as its managing director.
27. Mr Aimson never entered into a written contract of employment with Etta. A draft shareholders’ agreement, as envisaged by the Letter of Intent, was not provided to Mr Aimson until April 2020. In his Defence, Mr Aimson denied that he had ever signed a shareholders’ agreement. However, the clear evidence of Mr Torkington and Mr Goluguri was that Mr Aimson had signed a Shareholders’ Agreement dated 6 July 2020 (“**the Shareholders’ Agreement**”), and the fact that Mr Aimson had signed the latter is confirmed by contemporaneous email exchanges, including a subsequent exchange on 10 February 2021 when, after Mr Aimson had enquired about the Shareholders’ Agreement, and had been referred to an email exchange, he confirmed that he had the same having been sent it after execution.
28. The Shareholders’ Agreement included, so far as is relevant, the terms set out in Schedule B to this judgment.
29. On 7 July 2020, Ms Gannon signed a written contract of employment with Etta (“**the Gannon Contract**”). The Gannon contract was in exactly the same terms as the Higgins Contract, including referring, at clause 3.1, to Ms Gannon being employed in the capacity of “*Head of Nursing & Care*”. In his witness statement, Mr Torkington

referred to Ms Gannon being employed in the capacity of “*Managing Consultant of Nursing and Care*”. However, in giving evidence, Mr Torkington confirmed that Ms Gannon had simply been employed as a recruitment consultant.

30. Reliance is placed by Etta upon the fact that, by an email dated 16 November 2020, Mr Aimson sent to Mrs Higgins and Ms Gannon an Excel spreadsheet providing a list of jobs shown on JobAdder, the database management software system, i.e. the Database, with a suggestion that they should: “... *start tomorrow by running through the list and cleaning it up.*” By a subsequent email sent the same day to Mr Aimson and Ms Gannon, Mrs Higgins circulated Excel spreadsheets providing to them: “... *your updated list of candidates in active-interviewing state in your name*”. It is Etta’s case that this was a preliminary step, implicating each of Mr Aimson, Mrs Higgins and Ms Gannon, taken in preparation for the theft of the business of Etta that it is alleged subsequently occurred.
31. Etta significantly underperformed as against the five year plan that Mr Aimson had prepared in October/November 2019, although it has to be borne in mind that the Covid pandemic had struck during the course of the year, and the country had been in lockdown for a significant part of the time after March 2020. Whilst the five year plan had forecast year one sales of £418,140, sales of only £127,712 were actually achieved. Nevertheless, during the course of 2020 Etta had generated increasing sales, as might have been expected with a new business.
32. Etta’s balance sheet as at 31 December 2020 showed a net deficit of £65,840, and a deficit on profit and loss account of £66,840. The sum of £71,681 was shown therein as an amount due to an associated company, this sum representing monies advanced to Etta by First2Group.
33. Mr Aimson produced revised projections in November 2020, and in early January 2021. His projections produced in early January 2021 and sent under cover of an email dated 7 January 2021 forecast an EBITDA of £417,303 for year two (2021), as against £614,280 for year two in the original projection produced in October/November 2019. This was based on temporary recruitment sales of £52,500 and permanent recruitment sales of £634,000 (total £686,500). Reliance is placed by Etta upon the fact that Mr Aimson felt able to be confident in his projections at the start of 2021. An equally rosy picture is said to have been painted by an email dated 29 January 2021 sent by Mrs Higgins to Mr Aimson, cc Ms Gannon, providing an end of week update, and forecast of work in the pipeline.
34. On 8 February 2021, Mr Aimson downloaded the entire Database of clients and candidates, not limited to those that might have been introduced by either Mr Aimson or Mrs Higgins. On the same day, he increased the threshold in relation to the bonus payable by Etta to Ms Gannon.
35. On 10 February 2021, Mr Aimson made the enquiry referred to in paragraph 27 above in relation to the Shareholders’ Agreement. On the same day, an email exchange took place between Mr Goluguri and Mr Aimson, copying in others, in respect of a significant overspend on Etta’s advertising budget. Etta’s case is that this overspend occurred in order to increase the numbers in the Database prior to its contents being downloaded.

36. On 12 February 2020, a “*Team Quiz*” took place online, attended by Mr Aimson, Mrs Aimson, Mrs Higgins and Ms Gannon. Mrs Higgins’ position, and that of Ms Gannon, is that this was one of a series of quiz sessions that took place during Covid in order to maintain team morale. Etta’s position is that there was more serious intent behind this event, and that it was used to plot the matters that are complained of by Etta in the present proceedings.
37. On the same day, 12 February 2020, Mrs Aimson had organised insurance, three “*GoDaddy*” domain names and three MS Office 365 licences for Hive.
38. On 14 February 2021, Mrs Aimson applied to have Hive incorporated, which it was on 16 February 2021.
39. On the same day that Hive was incorporated, 16 February 2021, Mrs Higgins made a telephone call to Sky with regard to a problem in using her GoDaddy domain name in connection with her Hive email account. In the course of her conversation, which was recorded and has been adduced in evidence by Etta, she refers to an issue with her new work email, whilst referring to the two other people signed up with email accounts not having any problem. It is Etta’s case that the reference to the two other email accounts must have been to Hive email accounts set up for Mrs Aimson and Ms Gannon. Reliance is further placed by Etta on the fact that Mrs Higgins was referring to her Hive email as being her new work email as supporting the case that she was already, by that stage, working for Hive.
40. There is evidence of Mrs Higgins having begun, over the next few days, to sign up for Hive clients whose details were in the Database and were clients of Etta. Thus, there is, for example, email correspondence with TFS Homecare on 22 February 2021, sent by Mrs Higgins on behalf of Hive using her Hive email address (with Hive logo), on which she is described as “*Managing Director*”. Further, there have been produced in evidence signed terms as between Hive and Britannia Pharmaceuticals Ltd dated 19 February 2021, a confidentiality agreement dated 22 February 2021 between Hive and the latter, and signed terms as between Hive and Bespoke Health and Social Care dated 23 February 2021.
41. On 23 February 2021 an email exchange took place between Mr Goluguri and Mr Aimson with regard to the ability of Etta to pay dividends, in which both expressed confidence in an ability to generate profits to do so.
42. 24 February 2021 was the last day on which any posts were made by either Mrs Higgins or Ms Gannon on behalf of Etta on “*Indeed.com*”, a recruitment tool on which candidates upload CVs and employers post jobs. It is Mr Goluguri’s evidence that, on 19 April 2021, he spoke to Etta’s account manager at Indeed.com and was informed that both Mrs Higgins and Ms Gannon had had Hive accounts with the latter as from 23 February 2021. Mr Goluguri has produced a file note of this conversation. Ms Gannon challenged Mr Goluguri’s evidence as to this conversation, but was, in any event, emphatic that she had not utilised any Hive account with Indeed.com until after her employment with Etta had come to an end, and she was employed by Hive.
43. Another similar resource tool used by Etta was “*CV-Library*”. Mr Goluguri has produced an email dated 16 April 2021 from CV-Library. This email says: “*Both Roisin and Rebecca have accessed the CV-Database frequently over February and*

March with Rebecca still continuing to run searches up until 08/04. The last Jobs posted by the Etta Team were on 24/02". Again, Ms Gannon was emphatic in her evidence that she had not utilised CV-Library on behalf of Hive until after her employment with Etta had come to an end, and she was employed by Hive.

44. In her Defence, Mrs Higgins says that she agreed to resign on 28 February 2021 with a period of four weeks' notice, making her last day of work 28 March 2021. She says that in handing in her notice, she was informed by Mr Aimson that the business was due to be "wound down", "the claimants" having discussed this, and on this basis proceeded to pursue the opportunities available to her.
45. On 1 March 2021, Mr Aimson informed Mr Torkington and Mr Goluguri that Mrs Higgins intended to leave, had inherited money and was taking time out. Following a meeting with Mr Aimson, Mrs Higgins put her resignation into writing in an email dated 2 March 2021 to Mr Aimson in which she referred, amongst other things, to completing a "thorough handover". The point is made by Etta that she made no mention of Etta winding down in this email and that a handover would be inconsistent with the latter.
46. Between 2 and 4 March 2021, there was an email exchange between Mrs Higgins (using her Hive email address) and Lynda Brown of Outcomes First Group. In the first email in the chain, Mrs Higgins, describing herself as Managing director of Hive, referred to earlier discussions to the effect that: "*Etta Healthcare have gone through some operational changes and due to demand and success within the community markets I now manage hive Resourcing. This is our dedicated business to community and social care placements. All terms agreed as per Etta Healthcare will be reflected so nothing changes from that standpoint.*" This prompted Lynda Brown to ask Mrs Higgins to confirm if Etta had closed down, and whether anyone at Etta would still be "requesting to support" them with their vacancies. In response, Mrs Higgins said that there would not be anyone working the vacancies at Etta "*as that's going in a different direction speciality wise*", and that if she required any clarity, then "*Steve Aimson (Founder)*" would be able to pick up on this.
47. It is Ms Gannon's evidence that, in January or February 2021, Mr Aimson, as Managing Director of Etta, informed her that he was having disagreements with his business partners, and that they had agreed to and would be aiming to wind Etta down in the coming months. She says that she had no reason to question this, and out of concern about being out of work, discussed potential jobs and arranged phone/face-to-face interviews with three employers whom she names in her witness statement. She has produced a LinkedIn post which she says supports this.
48. Ms Gannon says that during this time, Mrs Higgins handed in her notice and that she was told by both Mrs Higgins and Mr Aimson that Mrs Higgins was going to use the closure of Etta to spend more time with her children, Ms Gannon's understanding being therefrom that Mrs Higgins felt burnt out from working through the pandemic.
49. Ms Gannon says that she had a telephone conversation with Mr Aimson in which he advised her that she would not be held to any restrictions in her contract of employment in terms of working for anybody else given that Etta was to cease trading. She says that she found Mr Aimson very convincing given that he was the Managing director, and that she discussed dates with him as to when she would cease working

for Etta. She says that she expressed a preference for the end of March 2021 given that she was moving house on 1 April 2021.

50. Ms Gannon further says that on 3 March 2021, Mr Aimson told her to hand in her notice as a formality, as well as telling her what she should say in doing so including that she had accepted another job. She says that she did as he advised, and that she emailed Mr Aimson the following day, 4 March 2021, giving notice and saying that she had decided to accept another role that was much better suited to her, even though that was not the case. Etta takes the point that what Ms Gannon said in this email was not true, and that she made no mention of Etta winding down.
51. It is Ms Gannon's evidence that she worked out her notice with Etta, continuing to work for Etta during her notice period, without, unlike Mrs Higgins, doing any work for or on behalf of Hive until she was subsequently employed by the latter as from 5 April 2021 as referred to below. No pleaded case is advanced against Mrs Gannon with regard to having acted in breach of the terms of the Gannon Contract until after she had ceased to be employed by Etta.
52. On 12 March 2021, Mrs Higgins received, on her Hive email account, an email from "WeWork" regarding an enquiry in respect of office space.
53. On 15 March 2021, an important email exchange took place between Mrs Higgins and Mr Aimson. The exchange began with an email in which Mrs Higgins enquired as to how Mr Aimson was coping without her, and purported to seek clarity regarding "restrictions", observing that Mr Aimson had said "*verbally that I won't have any imposed*". She then suggested that she was looking at her options and had had a number of opportunities presented to her "*across internal and agency roles*", and that she was not sure yet which way she wanted to go. She concluded by saying: "*I'm a few weeks off deciding yet anyway as I am doing well at home at the moment so I'm looking at hopefully accepting an offer in April.*" When I queried with her how this tied in with her involvement, to date, with Hive, she said that she had merely been "*scoping*" a role with Hive.
54. Mr Aimson, by an email sent just over an hour later, responded by saying that he was not one for imposing restrictions, particularly given the reasons given by Mrs Higgins for leaving and the fact that she had worked all the way through a pandemic. He then said: "*Recruitment and Healthcare are a crowded space and there is opportunity for many so long as you don't actively target our exclusive clients, I'm happy to waiver (sic) your restrictions.*" Mrs Higgins then responded by thanking Mr Aimson for confirming and saying that she would keep him updated: "*in case I become a client in a dreaded in house role!*"
55. Etta maintains that the above exchange was a charade designed to create a false impression that Mrs Higgins was not involved with Hive, but rather was sitting at home looking for a job, and the point is taken that there is no reference to, and that what was said in the exchange is inconsistent with, Etta winding down or any belief on the part of Mrs Higgins that it was.
56. Etta further places reliance upon a mortgage application reference dated 16 March 2021 provided for Mrs Higgins that went through a number of iterations and was ultimately signed by both Mr Aimson and Mrs Aimson. Mrs Higgins complains that

the document in question can only have been unlawfully obtained by wrongly accessing her email account. Etta's position is that the relevant document was found on a desk at Etta's offices in or about August 2021. However, there is no dispute that the document was created, and exists. Mrs Higgins takes the further point that the reference was never in fact used, although Etta says that that is irrelevant to the point that it seeks to make by reference to it.

57. The reference refers to Mrs Higgins being Managing director of Hive on a basic salary of £50,000 per annum and says that: "*The new contract provided in March 2021 was issued when we created a new business, Hive Resourcing.*" It went on to say: "*Rebecca has worked directly for me for the last 12 years and is an integral part of the future of Etta Healthcare and Hive Resourcing, with a career plan for Rebecca to own shares in the business. The promotion to Hive Resourcing was based on previous performance with Etta Healthcare and they will specialise in other areas of healthcare, particularly within temporary and fixed term roles, Etta Healthcare supports permanent recruitment.*" The first version was signed by Mr Aimson as "*Co-founder and Managing director ... Etta Healthcare/Hive Resourcing.*"
58. On 22 March 2021, Mrs Higgins signed up as a client for Hive, Cambian Group, a client of Etta. On the same date she received an email from TFS dealing with Hive's rates.
59. It is Etta's evidence that, up to this point, Mr Torkington and Mr Goluguri had been unaware of any involvement of Mrs Higgins or Ms Gannon with Hive, and that Mr Aimson had led them to believe that he was, on behalf of Etta, looking for replacements for Mrs Higgins and Ms Gannon with a view to Etta continuing its business in the ordinary way. However, on 22 March 2021, Mr Aimson indicated to Mr Torkington and Mr Goluguri that he was contemplating not continuing with Etta. Etta's evidence is that attempts were made to persuade him to stay, but that at a further MS Teams meeting on 29 March 2021, Mr Aimson repeated that he was still having thoughts about not continuing. It is Mr Torkington evidence that, at this time, they became suspicious about what was going on and began to carry out enquiries leading to the discovery of the events that form the basis of the present claim.
60. In the meantime, having given a formal notice earlier in the month with regard to leaving Etta, on 24 March 2021, Ms Gannon signed an employment contract with Hive. The relevant document records that it had been signed on behalf of Hive by Mrs Aimson on 17 March 2021. It is Ms Gannon's evidence that sometime towards the end of March 2021, she was approached by Mrs Higgins who verbally offered her a role as a recruitment consultant at "*a new company owned by Kim Aimson*". She says that she decided to accept the offer as she had had a good relationship with Mrs Higgins and was told by her that Hive would be a "*female lead, ethical recruitment business*". She says that this "*sounded positive to me*". A start date of 1 April 2021 was agreed, but this was subsequently amended to 5 April 2021 as Ms Gannon was moving house.
61. Ms Gannon's employment contract with Hive that has been produced is an unusual document. As became clear during the course of Ms Gannon's cross examination, it follows virtually word for word the wording of the Gannon Contract (with Etta), although the paragraph numbering has been replaced by bullet points despite the fact there is reference to paragraph numbering within the text. A number of important clauses, including post termination restrictions, have either been omitted, or the

relevant pages have not been produced. Ms Gannon says that she did not take a copy of the document at the time and has produced what she has subsequently been provided with by Mrs Aimson.

