Neutral Citation Number: [2019] EWHC 2824 (Comm)

Case No: E40MA084

IN THE HIGH COURT OF JUSTICE
BUSINESS & PROPERTY COURTS IN MANCHESTER
CIRCUIT COMMERCIAL (QB)

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

Date: 11th November 2019

Before:

HIS HONOUR JUDGE EYRE QC

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Between:

AVIVA INSURANCE LIMITED	**Claimant**
- and -	
DAVID OLIVER	**Defendant**

- -
- -

Brian McCluggage (instructed by **Horwich Farrelly Solicitors**) for the **Claimant**
The **Defendant** appeared in person

Hearing dates: 14th – 16th October 2019

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JUDGMENT

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

HH Judge Eyre QC:

Introduction.

1. The Claimant is an insurance company which as part of its operation provided motor insurance to policy holders. Kirstie Carruthers was an employee of the Claimant and in 2013 and 2014 she accessed the Claimant's computer systems to obtain the personal details of policy holders who had reported to the Claimant accidents in which they had been involved but which had not been their fault. Miss. Carruthers then provided those details (or at least some of them) to the Defendant in return for payment. The Defendant in turn sold the details on to claims management companies. There is no dispute that Miss. Carruthers was acting wrongfully. The Claimant says that the Defendant was aware of this and is liable to the Claimant as a consequence. The Defendant denies liability saying that he was not aware that Miss. Carruthers had obtained this material wrongfully.

The Background History.

2. There was little dispute about the background to the claim but there was dispute about the inferences to be drawn from that history and, in particular, as to the Defendant's state of mind.

3. Miss. Carruthers was employed by the Claimant from September 2001 and by 2013 she was a team manager at its Stretford claims office. In that rôle she had access to the Claimant's computer systems. On a daily basis the Claimant sent her spreadsheets containing the details of policyholders who had the previous day reported their involvement in road traffic accidents but who had not taken up a service such as credit hire offered by the Claimant. The spreadsheets gave details of the policyholder's name, policy number, and vehicle registration number. The purpose of providing this information to Miss. Carruthers was so that the team she headed could contact the policyholder and offer again the service which the policyholder had declined. Miss. Carruthers's access to the Claimant's computer systems meant that she could obtain further details in relation to those policyholders and in particular their telephone numbers and the information they had provided about the accidents.

4. There is a market in which payment is made for information about those who have been involved in road traffic accidents and in particular for data about those who were not at fault in such accidents. Claims management companies and others will pay for such information because it enables them to contact potential claimants offering their services. The closer in time to the accident the information is being sold and the more detailed it is the more valuable it is. Similarly the higher the proportion of those not at fault for an accident in any given tranche of data then the more valuable that tranche is. This is because those are factors which enhance the purchasing claims management company's prospects of being able to persuade the persons in question to accept their services. Information about those who have been involved in road traffic accidents is available, whether legitimately or more frequently illegitimately, from recovery and storage agents, repair garages, and car hire companies. However, the information from such sources is likely to be less complete and further removed in time from the accident than that in the possession of an

insurance company. The Defendant did not substantially challenge this account of the market which was set out in the evidence of Benjamin Challinor for the Claimant (and Mr. Challinor was not cross-examined on this part of his evidence). However, when he was cross-examined the Defendant did contend that it was his experience that credit hire and recovery companies could be in possession of such information within a short time of the accident even, he asserted, before an insurance company.

5. Miss. Carruthers accessed the Claimant's systems and obtained fuller details of the policyholders whose names she had been sent. She did this shortly after those names were sent to her and so shortly after the policyholders had contacted the Claimant and, therefore, within a very short time of the relevant accident. The details which Miss. Carruthers obtained included the policyholders' names; policy numbers; and contact details together with the date of the accident.

6. Having accessed the Claimant's computer systems Miss Carruthers composed a spreadsheet into which she inserted the policyholder's name, policy number (in a column headed "pol"), the make and model of their car, and the policyholder's phone number. She then transmitted that spreadsheet to others doing so by photographing the spreadsheet on her mobile phone and then transmitting the resulting photographs and receiving payment for doing so. Those who received the data or others to whom they had in turn sold it used the data to contact the Claimant's policyholders. That contact was made by telephone using the numbers which Miss. Carruthers had provided and with the callers seeking to persuade the policyholders to engage their services. On occasion those phoning claimed to be calling on behalf of the Claimant or to have an arrangement with the Claimant and to have been provided with the policyholder's contact details by the Claimant. It is of note that all the policyholders whose information Miss. Carruthers passed on had told the Claimant that they had not been at fault in relation to the accident they were reporting.