62. On 29 March 2021 and 30 March 2021, there were email exchanges regarding Mrs Higgins' mortgage application reference, and it was at this stage that the document signed by both Mr Aimson and Mrs Aimson was produced.
63. The contracts of employment of Mrs Higgins and Ms Gannon with Etta (the Higgins Contract and the Gannon Contract) both terminated on 31 March 2021. Mrs Higgins says that notwithstanding having carried out work for Hive in the period leading up to 31 March 2021, she had continued doing work for Etta as well. As I have said, it is Mrs Gannon's case that she did not work for Hive prior to the termination of her employment with Etta, and the commencement of her employment with Hive on 5 April 2021.
64. Ms Gannon returned her Etta laptop to Mr Aimson, and it was returned to Etta on 8 April 2021. Etta takes the point that the settings on Ms Gannon's laptop show, as evidenced by a screenshot, that she had used her laptop to access the Wi-Fi at Hive's offices. A similar point is made with regard to Mr Aimson's laptop after it was subsequently returned after his employment was later terminated. So far as Ms Gannon is concerned, she says that she cannot recall using the laptop at Hive's offices, but that it is possible that she did so when she attended to sign her employment contract, or having brought it to Hive's offices after her employment with the latter had commenced, and signed into Hive's Wi-Fi while stripping personal details from the laptop prior to its return to Etta on 8 April 2021.
65. On 16 April 2021 a further online meeting took place between Mr Torkington, Mr Goluguri and Mr Aimson at which Mr Aimson was challenged with regard to Hive. A video recording of this meeting has been produced and I have had the opportunity of viewing and listening to it. During the course of this meeting, Mr Aimson referred to Hive as having been set up by Mrs Aimson, but sought to distance himself from it, and denied that either Mrs Higgins or Ms Gannon was working for Hive. Mr Torkington and Mr Goluguri did not accept the explanations that were given, regarded Mr Aimson's position as untenable, and ultimately dismissed him on 27 April 2021 by a letter of that date.
66. Etta relies upon the fact that, on 19 April 2021, Ms Gannon whilst working for Hive sent out a mailshot to clients that had been clients of Etta, and that Mrs Higgins did the same thing on 28 April 2021. It is Etta's case that this can only have been done using the Database, as downloaded by Mr Aimson, and reliance is placed upon the fact that the mailshot sent out by Ms Gannon led to the receipt of emails that were forwarded to Mr Aimson.
67. Further, reliance is placed by Etta upon the fact that a client of Etta, Ramsay Health Care (UK) Ltd sent terms signed with Hive to Etta thinking that they were the same business.
68. On 1 May 2021, Freeths LLP, on behalf of Mr Torkington, Mr Goluguri and Etta, sent pre-action letters to each of Mr Aimson, Mrs Higgins, Ms Gannon and Hive raising the issues that form the subject matter of the present proceedings. The stand taken was

that the actions of the latter had effectively removed Etta's business to Hive and therefore destroyed it.

69. Freeths LLP sought undertakings in respect of, amongst other things, the use of confidential information, and in respect of the post termination restrictions in the Higgins Contract and the Gannon Contract. So far as Mrs Higgins and Ms Gannon are concerned, certain limited undertakings were provided by emails dated 10 May 2021.
70. No application was made for interlocutory injunctive relief, and Etta has limited its claims to damages in the present proceedings which were ultimately issued on 9 September 2022.
71. Etta ceased to trade roughly contemporaneously with Mr Aimson's dismissal. It was Mr Torkington's and Mr Goluguri's evidence that they had no expertise in actually running a healthcare recruitment business and that given that the Database had been taken, and that it no longer had its key employees, Etta simply could not continue to trade.
72. The Defendants have questioned why Etta could not have continued to trade, or at least made some commercial use of the Database given that it still existed. Further, reference was made by the Defendants to the fact that Mr Torkington and Mr Goluguri were involved in another healthcare recruitment business called GK Healthcare Ltd ("**GK Healthcare**"). It was suggested that the business of Etta may have been moved to this company, and it is not dispute that Etta's Facebook page was effectively taken over by GK Healthcare. Further, there is evidence that Etta and GK Healthcare had a common client. However, it was the evidence of Mr Torkington and Mr Goluguri that the two businesses are completely separate, and that there was no scope for continuing the business of Etta through GK Healthcare. I specifically asked Mr Torkington whether the Database had been transferred to GK Healthcare, and he confirmed that it had not.
73. So far as Hive is concerned, it did not prove to be a success, and was ultimately dissolved on 17 October 2023.
74. Due to a number of unfortunate personal circumstances, Ms Gannon was unable to commit herself to Hive, and on or around 4 August 2021, she was asked to leave Hive by Mrs Higgins due to the fact that she had not made any placements since she had begun her employment and given that she had become an unreliable member of staff as a result of her personal difficulties.

Etta's Claim

Introduction

75. At a high level, the essence of Etta's case is that Mr Aimson's own projections in respect of Etta produced in early 2001 showed a healthy position, with significant profits being made over the following few years, yet only some four months later, Etta was forced to cease to trade because its Database was being used by Hive, for whom all its senior employees (i.e. Mr Aimson, Mrs Higgins and Mr Gannon) were either working or assisting it to establish its business. Etta therefore lost the chance of making the projected profits, and/or the value of its business. It is alleged that this was

brought about by Mr Aimson, Mrs Higgins, Ms Gannon and Mrs Aimson acting together in concert through the commission by one or more of them of unlawful actions for which they are respectively liable, but for which they are all collectively liable in the tort of unlawful means conspiracy to compensate Etta by way of damages.

76. So far as the unlawful actions are concerned, they are alleged to be:

- i) In the case of Mr Aimson:
 - a) Breach of clauses 2.2, 2.3, 11.1, 11.2 and 14.1 of the Shareholders' Agreement;
 - b) Breach of an implied term of his contract of employment of good faith and fidelity to Etta;
 - c) Breach of his equitable duties of confidence to Etta;
 - d) Breach of Reg. 16 of the Copyright and Rights in Databases Regulations 1997 ("**the Database Regulations**"); and
 - e) Breach by Mr Aimson of his statutory fiduciary duties as a director under ss. 171(b), 172, 173, 174, and 175 of the Companies Act 2006 ("**CA 2006**").
- ii) In the case of Mrs Higgins:
 - a) Breach of an implied term of the Higgins Contract of good faith and fidelity to Etta in working for Hive prior to the termination of the Higgins Contract;
 - b) Acting in breach of the post termination provisions in clauses 18.2.1 to 18.2.8 of the Higgins Contract;
 - c) Wrongfully procuring Ms Gannon to act in breach of the Gannon Contract;
 - d) Misusing Etta's confidential information and the Database in breach of clauses 17 and 21 of the Higgins Contract, and/or Reg. 16 of the Database Regulations, before and after the termination of her employment with Etta.
- iii) In the case of Ms Gannon, :
 - a) Acting in breach of the post termination provisions in clauses 18.2.1 to 18.2.5, and 18.2.8 of the Gannon Contract; and
 - b) Misusing Etta's confidential information and the Database in breach of clauses 17 and 21 of the Gannon Contract, and/or Reg. 16 of the Database Regulations, after the commencement of her employment by Hive.

- iv) In the case of Mrs Aimson, wrongfully procuring Mrs Higgins to act in breach of the Higgins Contract.
77. In addition, in the case of Mr Aimson, it is alleged that he received payments totalling £58,909.25 paid to him by way of dividends that are repayable because Etta never made sufficient profits to enable the payments to be lawfully made out of profits available for distribution as required by s. 830 CA 2006. It is pleaded by Etta in its Particulars of Claim that Mr Aimson received the sums in question in breach of clause 2.2 of the Shareholders' Agreement, and his statutory fiduciary duties under ss. 171, 172, 173, 174 and 175 CA 2006.
78. As I have mentioned, judgment in default has been obtained against Mr Aimson and Mrs Aimson, and their Defences have been struck out, and, so far as they are concerned, I am only now presently concerned with the quantum of damages recoverable against them. However, in so far as the conspiracy claim is pursued against Mrs Higgins and Ms Gannon concerning unlawful acts on the part not only of Mrs Higgins and/or Ms Gannon themselves, but also the unlawful acts of Mr Aimson and Mrs Aimson, it is necessary for me to be satisfied on the evidence that the latter allegations are made out even though it is not open to Mr Aimson and Mrs Aimson to dispute them.

Relevant legal principles

Breach of Contract

79. The relevant express terms of the Shareholders' Agreement, the Higgins Contract and the Gannon Contract relied upon by Etta are set out in Schedule A and Schedule B hereto. In the case of Mrs Higgins and Ms Gannon, we are concerned with confidentiality under clause 17, post termination restrictions under clause 18, and database policy under clause 21 of their respective contracts.
80. So far as post termination restrictions are concerned, Etta accepts that it is for it to prove that the same are valid and enforceable and are not void as a restraint of trade. To that extent, Etta accepts that it must show that:
- i) It has a legitimate proprietary interest that it is appropriate to protect; and
 - ii) The protection sought is no more than is reasonable having regard to the interests of the parties and the public interest.
81. Etta recognises that restrictions in employment contracts will generally be viewed more strictly than those in commercial ones and that, generally, the more senior the employee, the easier it will be for an employer to uphold a covenant: see *Thomas v Farr plc* [2007] EWCA Civ 118. Further, Etta accepts that preventing competition cannot be an end in itself. Etta refers to the relevant principles as being set out in *Office Angels v Rainer-Thomas and O'Connor* [1991] IRLR 214 at paragraphs 21-25.
82. The latter is said to provide authority for the proposition that trade connection (with customers, clients or suppliers) and, more generally, goodwill, trade secrets and other confidential information, and the stability of the workforce are all rights which the

Courts allow to be protected. It is submitted that this can include a recruitment agency's pool of work-seekers.

83. It is submitted that the reasonableness of any restriction requires consideration of the restricted activities themselves, the period and (if appropriate) the geographic extent of the restriction, and that this is, ultimately, a balancing exercise and reasonableness is to be assessed at the time that the covenant was entered into.
84. *TFS Derivatives Ltd v Morgan* [2004] EWHC 3181, is relied upon by Mr Vinson on behalf of Etta as providing the following guidance:
- i) The court must first decide what the covenant means when properly construed;
 - ii) The court will then consider whether the former employer has shown that it has a legitimate business interest requiring protection;
 - iii) The covenant must be no wider than its reasonably necessary for the protection of those interests, which is to be assessed from the perspective of reasonable people in the positions of the parties at the date of the contract having regard to the contractual provisions as a whole and the factual matrix.
85. In closing submissions, I raised with Mr Vinson the question as to the appropriate approach to any consideration of the reasonableness of post termination restrictions in the case where an employee has brought to their job personal contacts which post termination provisions would have the effect of preventing them from contacting or dealing with on the termination of their employment. Mr Aimson and Mrs Higgins have suggested that this was the case so far as they are concerned. Mr Vinson took me to a helpful consideration of the relevant principles in Bloch and Brearley, *Employment Covenants and Confidential Information*, 4th Edn. at 11.192 and 11.193, and the decision of the Court of Appeal in *Hanover Insurance Brokers v Shapiro* [1994] IRLR 82, distinguishing the earlier decision of the Court of Appeal in *M&S Drapers v Reynolds* [1957] 1 WLR 9. In short, it is submitted by Etta that the fact that a large proportion of customers might be known to an employee prior to his employment is a fact relevant to the reasonableness of a covenant but is more likely to impact upon the reasonableness of the length of restraint rather than rendering the relevant provision unenforceable simpliciter, in particular in the case of a more senior employee.
86. Etta accepts that to the extent that an express term seeks to protect confidential information, the information in question must be genuinely confidential.
87. Etta submits that the Higgins Contract and the Gannon Contract, as well as Mr Aimson's contract of employment, were all subject to the term of good faith and fidelity that it is said is to be implied into every employment contract – see e.g. *Faccenda Chicken Limited v Fowler* [1986] Ch 117. In *Attorney General v Blake* [1998] Ch 439, the duty was described as follows by Lord Woolf MR at 454C:

“The employee must act in good faith; he must not make a profit out of his trust; he must not place himself in a position where his duty and his interest may conflict; he may not act for his own

benefit or the benefit of a third party without the informed consent of his employer.”

88. I do not understand there to be any particular dispute as to the principles of law to be applied, but both Mrs Higgins and Ms Gannon challenge the reasonableness of the post termination restraints in the present case and submit that the same were always unenforceable.

Procuring breach of Contract

89. This cause of action is directed at:
- i) Mr Aimson and Mrs Aimson for procuring Mrs Higgins to act in breach of the Higgins Contract, if not also procuring Ms Gannon to act in breach of the Gannon Contract; and
 - ii) Mrs Higgins for procuring Ms Gannon to act in breach of the Gannon Contract.
90. Etta accepts that to establish liability under the economic tort of procuring breach of contract, Etta must show not only that the relevant Defendant induced or procured an act that was a breach of contract, but that the relevant Defendant actually knew that they were inducing or procuring such an act, or an act which would have that effect, and that they intended to procure the breach. It is accepted that this presupposes the knowledge of the existence of a contract. However, Etta relies upon *OBG Ltd v Allan* [2008] 1 AC 1 at [40]-[41] per Lord Hoffmann, and at [192] per Lord Nicholls, for the proposition that whilst this is a subjective test, knowledge includes reckless indifference or wilful failure to enquire into a fact.
91. Etta relies upon *Smith New Court Securities Ltd v Citibank NA* [1997] AC 254 at [279]-[280] per Lord Steyn as authority for the proposition that it is entitled to recover all direct losses if this cause of action is established.
92. I note that the relevant principles behind the tort of procuring breach of contract were considered by the Court of Appeal in a judgment handed down after submissions in the present case – see *Northamber Plc v Genee World Ltd and others* [2024] EWCA Civ 428, at [30], and [34]-[63] per Arnold LJ. The Court of Appeal was there primarily concerned with what was required to amount to inducement.

Misuse of confidential information/breach of duty of confidence/breach of the 1997 Regulations

93. Over and above any contractual obligations, express or implied, so far as the use of confidential information is concerned, Etta relies on the relevant Defendants being subject to an equitable duty to the effect that information disclosed in confidence should not, without consent, be used to unfair advantage or to the prejudice of the person who gave the information: see *Seager v Copydex Ltd (No.1)* [1967] 1 WLR 923. Relying upon *JN Daries Ltd v Johal Dairies Ltd* [2009] EWHC 1331 (Ch), Mr Vinson submits that that commercial information, such as customer lists or details of contacts and the like are generally considered to be confidential for this purpose.

94. Etta submits that it is generally accepted that there are three requirements for the protection of information under this equitable duty, as set out in *Coco v A N Clark Engineers Ltd* [1969] RPC 41:
- i) The information must have the necessary element of confidence;
 - ii) The information must have been imparted in circumstances importing an obligation of confidence arising by contract, implied because of the circumstances or implied due a special relationship such as employer and employee; and
 - iii) There must be an unauthorised use or misuse of the information to the detriment of the claimant.
95. Specific reference is made by Mr Vinson on behalf of Etta to *First Conference Services Ltd v Richard Bracchi* [2009] EWHC 2176 (Ch), where it was held that an ex-employee who copied and retained various documents and information belonging to his ex-employer, including many contact details and sales figures, acted in breach of confidence as that database was an important tool which could be used as the basis for starting up a rival business.
96. So far as the Database regulations are concerned, they are relied upon by Etta as protecting a “*database*”, defined (by section 3A(1) of the Copyright, Designs and Patents Act 1998) as “*a collection of independent works, data or other materials which (a) are arranged in a systematic or methodical way, and (b) are individually accessible by electronic or other means.*”
97. Etta points to Reg. 13 of the Database Regulations as providing that database right arises if there has been “*a substantial investment in obtaining, verifying or presenting the contents of the database*” pursuant to Reg. 13. That right is then infringed if a person extracts or re-utilises all or a substantial part of the contents of the database without permission (see Reg. 16). Extraction is defined in Reg. 12 as: “*the permanent or temporary transfer of all or a substantial part of the contents of a database to another medium by any means or in any form.*”
98. Etta relies upon *Flogas Britain Ltd v Calor Gas Ltd* [2013] EWHC 3060 (Ch)⁴² as authority for infringement of database right giving rise to a damages claim.

Breach of statutory fiduciary duties

99. These duties only apply to Mr Aimson in his capacity as a director of Etta. They are relevant to his actions in respect of downloading the Database, as well, potentially, as other conduct relating to Hive, and also any payment of unlawful dividends.
100. The relevant provisions of CA 2006 are:
- i) S. 171(b) – duty only to exercise powers for the purposes for which they were conferred;
 - ii) S. 172 – duty to act in the way the director considers, in good faith, would be most likely to promote the success of the company for the benefit of its

members as a whole and to have regard *inter alia* to the matters set out in ss. 172(1)(a) to (f);

- iii) section 173 – duty to exercise independent judgment;
- iv) section 174 – duty to exercise reasonable care, skill and diligence;
- v) section 175 – duty to avoid a situation in which the director has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company.

Unlawful means conspiracy

101. Etta identifies the helpful summary of the essential ingredients in respect of this tort as set out in *Cuadrilla Bowland Ltd v Persons Unknown* [2020] 4 WLR 29 at [18], per Leggatt LJ, namely that there must be:

- i) An unlawful act by a defendant;
- ii) Which was done with the intention of injuring the claimant;
- iii) Pursuant to an agreement or combination (whether express or tacit) with one or more other persons; and
- iv) Which actually injures the claimant.

102. Mr Vinson, on behalf of Etta, identifies the following further propositions that he submits apply to the consideration of the conspiracy claim in the present case:

- i) The intention to injure the Claimant does not need to be the sole or predominant purpose of the agreement or combination, the Defendants must merely have had the intention to injure in the sense that it was one of the purposes and/or it could be reasonably foreseen that the conspiracy might injure that person: see *Lonrho plc v Fayed and others* [1992] 1 AC 448;
- ii) There is no requirement that the conspirators must know of the unlawfulness of the means: see *The Racing Partnership Ltd and others v Sports Information Services Ltd* [2021] Ch. 233, per Arnold and Phillips LJJ, Lewison LJ dissenting.
- iii) There is also no requirement that all of the defendants to such a claim have to use unlawful means: see *Lakatamia Shipping Co Ltd v Nobu Su* [2021] EWHC 1907 (Comm) at [83], per Bryan J.
- iv) Once some pecuniary loss is established, damages in conspiracy are at large: see *Lonrho plc v Fayed (No.5)* [1993] 1 WLR 1489 at 1494. On the basis thereof, it is submitted that Etta is not, therefore, limited to a precise calculation of the amount of pecuniary loss actually proven and does not have to quantify its losses precisely. There must however be some nexus. When deciding the level of damages, the Court should consider all of the circumstances of the case, including the conduct in issue and the nature of the wrongdoing.

- v) The relevant Defendants as parties to the conspiracy will be jointly and severally liable for the losses caused thereby (albeit not for losses which arose before they joined the conspiracy).
103. In closing, and in answer to my probing, Mr Vinson dealt in more detail with the requirement of an agreement or combination. He referred to the analysis of the position by Bryan J in *Lakatamia Shipping Co Ltd v Nobu Su* (supra), where at [83]-[87], Bryan J said this with regard to “combination”:
- “83. Turning first to the element that there must be a combination. The combination must be to the effect that *“at least one of”* the conspirators will use unlawful means, see *Revenue and Customs Commissioners v. Total Network SL* [2008] UKHL 19; [2008] 1 A.C. 1174, at [213] (described as *“common ground”* per Lord Neuberger). Thus, there is no requirement that all of the conspirators will use unlawful means. It is also unnecessary, in order for a combination to exist, that it be, for example, contractual in nature, or that it be an express or formal agreement. As Nourse LJ explained in *Kuwait Oil Tanker Co*, at [111]: *“it is not necessary to show that there is anything in the nature of an express agreement, whether formal or informal. It is sufficient if two or more persons combine with a common intention, or, in other words, that they deliberately combine, albeit tacitly, to achieve a common end”*.
84. Equally, it is not a requirement in order for a conspirator to be liable that he or she entered into the agreement at the same time as the other parties thereto - see, *Kuwait Oil Tanker* at [111] per Nourse LJ.
85. It is enough for liability to arise that a defendant *“be sufficiently aware of the surrounding circumstances and share the same object for it properly to be said that they were acting in concert at the time of the acts complained of”* - see *Kuwait Oil Tanker*, at [111] per Nourse LJ. However, although there must be sufficient identity of object, the conspirators do not need to *“have exactly the same aim in mind”* - see Clerk & Lindsell on Torts, at para 23.104. Further, *“the advantage to be derived from that same object may not be the same”*- see *Crofter Hand Woven Harris Tweed Co Ltd v. Veitch* [1942] A.C. 435, 479 per Lord Wright.
86. Direct evidence of the combination is inessential, and it is also unnecessary for the claimant to pinpoint precisely when or where it was formed. In this regard I have already quoted what was said by O'Connor LJ in the criminal law case of *R. v. Siracusa* (1990) 90 Cr. App. R. 340, 349 in the context of circumstantial evidence above, but it bears repeating at this point: *“the origins of all conspiracies are concealed and it is*

usually quite impossible to establish when or where the initial agreement was made or when or where other conspirators were recruited. The very existence of the agreement can only be inferred from overt acts. Participation in a conspiracy is infinitely variable: it can be active or passive. If the majority shareholder and director of a company consents to the company being used for drug smuggling carried out in the company's name by a fellow director and minority shareholder, he is guilty of conspiracy. Consent, that is agreement or adherence to the agreement, can be inferred if it is proved that he knew what was going on and the intention to participate in the furtherance of the criminal purpose is also established by his failure to stop the unlawful activity".

87. As I have also already noted, in *Kuwait Oil Tanker*, at [111], Nourse LJ said that this passage was fully applicable to the tort of unlawful means conspiracy. He added, at [112], that: "*It will be the rare case in which there will be evidence of the agreement itself*". In this regard I also agree with the observations of Waksman J in *Lakatamia v. Su* at [37], which I have already referred to, that in a conspiracy case "*by definition the claimant is not likely to have much by way of documents itself or direct evidence*" and that "*quite often all it can do is raise inferences from the documents which it has*".

Application of the legal principles to the facts of the case

Database

104. Etta's case is that the starting point is the Database, which identified some 18,505 candidates and 680 clients. It is submitted that the Database clearly belonged to Etta and constituted confidential information. This is on the basis that:
- i) It contained vast numbers of entries, which had been collated for its purposes and which included the e-mail addresses, mobile phone numbers and other information for candidates Etta was seeking to place with clients (for which it contained the same information);
 - ii) It included Etta's past transactions, work in progress and future works;
 - iii) Etta had produced the candidates from paid advertising on job boards and expended time and money in compiling them on the Database; and
 - iv) In short, the Database was the lifeblood of Etta's business.
105. Further, Etta submits that the Database had been compiled over the lifetime of Etta, and Etta had clearly made a substantial investment in obtaining, verifying and presenting its contents so as to give rise to its database right under the Database Regulations.

106. Etta submits that it is clear that Mr Aimson downloaded the Database on 8 February 2021 and that it was subsequently used for the benefit of Hive. It is Etta's case that this gave rise to breaches by each of Mr Aimson, Mrs Higgins and Ms Gannon of equitable duties of confidence and infringement of database right in breach of Reg. 16 of the Database Regulations, as well as breach by Mrs Higgins and Ms Gannon of clause 21 of their respective contracts of employment, and breach by Mr Aimson of the Shareholders' Agreement and his statutory fiduciary duties.
107. Etta submits that the above is supported by the following:
- i) The evidence of Mr Torkington, at paragraphs 49-50 of his witness statement, to the effect that Mr Aimson downloaded the Database, supported by an extract from the JobAdder records showing what was downloaded on 8 February 2021, and that what was downloaded was downloaded by Mr Aimson;
 - ii) Mr Aimson admitted in paragraph 19 and 20 of his Defence downloading information from the Database, albeit contending that what was downloaded was not confidential information belonging to Etta, an issue to which I will return;
 - iii) Mr Aimson had no legitimate reason for downloading the whole of the Database on 8 February 2021, and it is no coincidence that this occurred at the very time that Hive was being formed and could make use of the information to establish its business;
 - iv) The evidence is to the effect that Hive, following its incorporation, did make use of the confidential information in question. Reliance is placed upon, among other things:
 - a) The fact that in her Defence, Mrs Higgins refers to being passed information by Mr Aimson from the database whilst working for Hive, although she maintained that this was in respect of the database that he had purchased from his own resources, an issue to which, as I say, I will return. It is Etta's case that the information in question must have derived from the Database;
 - b) The fact that it is Ms Gannon's case that she was passed information by Mrs Higgins whilst working for Hive and told to send a mailshot to candidates. Etta again submits that the relevant information must have derived from the Database; and
 - c) As Hive was contacting (via Mrs Higgins and Ms Gannon) Etta's candidates and clients, it is to be inferred that done by the use of the Database.

Conspiracy

108. Etta puts its case in conspiracy at the forefront of its case as a whole as its allegation of conspiracy is said to embrace all the Defendants. In essence, it is alleged by Etta that all the Defendants conspired with each on a date or dates beginning prior to 16

February 2021 to divert business and employees away from Etta to its detriment and to do so by unlawful means. Those means are said to have been the obtaining and misuse of Etta's confidential information, breaching contractual and other obligations owed to Etta by various of the Defendants and procuring others to do the same.

109. That Mr Aimson and Mrs Aimson are liable for such a conspiracy is determined by the judgment against them. However, the case in conspiracy, and any unlawful acts on the part of Mr Aimson and Mrs Aimson relied upon in support of the case of conspiracy against Mrs Higgins and Ms Gannon necessarily have to be proved as against them.
110. Etta submits that there was such a conspiracy is quite clear on the evidence, the following particular matters being relied upon:
 - i) Mr Aimson downloading the Database on 8 February 2021;
 - ii) Mr Aimson, Mrs Higgins, Ms Gannon and Mrs Aimson participating in the "*Team Quiz*" online on 12 February 2021, the very day that Mrs Aimson organised insurance, 3 GoDaddy domain names and 3 Office 365 licences for Hive;
 - iii) Mr Aimson, on 16 February 2021, deleting a large number of files from the Database on One Drive without any authority or reason to do so.
 - iv) Hive being incorporated on 16 February 2021 by Mrs Aimson on the making of an application dated 14 February 2021 (suggesting that preparatory steps towards incorporation were taken earlier than this);
 - v) Mrs Aimson having no recent experience in the recruitment sector and therefore necessarily needing others with experience to help her to set up Hive;
 - vi) Mr Aimson and Mrs Aimson both signing the mortgage application reference for Mrs Higgins referred to above in which Mr Aimson is described as the Co-Founder and Managing director of "*Etta Healthcare/Hive Resourcing*". Etta submits that the fact that this reference was never used is beside the point. It was dated 16 March 2021 (when Mrs Higgins was still working for Etta). The emails, which attach one version of the reference, make it clear that Mrs Aimson and Mr Aimson were aware of it and were said to be sorting it out. It conflates Etta and Hive, states expressly that Mr Aimson had an important role with Hive and talks about "*when we created a new business, Hive Resourcing*". It is submitted that this provides clear evidence that links each and every one of Mrs Aimson, Mr Aimson and Mrs Higgins with each other and the denuding of Etta in favour of Hive, as well as demonstrating the intentions of those involved and the unlawful lengths to which they were prepared to go with Hive being clearly represented as a successor to Etta.
 - vii) The connection of Mr Aimson's Etta laptop to the Wi-Fi at Hive's offices whilst he was working for Etta. It is submitted that there can have been no legitimate reason for the use by Mr Aimson of Etta's computer at Hive's offices;

- viii) Mr Aimson informing Etta of his intention to resign on 22 March 2021, Mrs Higgins having resigned on 2 March 2021 and Ms Gannon on 3 March 2021;
 - ix) Ms Gannon and Mrs Higgins both say that Mr Aimson told them that Etta was winding down. In Ms Gannon's case, this was, as referred to above, said to have happened in January/February 2021. However, whatever Mr Aimson might have said, this was not true unless this was to be the inevitable effect of the conspiracy being put into effect;
 - x) At the online meeting on 16 April 2021, Mr Aimson was clearly aware of Hive and falsely sought to suggest that it was not a competitor.
111. That the conspiracy involved both Mrs Higgins and Ms Gannon is also said to be clear from the evidence: The following particular matters are relied upon by Etta:
- i) Mr Aimson increasing the commission thresholds payable to Etta's employees on the very same day that he downloaded the Database so as to allow Ms Gannon to receive a bonus of £1,124.21. This is said to be evidence of a financial benefit being arranged by one conspirator for another, there being no other basis for this to be done;
 - ii) Mr Aimson, on 1 March 2021, telling Messrs. Torkington and Goluguri that Mrs Higgins wanted to leave Etta for personal reasons and that she had inherited some money and was not going to work in the healthcare industry anymore in circumstances where:
 - a) Mrs Higgins's case is that she resigned on 28 February 2021 and that, on that date, Mr Aimson purported to waive her restrictive covenants;
 - b) Mrs Higgins says that she was told by Mr Aimson that Etta was being wound down and she therefore looked for further opportunities, yet the contents of the email exchange on 15 March 2021 referred to above is inconsistent with that; and
 - c) At the time of her giving notice to Etta, and from shortly after the incorporation of the latter, Mrs Higgins had been actively working for Hive whilst still employed by Etta;

Etta submits that the above provides clear evidence of the conspiracy involving Mrs Higgins as of February 2021;
 - iii) Mrs Higgins' early involvement with Hive prior to the termination of her employment with Etta, particular reliance being placed by Etta on the following:
 - a) Mrs Higgins, on 16 February 2021, the day of Hive's incorporation, making the recorded telephone calls referred to above to Sky from Etta's telephone system in which she discussed three email accounts set up for Hive for her "*and the other two people signed up.*"

- b) On the same day, Mrs Higgins making recorded telephone calls to three of Etta's candidates using Etta's telephone system (and, it is submitted, the Database) introducing herself as being Hive;
- c) Mrs Higgins emailing on behalf of Hive and agreeing terms with clients of Etta before she left Etta as referred to above, Mrs Higgins, for this purpose, using her new Hive email account, and describing herself as Managing Director of Hive;
- d) Evidence of other examples of work carried out by Mrs Higgins for Hive whilst still an employee of Etta, including calling Etta's candidates on behalf of Hive and securing signed terms of business on behalf of Hive;
- iv) The circumstances behind Mrs Higgins mortgage application reference referred to above. It is submitted that the only conclusion to be drawn from that evidence is the existence of the conspiracy including the three people who dealt with that reference;
- v) In relation to Ms Gannon, as referred to above, Mrs Higgins discussed 3 Hive email addresses with GoDaddy on 16 February 2021. It is submitted that the only proper inference is that "*the other two people signed up*" were Mrs Aimson and Ms Gannon on the basis that there was no-one else and no need for three such addresses without Ms Gannon;
- vi) The same point is made in relation to Mrs Aimson arranging for 3 licences for Office 365 on 12 February 2021. It is submitted that the only real inference is that it was known that Ms Gannon was part of Hive at that point;
- vii) Ms Gannon's resignation within a day of Mrs Higgins. Mr Aimson told Etta that Ms Gannon had gone to work for "*My Dental*". That was not true and it is submitted that there would have been no need to say anything like this unless it was necessary to cover up the truth of what Ms Gannon was going to be doing. It is submitted that Mr Aimson and Ms Gannon knew that she was going to work for Hive at that point (and it is submitted that it had been known beforehand as well by virtue of the matters set out above and below);
- viii) Ms Gannon sent a mailshot on behalf of Hive on 19 April 2021 (in which she described herself as Head of Permanent Staffing). That prompted one response in relation to taking business, which was then forwarded by Ms Gannon to Mr Aimson. It is submitted that there would be no need to forward this to Mr Aimson unless Mr Aimson was involved with Hive. Mr Aimson responded to all of the other Defendants, including Mrs Higgins at her Etta email address hence this correspondence coming to light;
- ix) The evidence that Ms Gannon had a Hive account with Indeed.com from 23 February 2021 referred to above;
- x) Neither Ms Gannon nor Mrs Higgins posted any adverts for Etta after 24 February 2021 despite remaining employed by it for over a month thereafter;

- xi) As referred to above, Ms Gannon's Etta laptop had connected to the Wi-Fi at Hive's offices prior to its return on 8 April 2023. It is submitted that there can have been no legitimate reason for the use of Etta's computer at Hive's offices.
112. As to the requisite elements of the conspiracy, it is submitted by Mr Vinson on behalf of Etta that:
- i) There have clearly been unlawful acts, including:
- a) Mr Aimson's acts in relation to the Database and breaches of the Shareholders' Agreement, and of statutory and other duties by him;
 - b) Mrs Higgins' breaches of the Higgins Contract in working for Hive whilst employed by Etta; and
 - c) Mrs Higgins and Ms Gannon's breaches of their post-termination covenants; and
 - d) Mrs Aimson's and Mr Higgins' actions in procuring and inducing breaches of contract;
 - e) The above allegations of breach of equitable duties of confidence and infringement of database right against Mr Aimson, Mrs Higgins and Ms Gannon.
- (Etta repeats its submission that any one such act will be sufficient and not all of the Defendants need to have committed it or known that it was unlawful);
- ii) The necessary intent to harm Etta has been established on the evidence, as has the actual harm caused;
- iii) The agreement or combination between the parties is also established by that evidence, the acts which occurred and the timing of the same.
113. It is therefore submitted that the conspiracy is clearly made out as against all the remaining Defendants.
114. This then raises the question as to what loss has been caused by the conspiracy, recoverable by way of damages, being the only question strictly speaking so far as Mr Aimson and Mrs Aimson are concerned.
115. As referred to above, Etta relies on *Lonrho plc v Fayed (No.5)* (supra) as authority for the proposition that once some pecuniary loss is established, damages in conspiracy are at large. Thus, it is submitted that Etta does not have to prove every element of its pecuniary loss, particularly in circumstances where it has been hampered in putting forward its case as to loss by the failure of, in particular, Mr Aimson, Mrs Aimson and Hive to provide proper disclosure.
116. In essence, Etta's case on damages is that Mr Aimson has allowed Etta to trade to the point where it was successful and taking-off and then participated in the taking of that business by Hive as a purported re-brand of Etta along with the assistance of the other Defendants. The effect of this was, it is alleged, to harm Etta beyond recovery. It is

alleged that the other directors had caused Etta to be funded (without any payment) but were not in a position to pick up the pieces and run it (as had always been the basis on which it operated). Etta's case is that the acts in question simply caused it to stop trading. Moreover, given what is said to be the apparent attempt to brand Hive as the successor to Etta, there would have been real issues in attempting to do so in any event. This is said to be not only evidenced by the mortgage reference for Mrs Higgins, but also the email exchange with Lynda Brown of Outcomes First Group between 2 and 4 March 2021 where the latter had responded to emails from Mrs Higgins at Hive by thanking her for notifying them of "*the changes to your business*".