7. Although Miss. Carruthers originally acted in conjunction with her then partner, John Sproston, when their relationship ended she continued to take the data and to sell it on her own account.

8. Miss. Carruthers sold data to the Defendant from September 2013 until her arrest in September 2014 (with an interval between April and June 2014 when she was away from work recovering from a broken leg). The Defendant did not accept that he was the sole person to whom Miss. Carruthers sold information but the relevant point for current purposes is that he accepted that she did supply him with data. The Defendant was originally working through KMG Manchester Ltd ("KMG") and passed the information on through them. In February 2014 he parted company with that operation and sold the data on his own account. The Defendant said that Miss. Carruthers then approached him saying that she had separated from Mr. Sproston and offering to supply him directly with the information on the same terms as had applied previously. The Defendant accepted that offer and supplied the information provided by Miss. Carruthers to Glynis Firth trading as GPM Marketing Consultants and potentially to others. He rendered invoices as DOBC Ltd, a company which he had incorporated on in July 2013, but requested payment to be made into his

personal bank account. There was dispute as to the nature of the relationship between the Defendant and KMG with the Defendant contending that he was an employee but with the Claimant suggesting that he operated as an independent contractor or as part of a joint venture. There were also disputes as to precisely to whom the Defendant sold the data; as to the precise amounts received; as to whether and in what circumstances the Defendant was sharing the sums received; and as to whether the Defendant was himself involved in or overseeing the use made of the data by way of calls to policyholders. The Claimant says that the lack of clarity on these matters is because of the Defendant's failure to give full information about his dealings with the data. What is clear is that the Defendant made payment to Miss. Carruthers (the Defendant does not dispute the Claimant's figure of £16,200 as a minimum for the sums paid to Miss. Carruthers); that he arranged for the data provided by her to be sold on to others; and that he received very substantial sums for doing so. The Claimant says that the Defendant received at least £370,742 from selling the data on. This is based on an analysis of the Defendant's disclosed bank statements for the period October 2013 to November 2014 identifying payments into those accounts from sources believed to be or to be linked to claims management companies. The Claimant says that the Defendant's failure to make full disclosure of his financial dealings indicates that the sum received might have been greater. In that regard it is of note that the Defendant said that he was provided with neither a P60 or P45 form by KMG and that he provided no details of accounts, tax returns or the like. He accepted that he had not yet filed any tax returns in respect of the relevant period even though he had received substantial sums of money saying that he had been awaiting the outcome of the criminal proceedings against him before doing so. He also accepted that he had not registered for VAT purposes when trading on his own account and receiving substantial payments saying that he had overlooked doing so.

9. The actions of Miss. Carruthers came to light after one of the Claimant's policyholders who had been approached by a claims management company carried out her own investigation. The material she obtained enabled Miss. Carruthers to be identified as the employee of the Claimant who had accessed and sold on her data. The Claimant's systems had previously been wrongfully accessed by another employee, Matthew Cooper who had sold on the Claimant's data to claims management companies. Mr. Cooper was dismissed in September 2013 when his actions came to light. The Claimant drew attention to the fact that Miss. Carruthers's wrongful accessing of the Claimant's systems started very shortly after Mr. Cooper's actions were discovered and stopped. Moreover, it appears that a large part of the data taken by Miss. Carruthers ultimately ended up in the hands of Heyworth Finance Ltd with that company making payment to the Defendant for the data. Heyworth Finance Ltd had also received data from Mr. Cooper. This was noteworthy as part of the background but in the absence of further evidence on this aspect these similarities did not assist me on the key question of the Defendant's knowledge or ignorance of the fact that Miss. Carruthers had obtained the data which she provided to him wrongfully.

10. In response to Miss. Carruthers's actions the Claimant set up a team (the "Achilles 2" team) to address the consequences of her misuse of policyholders'

data. This team was engaged in contacting the policyholders whose data had been supplied to others. The team informed the policyholders of the data breach; answered their queries; gave reassurance about the Defendant's actions; dealt with consequent complaints; and sought to collate information from the policyholders about the telephone calls the latter had received using the data from the Claimant. The Claimant puts the cost of this exercise at £108,651.59 on the basis of the wage costs of the employees involved together with sums in relation to stationery, equipment, and similar items.