117. In the first instance, Etta seeks its losses based upon the projections made for its business by Mr Aimson himself. Etta submits that he was best placed to make these projections, and they were not suggested as being outlandish by him. They were, it is said, his reasonable forecast as to how Etta's business was progressing and would progress. As referred to above, the revised projections prepared in early January 2021 showed an EBITDA of £3.1 million per annum odd within 5 years.
118. Etta seeks to recover by way of damages a sum calculated by reference to the percentage chance of achieving this level of profit on the basis of loss of chance occasioned by the matters about which complaint is made. Whilst accepting that this would be a matter for the Court, Etta submits that the appropriate percentage chance to apply is 85%. Etta submits that there was a "*real and substantial*" prospect of achieving the projected figures and so, applying the decision of the Court of Appeal in *Allied Maples Group Ltd v Simmons and Simmons* [1995] 1 W.L.R., the Court ought to assess damages based upon the chances of success in percentage terms, on Etta's case, 85%.
119. Etta relies upon the expert accountancy report of Greg Lacey ("**Mr Lacey**") dated 19 January 2024. None of the Defendants relied on expert evidence not having filed or served any such evidence within the time permitted. Further, Mr Lacey was not required to attend for cross-examination.
120. In his report, Mr Lacey has opined on whether the projections were realistic. In that respect, Etta relies upon Mr Lacey having noted that:
 - i) Etta's figures had fallen short in the first year of the forecast, but that this was affected by the Covid-19 pandemic;
 - ii) There was an upward trend in Etta's business over the period of operation;
 - iii) It would not be unreasonable for Mr Aimson to have assumed that the 2021 income might increase in line with the projection;
 - iv) The cumulative fees were increasing month on month;
 - v) Mr Aimson had considerable experience to bring to bear in making his forecasts;
 - vi) He had seen no evidence that the 2021 projection was not achievable when it was prepared;
 - vii) The underlying assumptions remained the same in the revised projections; and

- viii) Any downturn seems to coincide with the actions against Etta that are complained of.
121. On the basis thereof, Etta submits that it had a real and substantial chance of achieving its projected potential and that loss ought to be assessed on this basis at such percentage as the Court decides. It contends for 85% but recognises that this is a high figure for a projection over a five-year period. I note that the projected EBITDA over the projected five year period exceeds £7 million. Mr Vinson recognised in the course of submissions that EBITDA is just that, and not a net profit figure, and that it would, in any event, be necessary to apply a discount for early payment of the loss of profits.
122. Etta does, however, have a fallback position if the Court is not satisfied that the approach of calculating damages by reference to the loss of chance of making profits is the most suitable in the circumstances in that Mr Lacey has also opined as to the value of Etta as at the date it had to close due to the actions of the Defendants. He puts this at £495,000 (assuming Mr Aimson repays the dividends that it is said that he unlawfully received). This figure of £495,000 is based upon applying a multiplier of 1.5 to the projected EBITDA for 2021 after applying a market rate salary for a managing director. The multiplier of 1.5, in contrast to a multiplier of up to 6 that might normally be applied in the case of the valuation of a recruitment consultant business, takes into account a number of factors beneficial to the Defendants as set out in paragraph 3.33 of the report.
123. Etta points out that Mr Lacey goes on to note that Etta would have been in a much stronger position by the end of 2021 had the acts complained about not occurred and further consultants had been recruited. Etta maintains that the £495,000, and the overall analysis behind it, is therefore beneficial to the Defendants at every stage and this figure therefore reflects the minimum loss to Etta.
124. Etta also refers to the fact that Mr Lacey has been able to identify £60,050 of work carried out by Hive relating to Etta's candidates and clients. This is from the limited disclosure provided, and Etta maintains that this may well be the tip of the iceberg, but that if the Court were looking to identify any such figure, this is the best that is available.
125. It is Etta's case, on the basis that all the Defendants joined the conspiracy at the same time, that they are all jointly and severally liable for the same loss as determined by the Court. Etta submits that the evidence is to the effect that the Defendants did all join the conspiracy at the same time.
126. I turn then to consider Etta's case in relation to the various unlawful acts that are said to lie behind the alleged conspiracy.

Breach of Contract by Mrs Higgins and/or Ms Gannon

127. It is Etta's case that it is clear that both Mrs Higgins and Ms Gannon acted in breach of their employment contracts with Etta. In the course of submissions, and contrary to the position adopted in his Skeleton Argument, Mr Vinson accepted that the pleaded case as against Ms Gannon is limited to breaches that are alleged to have occurred after the termination of her employment by Etta.

128. So far as Mrs Higgins is concerned, it is alleged that she acted in breach of the Higgins Contract prior to the termination of her employment by Etta, it being alleged that she acted in breach of clause 17 thereof relating to confidentiality and clause 21 thereof relating to Database policy, as well as in breach of her duty of good faith/fidelity. The terms of the relevant provisions are, as I have already identified, set out in Schedule 2 hereto. In short, it is submitted that the evidence is clear that, whilst employed by Etta, Mrs Higgins disloyally worked for Hive seeking to generate business for the latter utilising information that she must have known derived from the Database. It is then alleged that both Mrs Higgins and Ms Gannon acted in breach of clauses 17 and 21 of their respective contracts whilst working for Hive after the termination of their employment by Etta by utilising confidential information derived from the Database.
129. So far as post termination restrictions are concerned, these are contained in clause 18 of the Higgins Contract and the Gannon Contract as set out in Schedule 2 hereto. The pleaded case is that Mrs Higgins acted in breach of clauses 18.2.1 to 18.2.8 and that Ms Gannon acted in breach of clauses 18.2.1 to 18.2.5, and 18.2.8.
130. In response to Mrs Higgins' and Ms Gannon's contention that the relevant provisions ought all to be struck down as unlawful restraint of trade, Etta submits that, adopting the analysis from *TFS Derivatives Ltd v Morgan* (supra) set out above:
- i) Each clause will first fall to be construed in order to determine its true meaning. Etta submits that each clause is clear as to its terms;
 - ii) The relevant provisions contain non-solicitation provisions, but Etta relies on the fact that they are limited to restricting Mrs Higgins and Ms Gannon from dealing with those with whom they were respectively involved and/or had personal dealings during a limited period prior to her leaving. In reliance upon *Office Angels v O'Connor* (supra), this is submitted to be reasonable. It is pointed out that this is a common clause with common restrictions, that Mrs Higgins was a senior employee and that both Mrs Higgins and Ms Gannon had important roles in securing new business. This is therefore submitted to be a common clause with common restrictions in such circumstances;
 - iii) The non-deal clauses and the non-compete clauses are also appropriate given the seniority of Mrs Higgins and Ms Gannon. Moreover, it is submitted that confidential information and non-solicitation clauses alone would not be sufficient to protect Etta's interests as being difficult to police: see also *Thomas v Farr Plc* (supra);
 - iv) There is clearly a legitimate business interest to be protected. Etta needs to be able to protect its confidential information and relationships with its customers, clients and other trade connections: see e.g. *Office Angels v O'Connor*;
 - v) In so far as Mrs Higgins and Ms Gannon take issue with the scope of the covenants, there is no real basis for this. They are limited to 6 months, and it is submitted that this is a reasonable period in the context of the type of business concerned and the length of time it would have taken any replacement to settle in and cement relationships: see *WRN Ltd v Ayris* [2008] EWHC 1080;

- vi) In terms of the geographical restriction, it is submitted that this is reasonable in the circumstances where Etta has a national presence. In any area in which Etta has not carried out business, the restriction would not apply.
131. In the circumstances, Etta submits that I should reject the contention on the part of Mrs Higgins and Ms Gannon that the relevant provisions are an unlawful restraint of trade.
132. As to Mrs Higgins' contention that Etta, through Mr Aimson, has waived any ability to rely upon any such covenants, Etta submits that this should be disposed of shortly, and dismissed for the following reasons:
- i) Any such purported waiver was of no effect as being itself part of the conspiracy, and for that reason cannot be relied upon by a participant in the conspiracy;
 - ii) The wording of the email exchange on 15 March 2021 is not apt for the purpose of effecting the alleged waiver. It talks only about Mr Aimson in the first person (as opposed to Etta with whom Mrs Higgins had contracted), it made reference to not targeting Etta's exclusive clients (which Etta submits that Mrs Higgins has done anyway) and it was not supported by any consideration. Further, it was based on what Etta submits is a lie that Mrs Higgins was looking at number of options and might hopefully accept an offer in April. It is submitted that this was clearly false as she was already working for Hive.
133. Ms Gannon also alleges in paragraph 22 of her witness statement that she was told that she would not have any restrictions following the termination of her employment in a telephone conversation with Mr Aimson. Etta submits that there is no evidence that this occurred, and that, as with the position with Mrs Higgins, this was part of the conspiracy and of no effect, even if it did happen.
134. It is submitted that Mrs Higgins and Ms Gannon have clearly breached their employment contracts in that each:
- i) Has been engaged in business of Hive;
 - ii) Has canvassed and solicited business from Etta;
 - iii) Has been concerned with the supply of Professional Contacts or otherwise dealt with Clients or Professional Contacts in relation to the Services;
 - iv) Has canvassed or solicited business from Candidates or Prospective Candidates;
 - v) Has been concerned in the supply of Candidates and Prospective Candidates;
 - vi) Has gained unlawful access to Etta's CV-library. This is admitted in the case of Mrs Higgins, her attempt to justify it being that she believed Etta had stopped trading – see Mrs Higgins' Defence responding to paragraph 35 of the Particulars of Claim;

vii) Further, Mrs Higgins has admitted that she was involved in the recruitment of Ms Gannon to Hive – see Mrs Higgins’ Defence responding to paragraph 9 of the Particulars of Claim. It is submitted that this renders her in breach of clauses 18.2.6 and 18.2.7 of the Higgins Contract.

135. Etta submits that the breaches on the part of Mrs Higgins and Ms Gannon have occasioned Etta loss in terms of the work lost to Hive. The best that can be identified in this respect, based upon the disclosure, is an amount of £68,050 being the work demonstrated to have been done by Hive.

Breach of contract and/or other breaches by Mr Aimson

136. Mr Vinson did not deal with this in great detail in submissions given that Mr Aimson’s Defence has been struck out, although, as I have said, the alleged unlawful acts on his part are relevant to the claim in conspiracy as against Mrs Higgins and Ms Gannon, and therefore require still require to be proved for that purpose.

137. Although Mr Aimson had sought to deny that he had ever signed the Shareholders’ Agreement, as referred to above, I am satisfied on the evidence that he must have done so.

138. The essence of Etta’s case is that the downloading of the Database, and the provision of its contents to Hive, as well as any other steps that Mr Aimson may have taken in order to facilitate the setting up and operation of Hive must necessarily have amounted to a breach of clauses 2.2, 2.3, 11.1, 11.2 and 14.1 of the Shareholders’ Agreement, a breach of the implied term of his contract of employment of good faith/fidelity to Etta, a breach of his equitable duties of confidence owed to Etta, a breach of Reg. 16 of the Database Regulations, and a breach of his fiduciary duties owed to Etta under ss. 171-175 CA 2006, including to act for proper corporate purposes, to act in good faith in a way that he considered to be in the best interests of Etta, and to act so as to exercise independent judgment and avoid a conflict of interest.

Mr Aimson, Mrs Higgins and Mrs Aimson procuring breach of contract

139. It is Etta’s case that, to the extent that he played a part in their recruitment by Hive, Mr Aimson knew of the terms of the Higgins Contract and the Gannon Contract, and that Mrs Higgins clearly knew of terms of the Gannon Contract.

140. Etta submits that the breaches of contract on the part of Mrs Higgins and Ms Gannon referred to above occurred as part of the conspiracy and were also procured by Mr Aimson and Mrs Aimson in respect of Mrs Higgins’ breaches, and by Mr Aimson and Mrs Higgins in respect of Ms Gannon’s breaches.

141. Etta says that this submission is supported by the evidence. In particular, reliance is placed upon Mr Aimson and Mrs Higgins having given differing versions of events about Mrs Higgins’ resignation and what was to happen about her restrictive covenants. Those differing versions, it is submitted by Etta, go to evidence the conspiracy. It is further submitted by Etta that they also demonstrate that both Mr Aimson and Mrs Higgins knew of the existence and scope of the relevant covenants. It is pointed out that Mrs Higgins accepts that she was involved in the recruitment of Ms Gannon and aware of the relevant covenants albeit that she says that she believed that

Etta was winding down such that they would not need to be adhered to. However, Etta relies upon this as clear evidence of the necessary knowledge on her part.

142. Alternatively, it is Etta's case that even if Mrs Higgins did not know of the precise terms of the Gannon Contract, she must have turned a blind eye to the existence of the relevant covenants which, on the basis of the authorities, requires the Court to proceed on the basis that she was sufficiently aware thereof.
143. As to Mrs Aimson, it is submitted that she must also be taken to have known about the relevant covenants due to her alleged part in the conspiracy.
144. On the above basis, Etta submits that the necessary ingredients of the tort of knowingly inducing or procuring a breach of contract have been established in respect of Mr Aimson, Mrs Aimson and Mrs Higgins, although judgment has been obtained against Mr Aimson and Mrs Aimson in any event.

Confidential Information and the Database

145. It is Etta's case that the Database and its contents are clearly Etta's confidential information.
146. There were contractual obligations on each of Mr Aimson, Mrs Higgins and Ms Gannon in relation to such confidential information. It is submitted that the evidence leads to the inevitable conclusion that it has been used in an unauthorised manner to the detriment of Etta. Etta asks, rhetorically, why else was it downloaded? Why else was the contents of the Database given by Mr Aimson to Mrs Higgins at Hive? How else was Hive able to make contact with Etta's clients and candidates as the evidence shows occurred? It is submitted by Etta that there is no answer to these questions other than the Database being accessed by Mr Aimson and passed on to the other Defendants. It is further complained that Mrs Higgins, if not also Ms Gannon, were still gaining access to Etta's CV-library account when working for Hive.
147. Etta submits that the present facts are very similar to those of *First Conference Services Ltd v Richard Bracchi* (supra), referred to above.
148. Moreover, it is Etta's case that the Database falls within the Database Regulations, and that there has been an extraction by Mr Aimson and re-utilisation by the other Defendants in each in case breach of Reg. 16 of the latter.

Loss and Damage

Mr Aimson and Mrs Aimson

149. It is submitted, firstly, that Mr Aimson is liable to repay the unlawful dividends in the sum of £58,909. This is on the basis that receipt is admitted and there is no defence available to Mr Aimson.
150. Further, it is submitted that both Mr Aimson and Mrs Aimson are liable for damages arising from the conspiracy as dealt with under the conspiracy heading above by reference to Mr Lacey's report. On this basis Etta invites the Court to assess this as a

percentage chance of Etta making good on Mr Aimson's projection of an annual EBITDA of £3.1 million (with some discount for accelerated receipt) – see paragraph 117 et seq above. At the very least, however, it is submitted that this loss is an amount of £495,000 reflective of Mr Lacey's valuation of Etta as at the date of the conspiracy, on the basis that this value was wholly lost as a result of the actions of the Defendants that are complained of – see paragraph 122 above.

151. In relation to the other claims against Mr Aimson, it is submitted that these lead to the same loss on the basis that the breaches by Mr Aimson of his various duties and/or infringement of the Database Right caused Etta to lose its entire business.
152. Further, it is submitted that the same is true in respect of Mrs Aimson. Procuring the breaches of contract in question also caused Etta to lose its entire business.
153. It is submitted that the suggestion that Mr Aimson and Mrs Aimson were separating does not detract from the evidence of the conspiracy and the involvement of both of them. Even if they were and are no longer together that is no excuse for their actions.

Mrs Higgins and Ms Gannon

154. It is submitted that both are both jointly and severally liable with Mr Aimson and Mrs Aimson for damages arising from the conspiracy as set out above. On this basis, they are liable in damages in the same way, and for the same amount as Mr and Mrs Aimson.
155. In relation to the other claims against them, it is submitted that their breaches and infringement of the Database right led to the same loss, namely the loss by Etta of its entire business. Alternatively, at the very least, they are liable for the work actually lost as a result of their own wrongful actions in causing Etta to lose business as identified in paragraph 135 above.

The Defendants' case

Mr Aimson and Mrs Aimson

156. It is the position of both Mr Aimson and Mrs Aimson that although they remain married, they separated in late 2020, albeit that Mr Aimson did not move out of the matrimonial home until about August 2021. Etta has questioned this on the basis of Mrs Aimson being seen in the background on video calls with Mr Aimson into 2021, and on the basis of comments made by Mr Aimson in his video call with Mr Torkington and Mr Goluguri on 16 April 2021 when he spoke about family matters. However, bearing in mind what has been said about Mr Aimson continuing to live at the family home, and given that Mr and Mrs Aimson have children, I have no reason to doubt the explanation provided by them both. I would add that Mrs Aimson informed me during the course of submissions that her divorce from Mr Aimson was in the course of being finalised.
157. As already mentioned, their Defences having been struck out and neither of them having served any witness statements, the role of Mr Aimson and Mrs Aimson at trial has been limited to cross-examining Etta's witnesses and making submissions. This is unfortunate so far as a consideration of the claim against Mrs Higgins and Ms Gannon

is concerned in that it leaves a not insignificant gap in the evidence, and therefore in understanding what has gone on. I remind myself that I must be careful to decide the case on the evidence rather than on the basis of matters only raised in the course of submissions, which have not been tested by cross-examination etc.. Nevertheless, I see no reason why I should not, so long as I am very careful in doing so, pay some regard to matters raised in the course of submissions, if only to help to explain aspects of the evidence.