11. Miss. Carruthers was arrested on 18th September 2014 and admitted on arrest that she had been selling data taken from her employer. The Defendant was arrested on 10th October 2014. He was interviewed by the police on that day and on 20th January 2015. On each occasion he was interviewed in the presence of his solicitor and on each occasion he answered "no comment" to all questions other than those in respect of his name and address and purely formal matters but he did provide a very short prepared statement on the second occasion. The Defendant says that he gave "no comment" answers on the advice of his solicitor.

12. Criminal proceedings were brought against Miss. Carruthers and the Defendant. On 31st January 2017 the Defendant pleaded guilty to an offence under the Data Protection Act 1988. It seems sentence was not passed until January 2018 when the Defendant was fined and in December 2018 a confiscation order was imposed under the Proceeds of Crime Act 2002. The Defendant says that he had initially been charged with conspiracy to defraud but that that charge had not been pursued. Miss. Carruthers also appears to have pleaded guilty to offences under the 1988 Act though the material before me did not contain details of the proceedings against her.

13. The current proceedings were started on 4th December 2017.

The Basis of the Alleged Liability.

14. The case against the Defendant is put in three ways. First, the Claimant asserts a breach of confidence claim saying that the Defendant received the data in circumstances giving rise to an obligation of confidence and that he made profits by selling it to others. Second, it is said that the Defendant induced Miss. Carruthers to breach her contractual obligations to the Claimant. Finally, the Claimant asserts an unlawful means conspiracy whereby the Defendant and Miss. Carruthers acted in concert using unlawful means to harm the Claimant.

15. As pleaded the Particulars of Claim also sought damages for breach of statutory duty under the Data Protection Act 1988. It was said that the Defendant had become a data controller for the purposes of the Act; that he had contravened the requirements of the Act; and that the Claimant was entitled to compensation under section 13 as "an individual" who had suffered damage by reason of that contravention. However, Mr. McCluggage properly conceded that the Claimant could not maintain that part of its claim because although the Claimant is a "person" for the purposes of that Act it was not an "individual" potentially entitled to compensation under section 13.

The Central Question.

16. There is no dispute that the information in question was confidential nor is it suggested that Miss. Carruthers's conduct was anything other than wrongful. The crucial question is whether the Defendant knew this and in particular whether he knew that she was providing him with information which she had obtained improperly from her employer. If he did know this then liability will follow (subject to consideration of the elements of each head of claim) but if he genuinely believed that the information was coming to him legitimately then liability is unlikely to have been established. Although the Claimant left open the possibility of a finding that the Defendant ought to have known the true position even if he did not in fact do so its core submission was that the Defendant was fully aware of what Miss. Carruthers was doing.

17. The Claimant says that when the evidence as a whole is considered there is only one credible explanation of the Defendant's actions and words. It says that it is clear that the Defendant knew not only that Miss. Carruthers worked for an insurance company but that she worked for the Claimant. He knew that the data which was being sold to him was being obtained by Miss. Carruthers from her employer's systems and was being extracted without authority. Accordingly, he knew that Miss. Carruthers was acting wrongfully and was content to pay her for data which she was obtaining through that wrongful conduct.

18. The Defendant's position is that he did not know that Miss. Carruthers worked for an insurance company let alone the Claimant and that he genuinely believed that Miss. Carruthers was providing him with information which she was entitled to sell. He says that he asked her as to the source of her information and was assured by her that the information was legitimately obtained from a credit hire company but that she was not prepared to disclose the actual source of the information. The Defendant said that he believed that the information did come either from a credit hire company or a recovery garage and that he did not find it surprising in the light of the way in which the trading in this data worked that Miss. Carruthers would not provide more details of the source of the information.

The Approach to be taken to the Assessment of the Evidence.

19. I have already noted that the underlying facts were not substantially in dispute and that the issue was as to the interpretation to be placed on the documents and the inferences to be drawn from the actions of those involved. The bulk of the Claimant's evidence took the form of statements and exhibits which had been prepared for the criminal proceedings. In respect of these the Claimant had served notices of intention to rely on hearsay evidence pursuant to CPR Pt 33.2 and the Defendant had not made any application under CPR Pt 33.4 requiring the witnesses to be called. Subject to the one exception which I will discuss below the Defendant did not seek to challenge that evidence though he did take issue with the Claimant on the inferences to be derived from it. The only witness who gave oral evidence for the Claimant was Benjamin Challinor and although the Defendant cross-examined Mr. Challinor there was no challenge to the bulk of his evidence.