158. With this caveat, I would note that in the course of her submissions, Mrs Aimson said as follows:

“It was Steve who suggested the idea to set up a recruitment business, given that was my background. He had decided he was going to pursue another role, again (sic) was adamant they [Mr Torkington and Mr Murali] were going to wind the business up. He also told me that he would share his concerns with Rebecca and Roisin. We were also separating and I had always been supported financially by Steve whilst I raised our children so I also had to find a source of income outside the support that Steve would continue to do for the children.

It was always my intention to set up a business that operated across healthcare as I did have previous experience in healthcare, though it's a very diverse market and I wanted to offer something different and not just a traditional recruitment business.

When Rebecca and Roisin joined they came to me on the understanding that restrictions had been waived and as such we could also operate in healthcare, yes we used this as an opportunity to get things going as we explored further avenues for success.”

159. So far as any remedy in damages is concerned, in both in cross-examination and in submissions, both Mr Aimson and Mrs Aimson sought to challenge the decision of Mr Torkington and Mr Goluguri to cause Etta to cease trading at an early stage after the discovery of the existence of Hive, and they further suggested that the business of Etta might actually have been taken over by GK Healthcare, it being their case that even in the face of competition from Hive, the Database had value that could have been exploited by Hive by employing new staff. These arguments thus raise causation and mitigation issues.
160. So far as quantum is concerned, and Mr Lacey’s report, the point is made by Mr Aimson and Mrs Aimson that the five year projections were optimistic, best outcome projections dependent upon a number of considerations such as the development of the temporary, as opposed to the permanent, side of the business which would have required significant infrastructural development, and the ability to develop NHS work. Further, the point is made that the projections were of EBITDA rather than net profit.
161. So far as Mr Lacey’s valuation based upon 1.5×2021 projected EBITDA is concerned, it was submitted that insufficient consideration was given to the fact that the temporary side of the business was not developed, that the figures were dependent

upon the development of NHS work, and that the value of the business was dependent not only upon the involvement of Mr Aimson as reflected in paragraph 3.33(iii) of Mr Lacey's report, but also the involvement of Mrs Higgins, and Ms Gannon. Further, Mr Aimson submitted that the valuation failed to include a proper market rate for a person holding Mr Aimson's position in the business.

162. In short, it was submitted that the figure of £495,000 arrived at by Mr Lacey was significantly and unrealistically too high.
163. So far as the dividend claim is concerned, Mr Aimson's submissions went (impermissibly) to the merits rather than quantum, and he really had nothing to say regarding the latter.

Mrs Higgins

164. Mrs Higgins says that she was asked by Mrs Aimson to join with her in the setting up of Hive in circumstances in which she was informed by Mr Aimson that Etta was going to close down, and that she would not be held to the restrictions in the Higgins Contract. She therefore submits that there can be no question of her being involved in any form of conspiracy because she had no intention to harm or damage Etta, because she thought that it was going to close down in any event, and therefore that Hive would not be in competition with it.
165. She says that she understood that data or information in the form of client and candidate names utilised by her at Hive was Hive's data or information that had been purchased by Mr Aimson or was in her own head, and therefore there can be no question of her having misused confidential information belonging to Etta or having infringed database right.
166. Mrs Higgins accepts that she committed what she described as "*an error of judgment*" in working for and helping Hive prior to her giving notice to terminate her contract of employment with Etta, and the Higgins Contract coming to an end. However, she says that, in the context of having been informed that Etta was going to cease to trade, and that she would not be held to the restrictions in the Higgins Contract, she was entitled to trust the word of her Managing director, Mr Aimson.
167. She accepts that she did assist with the recruitment of Ms Gannon for Hive, but submits that there is no question of her having wrongfully procured any breach of contract, because Ms Gannon was entitled to give notice terminating her contract of employment, and Mr Aimson, as Managing director of Etta, had made it clear to Ms Gannon that the post termination restrictions in the Gannon Contract would not be enforced, and they were, in any event, she submits void as an unreasonable restraint on trade.
168. So far as the post termination restrictions in the Higgins Contract were concerned, again Mrs Higgins relies on Mr Aimson, as Managing director of Etta, having made it clear that they would not be enforced, and it is her case that they were, in any event, void as an unreasonable restraint on trade.
169. To the extent that Mrs Higgins acted in breach of her contract of employment prior to the termination of the Higgins Contract, it is her case that it is a significant

consideration that she did continue to work for Etta throughout the relevant period, and, in any event, that Etta has failed to identify or provide any cogent evidence quantifying the loss that it might have suffered by reason of any such breach of contract.

170. Thus, it is Mrs Higgins' case that the claim against her ought to be dismissed.

Ms Gannon

171. Ms Gannon submitted that her position requires to be considered apart from that of the other Defendants, making the point that she has "*navigated*" the process of defending the present proceedings "*without any communication support from the other defendants*".

172. She stressed that she was a junior employee of Etta, as a recruitment consultant, who had only been with Etta a matter of months before the events that gave rise to the present proceedings, and that during much of this period the country had been in lockdown as a result of the Covid pandemic, thus limiting her ability to communicate, and develop a relationship with others such as Mr Aimson and Mrs Higgins.

173. Although Etta had, in the present proceedings, sought to portray Ms Gannon as having a more senior position, Mr Torkington accepted in response to a question from me that Ms Gannon was employed simply as a recruitment consultant. Unlike Mrs Higgins, she had not had known Mr Aimson prior to joining Etta.

174. It is Ms Gannon's evidence and case that she was not involved in the affairs of Hive until she began to work for the latter on 5 April 2021, having been recruited by Mrs Higgins in late March 2021, signing her contract of employment with Hive on 24 March 2021.

175. Her evidence as to the circumstances in which she came to give notice on 4 March 2021 terminating her contract of employment with Etta and came to be employed with Hive as from 5 April 2021 is as described in paragraphs 49 to 51 above.

176. As referred to above, Etta does not allege that Ms Gannon acted in breach of the Gannon Contract prior to her joining Hive on 5 April 2021. However, in any event, Ms Gannon denies that she did do anything for Hive prior thereto that might otherwise be relied upon by Etta in support of the case in conspiracy against her.

177. As to the principal matters relied upon by Etta as showing that Ms Gannon was party to the conspiracy:

- i) Ms Gannon disputes that there was anything sinister in the email sent on 16 November 2020 with lists of clients and candidates. Certainly, if these were preparatory steps to the setting up of a new venture distinct from Etta, then Ms Gannon says that she knew nothing of it;
- ii) It was her evidence that the Quiz Night held shortly prior to the incorporation of Hive was just that, and that there was no discussion at the event that she attended online with regard to Hive or the setting up thereof;

- iii) To the extent that her bonus was increased contemporaneously with Hive being set up, this had nothing to do with any involvement by her at least therewith;
- iv) Ms Gannon said that she had no knowledge of, and therefore cannot explain the third email account, or the third MS 365 Office account, that had been set up for Hive at about the time of its incorporation, and she submits that there is no evidence, and simply speculation, that that these were accounts set up for her. In any event, even if they were, she says that she was not made aware of them;
- v) As to an Indeed.com account being set up in her name on 24 February 2021, again Ms Gannon says that she had no knowledge thereof. Ms Gannon questions Mr Goluguri's evidence as to a conversation with a representative of Indeed.com, and as to whether he would have been prepared to provide the requisite information. However, she makes the point that the note of the conversation that has been produced merely shows that the account was set up, and she submits that there is no evidence that she actually used this account. In any event, she was emphatic in her evidence that even if any account had been set up, it was not an account that she used, at least until after she joined Hive on 5 April 2021;
- vi) As to the evidence that she had not for some period of time prior to leaving Etta utilised Indeed.com on behalf of Etta, she explained in the course of her cross-examination, in some detail, that very much more was involved in the job of a recruitment consultant than posting on Indeed.com in order to place candidates with clients, and that, therefore, nothing sinister should be read into this at all;
- vii) Likewise, Ms Gannon emphatically denied that she had accessed CV-Library on behalf of Hive prior to joining the latter;
- viii) As to the fact that Ms Gannon's Etta laptop had been used to access the Wi-Fi at Hive's offices, as referred to in paragraph 64 above, Ms Gannon has explained this on the basis that the laptop was not returned, until it was returned via Mr Aimson on 8 April 2021, after her employment with Hive had begun a number of days beforehand. She was emphatic in her evidence that there was nothing sinister about this, and that she may have signed on when attending to sign her contract of employment with Hive on 24 March 2021, or when removing personal information from the laptop prior to its return to Etta;
- ix) As to her resignation letter dated 4 March 2021 referring to her taking up new employment, when that was yet to be arranged, she says that she was told by Mr Aimson that that was what she should put, without questioning the point. Her case is that if there was any intent to mislead Etta by this, then she was not party to it, and merely did what Mr Aimson asked her to do "*as a formality*";
- x) It was put to Ms Gannon in cross-examination that she must have thought that it was odd that Mrs Higgins should approach her to recruit her to join Hive when she had been told that Mrs Higgins was going to use the closure of Etta as an opportunity to spend some time with her family, Ms Gannon believing

that she felt burnt out following the pandemic. Ms Gannon denied that she did, in the context, find this odd.

178. In above circumstances, Ms Gannon submits that there is no question of her being involved in any conspiracy of the kind alleged against her. It is her case that she was not involved with Hive until a comparatively late stage in the day, upon being approached by Mrs Higgins in mid to late March 2021 in circumstances in which she believed, given what Mr Aimson had told her, that Etta would be closing down, and that Mr Aimson, as Managing director of Etta, had, in any event, released her from any post termination restrictions in the Gannon Contract. If there was any agreement or combination to use unlawful means to intentionally damage Etta, then it is her case that she was not a party to it.
179. So far as the other allegations against her are concerned, it is her case that she was entitled to rely upon Mr Aimson, as her Managing director, having made it clear that she would not be bound by the post termination restrictions in the Gannon Contract. Further, it is her case that, in any event, the provisions in question are void as an unreasonable restraint on trade.
180. So far as the allegations concerning misuse of confidential information, or database rights are concerned, it is her case that she did not appreciate that any information in relation to clients or candidates provided to her whilst employed by Hive was confidential information belonging to Etta. She says that she knew nothing about the downloading the Database, and any transfer of the contents thereof to Hive, and she says that she was simply given a list of clients and candidates by Mrs Higgins to work with, which she understood to belong to Hive.
181. Further, it is her case that even if she has acted in breach of contract, or otherwise in breach of any other obligations in relation to confidential information or database right, then it has not been demonstrated that Etta has suffered any loss as a result thereof. It is her evidence that no placements were made in consequence of any work that she carried out on behalf of Hive.
182. Consequently, it is Ms Gannon's case that the claim against her should be dismissed.

Witnesses

Correct approach to the evidence

183. The key events in question in the present case took place some three years ago. I consider that I must have regard to the much repeated observations of Leggatt J (as he then was) in *Gestmin SGPS S.A. v Credit Suisse Limited* [2013] EWHC 3560 (Comm) at [15] – [22] with regard to the unreliability of memory, and his caution to place limited, if any, weight on witnesses' recollections, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts. In this passage, Leggatt J described the process by which memories might become distorted by the passage of time as a witness subconsciously reconstructs events in their own mind leading to the giving of honestly held, but false evidence. This is something that I bear firmly in mind in considering the respective witness's evidence.

184. Further, it is, I consider, necessary to have regard to the observations of Arden LJ (as she then was) in *Re Mumtaz Properties Ltd* [2012] 2 BCLC 109 at [12] and [14] to the effect that it is necessary for a fact finding judge to act with caution before attaching undue weight to the impression that a witness might give in the witness box, or his or her “*demeanour*”, and that what is said in the witness box requires to be tested against other evidence, and in particular contemporaneous documentary evidence.
185. The Court of Appeal in *Kogan v Martin* [2019] EWCA Civ 1645 at [88] stressed the importance of making findings by reference to all the evidence, which is both documentary evidence and witness evidence, placing such weight as the circumstances require on each. In considering what weight ought to be attached to the witness evidence in the present case, I must take into account the considerations highlighted in *Re Mumtaz Properties Ltd* (supra) and *Gestmin* (supra).
186. In addition to documentary evidence, it is plainly appropriate to test the witness evidence against the inherent probabilities of the relevant situation, and considerations such as the consistency (or otherwise) of a particular witness’ evidence with other evidence, the internal consistency of that evidence, and the consistency of that evidence with what the witness might have said on other occasions – see *Kimathi v The FCO* [2018] EWHC 2066 (QB), at [98].
187. I consider that the above considerations lead to the conclusion that in most cases the party required to prove their case will need to do so by using reliable contemporaneous documentary evidence as a platform, to which are added known, established or agreed facts, and probable facts (both inherently probable and by inferences properly drawn from known, established or agreed facts), which the Court will then consider by reference to witness testimony which is consistent or compatible with that underlying body of reliable documentary evidence and is not tainted or flawed by other indicators of unreliability – see *Re Parsonage (deceased)* [2019] EWHC 2362 (Ch), per HHJ Simon Barker QC at [32]-[37].

Etta’s evidence

188. Mr Torkington and Mr Goluguri might be open to criticism for a reluctance to answer certain questions. For example, in the case of Mr Torkington, with regard to Ms Gannon’s true role at Etta, and in the case of Mr Goluguri with regard to the amount that had actually been invested in Etta, “*some 10’s of 1,000s*” (Etta’s accounts would suggest approximately £70,000). However, on the whole, I do not consider that they were being evasive in the evidence that they gave, and I am satisfied that the evidence they gave was, broadly speaking, accurate, and that they were doing their best to assist the Court. Likewise in the case of Mr Birindwa.
189. Ultimately, the present case, at least as to liability, turns rather more on the evidence of the Defendants than that of Etta’s witnesses of fact. On issues of mitigation and causation, I am satisfied with Mr Torkington’s and Mr Goluguri’s account that once the events in respect of Hive came to light, with Hive using the Database, Mrs Higgins and Ms Gannon having joined Hive, and Mr Aimson having, understandably, been dismissed, it was simply not viable for Etta to continue as a going concern. Further, I am satisfied with Mr Torkington’s and Mr Goluguri’s explanation that, given these considerations, there was nothing else that Etta could have done to realise any value from the Database.

190. Further, I am satisfied with the explanation given that GK Healthcare did not, as contended by certain of the Defendants, simply take over the business of Etta, including the Database. There is evidence that GK Healthcare did take over Etta's Facebook page, and that some benefit might have been gained therefrom. However, I accept the answer that I was given in cross-examination that the Database was not transferred to the latter, which it might have been if it had retained any significant value.

Mrs Higgins

191. Mrs Higgins came across to me as an intelligent, articulate and motivated individual, who had developed very considerable experience in recruitment, in particular healthcare recruitment, over the years during the course of which she will have developed a number of personal contacts.
192. To her credit, in the course of the present proceedings she made no attempt to conceal her involvement with Hive from its incorporation, and during the course of her employment with Etta, candidly accepting that she had made an error of judgment so far as that involvement is concerned.
193. The impression that I gained from the evidence as a whole is that by late January 2021, if not earlier, Mr Aimson had become dissatisfied with the way that things were going so far as Etta was concerned, and his relationship with Mr Torkington and Mr Goluguri, and their commitment to the development of the business of Etta. I consider it likely that it was against this background, and difficulties within Mr and Mrs Aimson's marriage that led to a decision being taken between the latter that a new entity, Hive, should be set up, nominally at least under Mrs Aimson's ownership and control, to which the information in the Database would be transferred, having been downloaded by Mr Aimson, and that Mrs Higgins, and ultimately Ms Gannon, would be persuaded to join this venture.
194. I consider it likely that it was in this context that Mrs Higgins was approached to join the "*Hive*" venture by Mrs Aimson at an early stage, with Mr Aimson offering encouragement at least, and that Mrs Higgins, and subsequently Ms Gannon, were informed that Etta would be winding down, because it was perceived by Mr Aimson at least that that would be the consequence of the business effectively being transferred to Hive.
195. Of course, if Etta had been closing down for perfectly legitimate reasons, and that is what Mrs Higgins had been informed and believed, then a case in conspiracy would be difficult to make out against Mrs Higgins, not least because she would not, in those circumstances, have intended to cause any damage to Etta, and unlawful means would not have been deployed. Likewise, even if Etta were not closing down for legitimate reasons, if that is what Mrs Higgins believed because the necessary intent on her part would, in those circumstances, still be missing.
196. This is, effectively, Mrs Higgins' case coupled with her evidence that she was informed by Mr Aimson that the relevant post termination restrictions would not be enforced against her.

197. However, there are, as I see it, a number of difficulties with this line of argument that Mrs Higgins seeks to advance:
- i) Mrs Higgins' story really does not stack up with what she said in her email exchange with Mr Aimson on 15 March 2021. In her first email to Mr Aimson on that date, she said that she had a number of opportunities presented to her across internal and agency roles, and she was not sure yet which way to go. This is inconsistent with the role that she had already been playing in respect of Hive up to that date, describing herself as Managing Director, and signing up business on behalf of Hive. I asked her to explain this during the course of her submissions, and her answer was that she was merely "*scoping*" a role in Hive and had not taken a final decision in respect of it. I have to say that I found that explanation wholly unconvincing given the very significant role that she was already playing in Hive by 15 March 2021, holding herself out as Managing Director and seeking to get business for Hive.
 - ii) Further, things were said during the course of this email exchange on 15 March 2015 that were, I consider, markedly inconsistent with any belief on the part of Mrs Higgins that Etta was going to cease trading, at least for any reasons unconnected with the competition provided by Hive. Thus, in Mr Aimson's email in response to Mrs Higgins' first email of 15 March 2021, in the context of restrictions not being imposed, Mr Higgins spoke in terms of the restrictions being waived "*as long as you don't actively target our exclusive clients*". That could only have been the case if, contrary to what Mrs Higgins said her belief was, Etta were to continue in business. In response thereto, Mrs Higgins thanked Mr Aimson for confirming, and did not query the point, and indeed said that she would keep him updated in case she became a client.
 - iii) This begs the question as to what this exchange on 15 March 2021 was all about, and I am bound to conclude that it was, as was put to Mrs Higgins by Mr Vinson in cross-examination, a charade to deliberately designed to mislead those reading the correspondence as to what Mrs Higgins was up to, and in particular with regard to her role in Hive. This rather ties in with the way that Mrs Higgins' resignation from Etta was presented to Mr Torkington and Mr Goluguri, at least by Mr Aimson, albeit it then being explained on the basis that she wanted to spend more time with her children.
 - iv) Further, there is the mortgage application reference signed by Mr Aimson and, subsequently, by Mrs Aimson. It is true that the reference might not actually have been used, but I agree with Mr Vinson that that is beside the point. The document was, apparently, prepared by Mrs Higgins, and does, as I see it, represent something of an insight as to Mrs Higgins' own understanding of the position at the time, namely that Hive had been established with the involvement of both Mr Aimson and Mrs Aimson, with Mr Aimson been described as "*Co-founder and Managing director... Etta Healthcare/Hive Resourcing*", supporting the case that Hive had been incorporated to try and take over Hive's business with Mrs Higgins' active involvement.
 - v) I note also the email exchange with Lynda Brown of Outcomes First Group between 2-4 March 2021, i.e. contemporaneously with Mrs Higgins giving her formal notice, in which when asked whether Etta was closing down, she

replied to the effect that Etta was “*going in a different direction speciality wise*”. Again, this is, as I see it, inconsistent with a genuine belief on Mrs Higgins’ part that Etta was closing down for genuine commercial reasons.

198. In many respects, Mrs Higgins came across as a good and persuasive witness judged in terms of demeanour. However, ultimately, in the light of the matters that I have identified, I do not consider that she can be regarded as a reliable witness telling the truth so far as her involvement in Hive is concerned, and her understanding of the position at the time.
199. It is a relevant consideration that she was close to Mr Aimson having worked for him for a number of years, albeit with a short break immediately prior to her joining Etta. I am driven by the evidence to conclude that it is more likely than not that she was actively involved with Hive from shortly after the idea for incorporating the same was hatched by Mr Aimson and Mrs Aimson, and that she was committed to it hence her acting as Managing Director on its incorporation. I reject her evidence that she was merely scoping out that role and was actively considering other options. There is, as I see it, absolutely no evidence to support the suggestion that she was doing so.
200. Given her key role in the establishment of Hive, I consider that she must have known about Mr Aimson downloading the data and information that he did from the Database on 8 February 2021, and that this was to be, and was in fact used by Hive to attempt to develop its business. Mrs Higgins says that her understanding was that the data had been bought personally by Mr Aimson, and must have belonged to him, and she has produced messages with a “*Harry P*” in January 2020 relating to the purchase of data. However, Mrs Higgins well knew that this was after the incorporation of Etta, and after it had commenced to trade, and she must have known and understood that it was being acquired in order to develop Etta’s database (i.e. the Database) if indeed data was then acquired.
201. In short, therefore, I regret that I did not find Mrs Higgins to be a convincing or satisfactory witness on the key issues relating to her involvement in Hive, and her contention that she thought that Etta was closing down in perfectly legitimate circumstances, and therefore that it would not be harmed by the establishment of Hive and her involvement therein.
202. I do, however, have not inconsiderable sympathy for her in that she recognises she made a serious error of judgment, and I am concerned that she was led into doing what she did by Mr Aimson, and to a lesser extent Mrs Aimson.

Ms Gannon

203. I do not consider that it would be fair to taint Ms Gannon with the same brush as Mrs Higgins. I regard it as highly significant that she did not have the long-standing relationship with Mr Aimson that Mrs Higgins had had, and that she had joined Etta as a comparatively junior employee only in July 2020 against the background of the Covid pandemic and lockdowns, when her opportunities to communicate with Mr Aimson and Mrs Higgins were more limited. I consider it much less likely that Mr Aimson would have shared his concerns in relation to his relationship with Mr Torkington and Mr Goluguri in the same way that I consider that he is likely to have done with Mrs Higgins.

204. Further, I consider it of significance that Ms Gannon left Hive fairly shortly after joining it, and that she has ploughed very much her own furrow so far as the defence of the claim is concerned.
205. In terms of demeanour, I found Ms Gannon to be a very impressive witness indeed to the extent that I can fairly say that she was either an honest witness telling the truth, or an extremely good and accomplished actress capable of an artful deception. I am mindful, as referred to above, of the need for caution in attaching too much to demeanour, but having seen Ms Gannon in the witness box, and having heard submissions from her over a fairly extended period of time, I consider that considerable weight does require to be given to her demeanour so long as not undermined by the documentary evidence, or other probable evidence.
206. I have identified in paragraph 177 above Ms Gannon's case as to the matters relied upon by Etta as showing that Ms Gannon was party to the alleged conspiracy. Having considered the matters relied upon by Etta and Ms Gannon's response thereto with some care, I consider that Ms Gannon has provided satisfactory and credible explanations that support rather than undermine her case. There certainly is no "*smoking gun*" that seriously undermines her case that, whatever role might ultimately have been intended for her by others, she played no active, or indeed passive, role in Hive until her employment formally commenced on 5 April 2021, having been approached in mid to late March 2021 by Mrs Higgins to join Hive.
207. I had been troubled by the point made by Mr Vinson with regard to Ms Gannon having been told that Mrs Higgins had left to spend more time with her children, and that that hardly ties in with her subsequently approaching Ms Gannon to join Hive, and that that might have been expected to have caused Ms Gannon to have concern as to the legitimacy of what was going on. However, having heard Ms Gannon's explanation in relation thereto under cross-examination, whilst not perhaps providing a complete answer, I do not consider that this point fundamentally undermines her case.
208. I accept Ms Gannon's evidence that she was informed by Mr Aimson that Etta was to close down, and I consider that there is no reason to believe that she did not understand other than this was for legitimate reasons so that, when later approach to join Hive, she saw no good reason for not doing so, having explored other job opportunities in the meantime. Further, I accept her evidence that she was informed that any restrictions in the Gannon Contract would not, in the circumstances, be enforced, and that she trusted and believed Mr Aimson, as Managing director of Etta in this respect. I consider that she is likely to have been so informed by Mr Aimson in order to persuade her to join Hive and minimise any concerns that she might have had given the terms of the Gannon Contract.
209. I gained the impression that such was the secrecy behind the establishment of Hive on the part of Mr and Mrs Aimson and Mrs Higgins, that Ms Gannon was kept very much in the dark about it, at least until the opportunity arose to bring her into the fold later in the day comparatively shortly before she was actually employed by Hive.
210. I therefore accept her evidence that she was not party to any agreement or combination to intentionally damage Etta by unlawful means as alleged by Etta against her. This does not, however, mean that, following her employment by Hive as from 5 April

2021, she did not act in breach of contract (the post termination restrictions in the Gannon Contract), or misuse Etta's confidential information, issues to which I will return.

Determination of the Claim

Liability

Mr Aimson

211. As I have indicated, notwithstanding that Etta has obtained judgment against Mr Aimson, I consider it necessary to make findings on the evidence as to the claim against him and against Mrs Aimson for the purposes of the consideration of the claim against Mrs Higgins and Ms Gannon.
212. As referred to in paragraph 101 above, the essential ingredients of the tort of unlawful means conspiracy, as helpfully summarised in *Cuadrilla Bowland Ltd v Persons Unknown* (supra) at [18], per Leggatt LJ, are:
 - i) An unlawful act by a defendant;
 - ii) Which was done with the intention of injuring the claimant;
 - iii) Pursuant to an agreement or combination (whether express or tacit) with one or more other persons; and
 - iv) Which actually injures the claimant.
213. So far as unlawful act is concerned, the evidence is, I consider, clear that the Database comprised a database of, amongst other things, names of clients and candidates that had been created using Etta's JobAdder database management software system, using Etta's resources, and for Etta's benefit. Even if Mr Aimson had acquired data for the database in January 2020, that was after Mr Aimson had been appointed a director of Etta, and whilst he was employed by Etta, and I do not see how any data so acquired could have belonged to anybody apart from Etta. Further, the evidence is, I consider, clear that Mr Aimson downloaded data, including the names of clients and candidates, from the Database on 8 February 2021, and provided the same to Hive for the purposes of using the same to develop its own business.
214. In these circumstances, I consider that there can be little doubt that by so acting, Mr Aimson acted in breach of his obligations under at least clauses 2.2, 2.3, and 14.1 of the Shareholders' Agreement, in breach of his statutory fiduciary duties under at least ss. 172 and 175 CA 2006, in breach of duties of confidence in equity, and so as to infringe Etta's database rights in respect of the Database in breach of Reg. 16 of the Database Regulations, for the reasons advanced by Etta.
215. Further, I am satisfied that whilst pretending otherwise to Mr Torkington and Mr Goluguri, Mr Aimson played a more active role in the setting up of Hive than he sought to maintain. I consider it likely, on the evidence, that by January/February 2021, Mr Aimson had become frustrated and dissatisfied with the way that things were

going with Etta, and the support that he considered that he was not properly receiving from Mr Torkington and Mr Goluguri. It may well be that, by this stage, Mr Aimson was in the course of separating from Mrs Aimson, and did not see his long-term future as being with either Etta or Hive as Mrs Aimson portrayed, but given that Mrs Aimson had been out of the recruitment business for some years, I am satisfied that the establishment of Hive must have required not insignificant further input from Mr Aimson apart from the provision of information from the Database, and that that assistance was provided including assisting to recruit Mrs Higgins having informed her that Etta had no future, and subsequently assisting at least with the recruitment of Ms Gannon.

216. These further acts must, as I see it, have amounted to breaches of at least clauses 2.2, 2.3, 11.1, 11.2 and 11.3 of the Shareholders' Agreement, and Mr Aimson's statutory fiduciary duties under at least s. 172 and 175 CA 2006 for the reasons advanced by Etta.
217. The unlawful acts that I have identified must have been done with the intention of injuring Etta although, on the authority of *Lonrho plc v Fayed and others* (supra), intention to injure Etta does not need to be the sole or predominant purpose of the agreement or combination pursuant to which the unlawful acts were carried out. The intention behind the acts in question must, as I see it, have been to deprive Etta of business for the benefit of Hive and, having procured the contents of the Database for Hive, and having assisted in the recruitment of Etta's key employees, put Hive in a position to acquire substantially the whole of Etta's business. The inevitable consequence thereof was to injure Etta, and Mr Aimson must, I consider, be taken to have intended the inevitable consequence of his actions.
218. So far as any agreement or combination (whether express or tacit) with one or more other persons is concerned, I conclude that there must have been an agreement or combination pursuant to which the unlawful acts were carried out with, at least, Mrs Aimson. I will consider this further in considering the position of Mrs Aimson, but on their case, the position of Mr and Mrs Aimson was that Hive was to be Mrs Aimson's business in that she was sole shareholder and director of Hive, and there is evidence that she positively contributed to the setting up of Hive, even though Mrs Higgins may have acted as its Managing Director. For example, Mrs Aimson taking the steps that she did to have Hive incorporated, and arranging insurance, domain names and MS Office 365 licences as referred to above, as well as taking a lead in the recruitment of Mrs Higgins. I consider that I am entitled to infer from this that there was the necessary agreement or combination between Mr Aimson and Mrs Aimson.
219. Finally, the effect of the unlawful actions in question was, I consider, plainly to actually injure Etta. I am satisfied that the effect of the unlawful actions that formed the subject matter of the conspiracy to which Mr Aimson was party was substantially to deprive Etta of its business and thereby to cause it to cease to carry on business because it had been denuded of its business through the use made by Hive of the misapplied data from the Database, and because it had lost its key employees to Hive.
220. In short, therefore, I am satisfied that the case against Mr Aimson, including the unlawful acts alleged as against him, and the case in conspiracy, is established on the evidence to the extent that it requires to be.

221. So far as the claim against Mr Aimson in respect of the payment of unlawful dividends is concerned, judgment has been entered against him, and the question is simply one quantum. However, the difficulty from Mr Aimson's perspective is that it is reasonably clear that he was paid in part by salary, and in part by way of the payment of sums of money on account of a dividend, the total sum paid in the latter being £58,909.25. The payments were clearly made in anticipation of there being sufficient profits available for distribution to enable a dividend to have been lawfully paid, but this turned out not to be position in the years in question, with the result that the payments cannot be regarded as having been lawfully paid. Apart from any other claim that might be brought by Etta against Mr Aimson in relation thereto, clause 5.2 of the Shareholders' Agreement was clearly engaged. As set out in Schedule B hereto, this provided that the parties agreed that Etta should not declare, pay or make any dividend or other distribution "*which is or would be prohibited by the Act*" i.e. CA 2006. In the circumstances, I am satisfied that Mr Aimson is liable to repay the sum of £58,909.25 to Etta.

Mrs Aimson

222. Again, judgment has been obtained against Mrs Aimson, but it is necessary to make findings on the evidence so far as her position is concerned for the purposes of the claim against Mrs Higgins and Ms Gannon.
223. So far as the ingredients of the tort of unlawful means conspiracy are concerned, and whether they are established against Mrs Aimson, as identified above, there is no requirement that all of the defendants to the unlawful means conspiracy claim should have used unlawful means (*Lakatamia Shipping Co Ltd v Nobu Su* (supra) at [83]), and there is no requirement that the conspirators know of the unlawfulness of the means (*The Racing Partnership Ltd and others v Sports Information Services Ltd* (supra)).
224. Consequently, if Mrs Aimson was party to an agreement or combination to carry out the unlawful acts, it does not need to be shown that the unlawful acts were her unlawful acts, or indeed that she knew that the unlawful acts were, in fact, unlawful.
225. Having said this, Mrs Aimson must, as I see it, have been aware of Mr Aimson's position as a director of Etta and his employment by Etta in a senior position. Further, she must have known that the source of the data being used by her company was Etta's database, i.e. the Database, and she cannot, as I see it, have believed that Mr Aimson was entitled, lawfully, to download lists of clients and candidates and provide them to Hive for use in its competing business.
226. Further, it is alleged that Mrs Aimson herself acted unlawfully in procuring Mrs Higgins to act in breach of contract, i.e. breach of the Higgins Contract. Irrespective of any consideration of Mrs Higgins' breach of her post termination restrictions, Mrs Aimson must have been aware that Mrs Higgins was employed by Etta, and it is difficult to believe that Mrs Aimson did not know that Mrs Higgins was actively working for Hive, and holding herself out as Managing Director of Hive, whilst still employed by Etta, before giving notice to terminate her contract of employment, and before her period of notice had expired.

227. The tort of procuring breach of contract requires that the defendant knew that he or she was inducing or procuring an act that was a breach of contract, and that the defendant intended to procure the breach, reckless indifference being sufficient for this purpose. I am satisfied on the evidence that Mrs Aimson must have known that the acts that she was inducing or procuring Mrs Higgins to do in working for Hive, and holding herself out as Managing Director Hive, prior to the termination of the Higgins Contract, on the evidence, amounted to a breach of contract, that she intended to procure.
228. However, even if this particular unlawful act on Mrs Aimson's part cannot be made out on the evidence, I am satisfied that she was party to an agreement or combination pursuant to which the unlawful acts on the part of Mr Aimson were carried out so as to make her liable in conspiracy for the consequences of those unlawful acts in any event.
229. As to this latter finding, to adopt the citation from *Kuwait Oil Tanker* at [111] applied by Bryan J in *Lakatamia Shipping* at [85] referred to above, the key question is whether the relevant defendant was "*sufficiently aware of the surrounding circumstances and share[d] the same object that they were acting in concert at the time of the acts complained of.*" I am satisfied, on the facts, that this must have been the case as between Mr Aimson and Mrs Aimson.
230. So far as intention to injure is concerned, the intention must, as I see it, be that of the party carrying out the unlawful act, although Mrs Aimson must have appreciated that the necessary effect of her involvement in the conspiracy would have been to injure Etta.

Mrs Higgins

231. So far as Mrs Higgins is concerned, I consider it necessary to first consider the unlawful acts that are alleged as against her, before considering the case in conspiracy against her bearing in mind that, as referred to above, there is no requirement that all of the defendants to unlawful means conspiracy claim have to use unlawful means, and there is no requirement that the conspirators know of the unlawfulness of the means.
232. As we have seen above, the unlawful acts alleged as against Mrs Higgins fall into two categories. Unlawful acts alleged to have been carried out before the termination of her contract of employment, and unlawful acts alleged to have been carried out thereafter.
233. So far as unlawful acts carried out during the course of her employment by Etta are concerned, I consider that there can be little doubt but that Mrs Higgins acted in breach of the implied term of good faith and fidelity to Etta by working for Hive prior to the termination of the Higgins Contract. Mrs Higgins realistically accepted that this was an error of judgment on her part. It involved her taking active steps to set Hive up in business not only in direct competition with Etta, but so as to effectively take over its business. Further, Mrs Higgins did so holding herself out as having a senior role with Hive as its Managing Director, and by providing misleading information to clients of Etta as to the status of the latter, see e.g. the email chain between Mrs Higgins and Lynda Brown of Outcomes First Group.

234. Further, Mrs Higgins accepts that she used data that emanated from Etta for the purposes of obtaining business for Hive. She says that her understanding was that this was data that Mr Aimson had personally acquired using his own funds. However, as I have said, Mrs Higgins came across as an intelligent woman, and I cannot accept that she can have believed that the Database, and the information contained therein, which database had been created whilst she, Ms Gannon and Mr Aimson had been employed by Etta, and whilst Mr Aimson was a director of Etta, belonged otherwise than to Etta. In these circumstances, I consider that I am bound to conclude that Mrs Higgins acted in breach of clause 17 of the Higgins Contract so far as her own use of the relevant information was concerned whilst she was working for Hive, both before and after the termination of her employment with Etta. In addition, I consider that Mrs Higgins must, in respect of the data taken from the Database, have acted in breach of Etta's database right under Reg. 16 of the Database Regulations. I note that there is a statutory defence under Reg. 97 of the latter where it is shown that at the time of the infringement in question the defendant did not know, and had no reason to believe, that database rights existed in the information in question. However, I do not consider that this is capable of applying in Mrs Higgins' favour on the facts of the present case.
235. So far as the position following the termination of Mrs Higgins' employment with Etta is concerned, and the application of post termination restrictions, I consider that Mrs Higgins must have been in breach of most if not all of the post termination restrictions in question, unless Etta, by Mr Aimson's actions, had waived its entitlement to enforce the provisions in question, or had become estopped from doing so.
236. So far as unlawful restraint on trade is concerned, I consider that there may be an argument so far as clause 18.2.1 is concerned, but that any argument that any of the other of the relevant provisions amounts to an unlawful restraint on trade is bound to fail. I regard it as highly significant that the relevant provisions are expressed to apply for a period of only six months, and that the definitions of "*Professional Contact*", "*Prospective Candidate*", and "*Prospective Client*", have the effect of restricting dealings to those with whom Mrs Higgins had had "*personal dealings*". I consider that Etta did have a legitimate interest in protecting the connection between itself and clients and candidates with whom Mrs Higgins had had personal dealings, and the relationship between itself and its employees.
237. There is the question of personal contacts that Mrs Higgins might have brought to her employment with Etta, and the argument that certain of the restrictions may have gone too far in seeking to restrict any dealings with such personal contacts once she had ceased to work for Etta. However, as the authorities identified by Mr Vinson referred to in paragraph 85 above indicate, whilst this may be a factor relevant to the reasonableness of a post termination restriction, it does not mean that the employer, for whose benefit those personal contacts have been exploited, does not have a legitimate interest in protecting its connection therewith once exploited for the benefit of the employer in the course of the employee's employment. Considerations such as the employee's own personal relationship with the contact are more likely to impact upon the reasonableness of the length of restraint rather than rendering the relevant provision unenforceable per se. Bearing in mind that we are concerned, in the present case, with a restriction of only six months, I find it difficult to see that this provides an answer in Mrs Higgins' favour on this head of claim. In any event, it is fair to say that

the evidence as to the significance of Mrs Higgins personal contacts that she may have brought to the business of Etta is somewhat opaque in any event.

238. So far as estoppel is concerned, I consider that this might have served to protect Mrs Higgins had she otherwise been an innocent party, but if, as I consider was the case for the reasons set out below, that she was party to the conspiracy, then I do not consider that this is an argument that could be capable of assisting her.
239. I turn then to consider the conspiracy argument as against Mrs Higgins. Of course, her case is that she was entirely innocent, having been informed by Mr Aimson that Etta was closing down in any event, and believing that to be the case. Thus she submits that there can be no question of her having combined together with anybody else with the intention of injuring Etta, and that even if there was a conspiracy between Mr and Mrs Aimson, she was not a party to it and was actively misled by Mr Aimson, believing that there was a perfectly innocent explanation for Hive being traded in such a way as to take over the business of Etta.
240. However, for the reasons I have set out in paragraphs 197 to 201 above, I do not accept the explanations that Mrs Higgins has provided. In the light of my findings set out therein, I am consider myself bound to conclude that Mrs Higgins was sufficiently aware of the circumstances behind the incorporation and setting up of the business of Hive, and so involved therein that it can properly be said that she shared the same object as Mr Aimson and Mrs Aimson in respect thereof. Further, on the basis of such findings I consider myself bound to conclude that Mrs Higgins was acting in agreement or concert with Mr Aimson and Mrs Aimson, and that pursuant to such agreement or concert unlawful acts were done with the intention of injuring Etta, and which did in fact injure Etta.
241. As I have also identified in relation to Mr Aimson and Mrs Aimson, there is no requirement that all of the defendants to an unlawful means conspiracy claim have to use unlawful means, and there is no requirement that the conspirators know of the unlawfulness of the means.
242. Consequently, in considering the case in conspiracy against Mrs Higgins, I am not confined to a consideration of her own unlawful acts as found above, and I must have regard to the unlawful acts of Mr Aimson and Mrs Aimson insofar as they were carried out pursuant to the combination or agreement behind the conspiracy. Further, although it might not be necessary to establish that Mrs Higgins was aware of the unlawfulness of the acts in question, I consider that she must have been so aware. In particular, I consider that she must have known that she was acting in breach of the Higgins Contract prior to the termination thereof in working for Hive and in doing what she was doing in setting the same up. Further, as touched on in paragraph 200 above, I consider that Mrs Higgins must have known that Mr Aimson was not entitled to download data from the Database in the way that he did, and provide the same for the benefit of Hive, and that Mrs Aimson was not entitled to procure her to act in breach of the Higgins Contract.
243. In the circumstances, I am satisfied that all the required ingredients of the tort of unlawful means conspiracy are established against Mrs Higgins.

Ms Gannon

244. In view of my findings in paragraphs 203 to 210 above, as summarised in paragraph 210 above, I do not consider that the case of unlawful means conspiracy has been made out as against Ms Gannon. In short terms, I do not consider that she was party to any agreement or combination with any of Mr Aimson, Mrs Aimson or Mrs Higgins to intentionally cause damage to Etta by unlawful means for the reasons set out in those paragraphs.
245. So far as the post termination restrictions contained in clause 18.2 of the Higgins Contract are concerned, or at least those restrictions therein that Etta alleges that Ms Gannon acted in breach of, with the possible exception of clause 18.2.1, I do not consider that they amounted to an unlawful restraint on trade for, essentially, the same reasons as I have given in respect of the post termination restrictions in the case of Mrs Higgins in the Higgins Contract considered in paragraph 236 above.
246. The difficulty with any argument that the post termination restrictions were waived by what might have been said by Mr Aimson to Ms Gannon is that Ms Gannon gave no consideration for the release of the relevant restrictions. However, I got the very firm impression from her evidence that Ms Gannon was genuinely led to believe by Mr Aimson that the relevant provisions would not be enforced against her, believing Mr Aimson to have had the authority to give such an assurance on behalf of Etta as its Managing director. I consider that Mr Aimson had at least ostensibly authority to act in this way, and that, in the circumstances, the better view is that Etta became estopped from enforcing the post termination restrictions against her, or at least of pursuing a claim for damages for breach of contract against her.
247. There remains the question of the use of information derived from the Database. As I have said, Ms Gannon's position is that she was provided with information by Mrs Higgins and did not appreciate and had no reason to appreciate that it came from the Database. Given my finding as to Ms Gannon having had no real involvement in the original setting up of Hive, including the downloading of the Database essentially for the benefit of Hive, I accept Ms Gannon's case and evidence on this point. In the circumstances, I do not consider that the claim in respect of the misuse of information derived from the Database succeeds as against her. So far as any infringement of database rights pursuant to Reg. 16 of the Database Regulations is concerned, I consider that Ms Gannon is entitled to pray in aid the statutory defence under Reg. 97(1) of the latter.
248. In the circumstances, I find that the claim against Ms Gannon fails not only in respect of the conspiracy claim, but also in respect of the other causes of action that are pursued against her.
249. However, should I be wrong so far as these other causes of action are concerned based upon Ms Gannon's conduct after the termination of the Gannon Contract, I consider that the claim would fail in any event because I do not consider that it has been demonstrated on the evidence that any measurable loss has been suffered by Etta in consequence of the breaches alleged against Ms Gannon. There is nothing, really, to show that Ms Gannon's actions caused any specific loss to Etta, or at least any loss that has been quantified in a sensible or measured way. Apart from anything else, it was Ms Gannon's evidence, which I accept, that she did not in fact finalise any placements while she was employed by Hive.

Quantum

Introduction

250. I turn then to consider the damages (if any) that ought to be awarded against Mr Aimson, Mrs Aimson and Mrs Higgins in respect of the claims that I have found have been established against them.

Principles

251. The starting point is that damages for conspiracy, as with any other tortious claim, fall to be assessed so as to put the injured party in the position that they would have been in had the tort, here the conspiracy, not occurred. So far as claims are pursued for breach of contract, then the aim of an award of damages is to put the injured party in the position that they would have been in had the contract been duly performed, and similar considerations apply to certain of the other non-tortious claims that are brought.
252. In the present case, the substantive claim against Mr Aimson, Mrs Aimson and Mrs Higgins is in conspiracy, and in the light of my finding that Mrs Higgins was involved from an early stage I consider that to the extent that any damage is proved, they will all be liable jointly and severally in the same amount for the loss occasioned by the conspiracy as contended by Etta. I do not understand it to be suggested that any of the other causes of action that are pursued would lead to any greater award against any Defendant.
253. As Mr Vinson submits, in the case of a claim for damages for conspiracy, damages are at large meaning that once some pecuniary loss is shown, the damages are not limited to the particular loss actually proved – see *Lonhro v Fayed (No 5)* (supra) at 1494B per Dillon LJ, and the discussion in McGregor on Damages, 21st Edn. At 48-020.
254. In many cases a claim for loss of profits may well represent the appropriate approach to an award of damages for conspiracy – see e.g. *Lonhro v Fayed (No 5)* (supra) at 1496E, 1505B and 1508F. However, an alternative approach might be appropriate on the particular facts, see e.g. *British Midland Tool Ltd v Midland International Tooling Ltd* [2003] 2 BCLC 523, a case on somewhat similar facts to the present where the conspiracy led to the loss of a business to a competitor, and damages were awarded based on the value of the business lost as well as for trading losses incurred, and closure costs – see at [200] and [237], per Hart J.
255. Where damages are to be awarded by reference to the value of the business, then the Court will, inevitably have to come to a view as to value, usually with the benefit of expert evidence. The task is, as I see it, somewhat akin to that of a Court seeking to arrive at the true value of a property in a valuer's negligence case. In that situation, some guidance as to the correct approach was provided by the Court of Appeal in *Capita v Jonas Drivers* [2012] EWCA Civ 1417, [2013] 1 E.G.L.R. 119, at [43(i)] per Gross LJ:

“Moreover, having regard to the true nature of quantum disputes and their history as jury questions, a Judge will sometimes find himself needing to do the best he can: see, for example, *Dennard v*

Pricewaterhouse Coopers [2010] EWHC 812 (Ch), at [182]. In her skeleton argument, Ms Carr summarised the task of the Judge in such circumstances as follows:

“The exercise required is not about the court reaching an immaculate or absolute value, but about reaching the most likely figure on the basis of the evidence it has heard. That evidence may well not be perfect, indeed it is unlikely ever to be so.”

I agree.”

256. So far as Etta’s claim in respect of the payment of unlawful dividends to Mr Aimson is concerned, there can, as I see it, be no real dispute that, once liability is established, then Mr Aimson is liable to repay the dividends unlawfully paid to him in the amount of £58,909.

The present case

257. As referred to above, there is Etta’s claim for the dividends unlawfully paid to Mr Aimson in the amount of £58,909 that is repayable by him, and in respect of which judgment should be entered against him.
258. So far as the conspiracy claim is concerned, as referred to in paragraphs 117 et seq and 150 above, Etta primarily seeks a sum representing the chance (85% is suggested) of it making profits as projected by Mr Aimson in his five years of EBITDA figures. Alternatively, as referred to in paragraphs 122 and 150 above, Etta seeks to recover the value of the lost business of Etta in a sum equivalent to Mr Lacey’s valuation of the business of Etta of £495,000.
259. I do not consider an award by reference to loss of profits, and the chance of making profits as projected by Mr Aimson to be an appropriate approach in the circumstances of the present case for, essentially, the following reasons:
- i) Firstly, I consider that a claim for loss of profits, even if formulated in terms of the loss of the chance of making profits, is likely only to be appropriate in a case where there is a well established business with a significant trading history in that I consider that it is only likely to be in such a scenario that one is likely to be able to reliably assess the true effect of the conspiracy, rather than other circumstances, on the ability of the party seeking damages to make profits.
 - ii) Where the conspiracy can be shown to have had the effect of causing a business to come to an end, then I consider that a more reliable approach to discovering the true loss caused by the conspiracy is likely to be, and is in the present case, to value the business lost as a result of the conspiracy. In considering the value of the business, the Court can consider the ability of the relevant party to make profits by, for example, applying a multiplier to EBITDA as Mr Lacey has sought to do in the circumstances of the present case. However, this requires the making of appropriate adjustments by way of the application of a discount to the multiplier applied to an established

business with a track record of making profits in order to deal with such issues such as the limited trading history, and the dependence on the business of particular individuals.

- iii) The projections made by Mr Aimson were of EBITDA rather than of net profits. Whilst use of the former may be appropriate for consideration for valuation purposes, with the application of an appropriate multiplier, in seeking to arrive at the value of the entity or business in question, it is of less value in calculating a projection of future lost profits;
 - iv) Applying Etta's primary approach of awarding damages by reference to the chance (said to be 85%) of making profits as projected by Mr Aimson would lead to an award of damages of many millions of pounds. The fact that Etta was established on the basis of an investment of only some £70,000 odd to date, traded for no more than 18 months, and was yet to make a profit, suggests to me that Etta's approach, would lead to an award of such a magnitude, cannot be right.
260. In these circumstances, I consider that Etta's alternative approach of placing a value on the lost business, as suggested by Mr Lacey, is the appropriate one for the Court to adopt, as indeed the Court did in *British Midland Tool Ltd v Midland International Tooling Ltd* (supra), in somewhat similar circumstances.
261. I turn then to Mr Lacey's report, and in particular paragraph 3.33 thereof, where Mr Lacey sets out the basis for arriving at his valuation of £495,000. I note that he has:
- i) Applied to Mr Aimson's projection of EBITDA in 2021 a multiplier of only 1.5 in circumstances in which an established business of the kind carried on by Etta with a trading history might have been expected to command a multiplier of up to 6;
 - ii) Described himself as acting prudently, taking into account the reliance of Etta on Mr Aimson, the reliance of Mr Aimson's projection for 2021 upon new recruits joining, the weak balance sheet and the other factors identified in paragraph 3.33;
 - iii) Applied to his starting EBITDA figure of £417,303 deductions of £19,271 to represent Mr Aimson's actual salary, and a further amount of £87,000 in order to make it up to what Mr Lacey refers to as a market rate for employing somebody in Mr Aimson's role, so as to arrive at a maintainable EBITDA figure of £349,574 to which he has applied his multiplier of 1.5.
262. It is unfortunate that Mr Lacey's report has not been tested by any expert evidence served on behalf of the Defendants, I am told because they could not afford to instruct an expert. I appreciate that Mr Lacey has not been cross examined on behalf of the Defendants, and nor have I have the opportunity of putting to him any concerns that I might have in relation to his valuation. However, as explained above, my task is to do the best I can on the materials available to me in circumstances where it is not possible to arrive at an immaculate or absolute value, and nor is there any requirement to do so.

263. I consider that Mr Lacey's valuation provides a good starting point. Nevertheless, notwithstanding his consideration of the reliability of Mr Aimson's forecasts referred to in paragraph 120 above, I consider that there are additional considerations that I am not satisfied that Mr Lacey has necessarily fully taken into account in his valuation approach. These considerations include the following:
- i) Although Mr Lacey has applied a discount of 75%, I am not satisfied that he has necessarily sufficiently factored into his consideration of the robustness of Mr Aimson's projected EBITDA figure of £417,303 for 2021, which is based on significant assumed growth, a number of factors, in particular:
 - a) The reliance of Etta not only on Mr Aimson, but also on Mrs Higgins and Ms Gannon, in circumstances where the EBITDA figure in itself assumes that new consultants will be taken on in any event;
 - b) The fact that the development of the business of Etta, and in particular the development of the temporary employee side of the business was dependent upon further investment, in circumstances in which there was no guarantee of that investment, and Mr Aimson had concerns as to whether it would be provided;
 - c) The figures produced by Mr Aimson were dependent upon the development of NHS work, which was by no means a given;
 - ii) Etta's limited trading history, and the fact that, irrespective of its balance sheet, it was yet to make a profit; and
 - iii) The very limited investment in Etta.
264. Further, I consider that there is some force in Mr Aimson's point that a market rate for somebody occupying his position of managing director of a company such as Etta, and with his experience and connections, would command a market salary of significantly in excess of that suggested by Mr Lacey .
265. I consider that I am also entitled to apply a sense check having regard to Etta's limited trading history, the fact that it was yet to make a profit, and the fact that it was significantly dependent on key individuals, and also the fact that it had received investment of only some £70,000 odd.
266. In the circumstances, I consider that some further adjustment is required to Mr Lacey's valuation of £495,000 and some further discount applied to the same. Doing the best that I can, and having regard to the fact that damages are at large, I consider that an appropriate award of damages against each of Mr Aimson, Mrs Aimson and Mrs Higgins for unlawful means conspiracy would be £275,000.

Conclusion

267. For the reasons set out above, I have found that Etta has succeeded in its case in unlawful means conspiracy against Mr Aimson, Mrs Aimson and Mrs Higgins, in the case of Mr Aimson and Mrs Aimson by default but in circumstances in which I consider that the case is made out on the evidence in any event. For the reasons explained above, I consider that this is a joint and several liability and that the

appropriate award of damages against each of them for unlawful means conspiracy is the sum of £275,000.

268. In addition, I find that Mr Aimson is liable to Etta in the further sum of £58,909 in respect of the dividends unlawfully paid to him.
269. I do not find that the claim succeeds against Ms Gannon, and I consider that the claim against her should be dismissed.
270. As I indicated at the conclusion of the trial, no attendance is required at the hand down of this judgment which will take place remotely by email to the parties and by transmission of the judgment to the National Archives. I will adjourn all consequential issues including as to the form of order, costs and permission to appeal to be dealt with at a further short hearing to be listed as soon as possible.

SCHEDULE A

RELEVANT TERMS OF THE HIGGINS CONTRACT

“17. CONFIDENTIALITY

- 17.1. For the purpose of this Agreement, Confidential Information shall be deemed to include:
- 17.1.1. Information relating to the Company’s plans, finances, new or maturing business opportunities, and research and development projects;
 - 17.1.2. marketing information relating to the Company’s marketing or sales of any past, present or future service including without limitation sales targets and statistics, market share and pricing statistics, marketing surveys and plans, market research reports, sales techniques and price lists;
 - 17.1.3. details of Professional Contacts (as defined in clause 18) including names, addresses, contact details, terms of business or proposed terms of business with them, their business requirements, pricing structures lists of employees and their terms of employment; and
 - 17.1.4. any other information of a confidential nature belonging to employees, candidates, clients, and employees of clients of the Company or in respect of which the Company owes any other obligation of confidence.
- 17.2. The information above shall include information in the public domain for so long as the Employee is in a position to use such information more readily than others who have not worked for the Company. It shall not apply to information which the Employee may be ordered to disclose by a court of competent jurisdiction or which the Employee discloses pursuant to and in accordance with the Public Interest Disclosure Act 1998.
- 17.3. In the normal course of employment with the Company the Employee will have access to and be entrusted with Confidential Information and the Employee should keep such information confidential.
- 17.4. To protect any Confidential Information the Employee agrees:
- 17.4.1. not at any time, whether during or following his/her employment with the Company (unless expressly so authorised by the Company in writing or as a necessary part of the performance of his/her duties hereunder), to disclose to any person or to make use of any such Confidential Information;
 - 17.4.2. to deliver to the Company, before the end of his/her employment, or if that employment ends without notice, immediately after its end, all documents and records belonging to the Company which are in

his/her possession or under your control, including all documents and records set out in clause 15;

- 17.4.3 not at any time to make any copy, abstract, summary or précis of the whole or any part of any document, computer program, tape or other tangible items belonging to the Company, except when required to do so in the course of the Employment, in which event the disk, C.D., tape, program, copy, abstract, summary or précis or other record shall belong to the Company and shall likewise be delivered up immediately upon termination of the Employment;
- 17.4.4 that she/he will, if at any time requested by the Company, delete all Confidential Information from any computer disks, tapes or other re-usable material in the Employee's possession or under his/her control and destroy all other documents and tangible items in the Employee's possession or under his/her control which refer to or contain any Confidential Information;
- 17.4.5. to use any social networking accounts as set out in the Company's social media policy;
- 17.4.6. not at any time after the termination of the Employment to represent or allow him or herself to be held out by any person, firm or company as being in any way connected with or interested in the Company.

...

18. POST TERMINATION RESTRICTIONS

18.1. In this clause:

- 18.1.1 "**Candidate**" means an applicant for permanent employment, temporary or contract work who has at any time during the Relevant Period been registered with the Company or any Group Company and with whom the Employee was materially involved or had personal dealings during the Relevant Period;
- 18.1.2 "**Client**" means any person, firm, company or entity which has at any time during the Relevant Period been a client of the Company or any Group Company and with whom the Employee was materially involved or had personal dealings during the Relevant period;
- 18.1.3 "**Introducer**" means any person, firm, company or entity which has at any time during the Relevant Period been an introducer or supplier of Candidates or Clients to the Company or any Group Company and with whom the Employee was materially involved or had personal dealings during the Relevant Period;
- 18.1.4 "**Key Employee**" means any person who immediately prior to the Termination Date was a recruitment consultant, manager or administrative staff of the Company or any Group Company with whom the Employee had personal dealings during the Relevant Period;

- 18.1.5 “**Networking Site**” includes (but is not limited to) professional networking sites such as LinkedIn, Xing, Viadeo (“Professional Networking Sites”) and social networking sites such as Facebook, Twitter, SecondLife, Google+, Wikipedia, (“Social Networking Sites”);
- 18.1.6 “**Personal Contact**” means any friends (not including Professional Contacts) or family of the Employee;
- 18.1.7 “**Professional Contact**” means any Candidate, Client, Introducer, Prospective Candidate or Prospective Client, or any other contacts, made either through a Networking Site or a professional body trade or association of which the Employee or Company is a member, with whom the Employee has had personal dealings during the Relevant Period;
- 18.1.8 “**Prospective Candidate**” means any person, firm, company or entity who has at any time during the period of six months prior to the Termination Date been in negotiations with the Company or any Group Company about their availability for placement in permanent employment, temporary or contract work and with whom during such period the Employee was materially involved or had personal dealings;
- 18.1.9 “**Prospective Client**” means any person, firm, company or entity which has at any time during the period of six months prior to the Termination Date been in negotiations with the Company or any Group Company for the supply of services and with whom during such period the Employee was materially involved or had personal dealings;
- 18.1.10 “**Relevant Area**” means any county of the UK in which the Company provides services;
- 18.1.11 “**Relevant Period**” means the period of 12 months ending on the Termination Date;
- 18.1.12 “**Services**” means services identical or similar to those being supplied by the Company or any Group Company at the Termination Date and with which the Employee was materially involved during the Relevant Period;
- 18.1.13. “**Termination Date**” means the date on which the Employee's employment terminates or, if she/he spends a period on garden leave immediately before the termination of his/her employment, such earlier date on which such garden leave commences.
- 18.2 The Employee covenants with the Company that she/he will not, save with the prior written consent of the Company, directly or indirectly, either alone or with or on behalf of any person, firm, company or entity and whether on his/her own account or as principal, partner, shareholder, director, employee, consultant or in any other capacity whatsoever:
- 18.2.1 for six months following the Termination Date be engaged or concerned in any business supplying Services in the Relevant Area;

- 18.2.2 for six months following the Termination Date and in competition with the Company or any Group Company canvass or solicit business or custom from any Professional Contact in relation to Services;
- 18.2.3 for six months following the Termination Date and in competition with the Company or any Group Company be concerned with the supply to any Professional Contact of Services or otherwise deal with any Client or Professional Contact in relation to Services;
- 18.2.4 for six months following the Termination Date canvass or solicit business or custom from any Candidate or Prospective Candidate in relation to Services;
- 18.2.5 for six months following the Termination Date be concerned with the supply to any Candidate or Prospective Candidate of Services or otherwise deal with any Candidate or Prospective Candidate in relation to Services;
- 18.2.6 for six months following the Termination Date solicit or endeavour to solicit the employment or engagement of any Key Employee in a business supplying Services (whether or not such person would breach their contract of employment or engagement);
- 18.2.7 for [six] months following the Termination Date employ any Key Employee in a business supplying Services (whether or not such person would breach their contract of employment or engagement);
- 18.2.8 at any time after the Termination Date represent himself/herself as being in any way connected with (other than as a former employee) or interested in the business of the Company or any Group Company or use any registered names or trading names associated with the Company or any Group Company. In particular the Employee will comply with the post termination provisions set out in section 8 of the Company's Email, Telephone, Computer Facilities and Social Media policy;
- 18.3 The Employee gives the covenants above to the Company as trustee for the Company and each Group Company. The Employee agrees that she/he shall (at the request and cost of the Company) enter into a direct agreement with any Group Company for which she/he performs services under which she/he will accept restrictions identical to the restrictions contained in this clause (or such similar restrictions as will be appropriate provided that such restrictions shall be no wider in scope than those contained in this clause) in relation to such Group Company.
- 18.4 Each of the restrictions contained in this clause is an entirely separate and independent restriction, despite the fact that they may be contained in the same phrase, and if any part is found to be unenforceable, that part shall be severed from this clause and the remainder will remain valid and enforceable.
- 18.5. While the restrictions in this clause (on which the Employee has had the opportunity to take independent legal advice) are considered by the parties to be fair and reasonable in the circumstances, it is agreed that if any such restriction should be held to be void or ineffective for any reason but would be treated as valid and effective if some part or

parts of the restriction were deleted, the restriction in question will apply with such modification as may be necessary to make it valid and effective.

- 18.6. If, during the Employment or any period during which these restrictions apply, any person, firm, company or entity offers the Employee any arrangement or contract which might or would cause him/her to breach any of the restrictions, she/he will not breach those restrictions and will notify that person, firm, company or entity of the terms of these restrictions.

...

21. DATABASE POLICY

- 21.1. Information collated by past and current employees of the Company in the course of their employment and any client and candidate information purchased by the Company is stored on the Company's database. The database is the product of a significant investment in time, money and expertise by the Company. Relevant information on Clients or Prospective Clients, Candidates or Prospective Candidates or suppliers OR Confidential Information that the Employee brings to the business or acquires during his/her Employment will also be input into the database. The data stored on the database is proprietary and is Confidential Information belonging to the Company in which it has a legitimate business interest and which it is entitled to protect. The Company's rights in the contents of the database and the database itself are protected by copyright, contract, common law and the Copyright and Rights in Databases Regulations 1997. Further, the Company is a registered data controller under the Data Protection Act 1998. It therefore has an on-going obligation to ensure the security and accuracy of the information contained on the database.
- 21.2 The Employee agrees and acknowledges that the contents of this database may not be used for any purpose other than proper Company business. The Employee is prohibited from making a copy of the database either in hard or soft copy form or to transfer any part of the database onto any other electronic media. No part of the database should be removed from the Company's premises either in hard or soft copy form without the express written permission of a director of the Company. Any breach of these prohibitions or any other form of misuse will result in disciplinary action up to and including dismissal. If the Employee needs to remove any details from the database for use outside the Company premises (save for names and a contact telephone number for a specific and legitimate business purpose), this should be approved by a Director. If the Employee has any queries in relation to the use of the database, these should be directed to his/her manager.
- 21.3 The Employee agrees that at the end of his/her employment, along with all other Confidential Information, if for any reason whatsoever she/he has any copies or extracts of the database in either hard copy or soft copy form, these should be returned to the Company and the Employee will not make or keep any copies.
- 21.4 If the Employee has reason to believe that any other employee has breached this clause 21 she/he must report it to the Managing director. Failure to report a suspected breach will result in disciplinary action against the Employee.

21.5 The Employee will comply at all times with the relevant Company policies including but not limited to the Company's Information Security and Data Protection Policy and the Email, Telephone, Computer Facilities and Social Media Policy.”

SCHEDULE B

RELEVANT TERMS OF THE SHAREHOLDERS' AGREEMENT

“2. BUSINESS OF THE COMPANY

- 2.1 The business of the Company is Temporary and Permanent Healthcare Recruitment, subject to variation from time to time in accordance with the provisions of this agreement (**Business**).
- 2.2 Each Shareholder shall promote (so far as is lawfully possible in the exercise of his rights and powers as a shareholder of the Company) the success of and develop the Business, in each case for the benefit of the Company's shareholders as a whole.
- 2.3 Steven Aimson, unless prevented by incapacity, must devote the whole of his time, attention and abilities to the business of the Company and always act in the best interests of the Company.”

...

“5. DIVIDEND POLICY

...

- 5.2 The parties agree that the Company shall not declare, pay or make any dividend or other distribution:
- (a) without Shareholder Consent; and
 - (b) which is or would be prohibited by the Act.”

“11. RESTRICTIONS ON THE SHAREHOLDERS

- 11.1 Except with prior written consent of James Nicholas Torkington and Murali Satynarayana Reddy Goluguri, Steven Aimson shall not, during the times specified below, carry on or be employed, engaged or interested in any business in the Territory which would be in competition with any part of the Business, including any developments in the Business after the date of this agreement. The times during which the restrictions apply are:
- (a) any time when the party in question is a Shareholder; and
 - (b) for a period of 12 months after the party in question ceases to be a Shareholder.
- 11.2 Except with prior written consent of James Nicholas Torkington and Murali Satynarayana Reddy Goluguri, Steven Aimson shall not, except as an authorised representative of the Company, in the same area of business in which the Company operates and during the times specified below, deal with or seek the custom of any person that is, or was within the previous 12 months, a client or

customer of the Company or, where the party is no longer a Shareholder, any person that was a client or customer at any time during the period of 12 months immediately preceding the party in question ceasing to be a Shareholder. The times during which the restrictions apply are:

- (a) any time when the party in question is a Shareholder; and
- (b) for a period of 12 months after the party in question ceases to be a Shareholder.

11.3 Except with prior written consent of James Nicholas Torkington and Murali Satynarayana Reddy Goluguri, Steven Aimson shall not, during the times specified below, offer employment to, enter into a contract for the services of, or attempt to solicit or seek to entice away from the Company any individual who is at the time of the offer, or attempt, a director, officer or employee with the Company or procure or facilitate the making of any such offer or attempt by any other person. The times during which the restrictions apply are:

- (a) any time when the party in question is a Shareholder; and
- (b) for a period of 12 months after the party in question ceases to be a Shareholder.

11.4 Except with prior written consent of James Nicholas Torkington and Murali Satynarayana Reddy Goluguri, Steven Aimson shall not, during the times specified below, solicit or endeavour to entice away from the Company any supplier who supplies, or has supplied within the previous 12 months goods and/or services to the Company or, where the party is no longer a Shareholder, any supplier who has supplied goods and/or services to the Company at any time during the period of 12 months immediately preceding the party in question ceasing to be a Shareholder if that solicitation or enticement causes or would cause such supplier to cease supplying, or materially reduce its supply of, those goods and/or services to the Company. The times during which the restrictions apply are:

- (a) any time when the party in question is a Shareholder; and
- (b) for a period of 12 months after the party in question ceases to be a Shareholder.

...

14. CONFIDENTIALITY

14.1 Except to the extent required by law or any legal or regulatory authority of competent jurisdiction or except with Shareholder Consent:

- (a) no party shall at any time during this agreement and for a period of 3 years after termination of this agreement disclose to any person (other than his professional advisers) the terms of this agreement or any trade secret or other confidential information relating to the Company (or any other Group Company) or to any Shareholder, or make any use of such information

other than to the extent necessary for the purpose of exercising or performing his rights and obligations under this agreement; and

- (b) no party shall make, or permit any person to make, any public announcement, communication or circular concerning this agreement or except with Shareholder Consent.

14.2 The undertakings in clause 14.1 are given by each party to each other party and, in respect of undertakings relating to the trade secrets and confidential information of the Company (or any other Group Company}, to the Company and apply to actions carried out by each Shareholder in any capacity and whether directly or indirectly, on the Shareholder's own behalf, on behalf of any other person or jointly with any other person.”