20. The Claimant had served a hearsay notice in respect of the statement which Miss. Carruthers had made to the police and the record of her police interviews. Although the Defendant had not made an application for Miss. Carruthers to be called he did take issue with this course. He was aggrieved that it was him rather than Miss. Carruthers who was being sued by the Claimant and also that Miss. Carruthers was not giving evidence. The hearsay notice had said that the Claimant was not calling Miss. Carruthers in part to save expense but also because she was not cooperating with the Claimant and because the Claimant was said to be concerned for the safety of Miss. Carruthers. The Claimant said it was concerned for her safety in the light of the contents of her statement and interviews which had referred to threats from the Defendant and others. The Defendant robustly denied having made any threats to Miss. Carruthers. Moreover, in that regard it is of note that in her police interview of 18th September 2014 Miss. Carruthers said that the Defendant had never threatened her although others had done so. In her statement of June 2016 Miss. Carruthers did describe contact from the Defendant. She does not there expressly state that the Defendant was threatening her although her account could be read as indicating that he was. In the absence of oral evidence from Miss. Carruthers or other evidence to this effect **t**here is no basis for a finding that the Defendant had threatened Miss. Carruthers. It may well be that she had been threatened by others (and the Defendant accepted this aspect of her account to the police) but I do not find that she had been threatened by the Defendant.

21. The Claimant said that I should attach weight to the account which Miss. Carruthers gave to the police and in particular her assertions that the Defendant contacted her and that the Defendant knew that she was working for the Claimant. Mr. McCluggage for the Claimant invited me to regard this as a reliable account of the Defendant's involvement because Miss. Carruthers was making admissions to the police against her interest. She had admitted her wrongdoing immediately on her arrest and should, the Claimant said, be seen as making a clean breast of her actions and giving a full and honest account of what had happened. The Defendant said that I should not regard Miss. Carruthers's account to the police as reliable evidence against him. He pointed out that she had admitted acting wrongfully in taking the information and he said that she should be seen as untrustworthy.

22. I have concluded that I must exercise very considerable caution before attaching any weight at all to the account which Miss. Carruthers gave of the Defendant's actions and of his knowledge of what was happening. It is of note that the hearsay notice was avowedly on the basis, in part, that she was not cooperating with the Claimant and that is not indicative of a continuing wish to give a full and honest account. More significant is the fact that in light of her admission of guilt and the weight of the evidence against her it was clearly in the interests of Miss. Carruthers when arrested and interviewed to seek to spread the blame and to minimise her rôle in the wrongdoing. The promptness of her admission carries little weight given that when she was arrested her phone contained wrongfully obtained data and the glovebox of her car contained print-outs and screenshots of the Claimant's policyholder data and further sheets of insurance details were in the boot of her car. In those circumstances any denial would have been futile. The core elements of her account for current purposes are her

admission that she took the information from the Claimant's systems; that she did so wrongfully; and that she sold it to the Defendant. Those matters are not in dispute (although the Defendant did not accept that he was the only person to whom Miss. Carruthers sold material) but I am not able to rely on the contents of Miss. Carruthers's statement and police interviews as taking matters beyond that.

23. The Defendant had sold at least some of the material provided by Miss. Carruthers to Glynis Firth trading as GPM Marketing Consultants. As part of their investigation of this matter the police interviewed Miss. Firth under caution and she subsequently provided a witness statement to the police. The latter statement was in the trial bundle. In the course of the trial a transcript of the interview was provided to me at the request of the Defendant. No hearsay notice had been served in respect of either the statement or the transcript. The Claimant did not, however, object to me reading them. The Defendant asked me to attach weight to Miss. Firth's comments and in particular her account that the Defendant had told her that the information had derived from a recovery agent and that she regarded that as a credible explanation. The Defendant urged me to regard those comments as supportive of his contentions that information such as that provided to him by Miss. Carruthers could come from recovery agents and that he genuinely believed that it had come from such a source. The Claimant invited me to regard it as inherently incredible that such information could have come from such a source or could have been thought to have done so. I will address the competing contentions in that regard more fully below in relation to the question of the Defendant's knowledge. In respect of Miss. Firth's comments to the police I do not regard the Defendant's failure to serve a hearsay notice as crucial but in my judgement I can attach no weight to those comments. Miss. Firth has not provided a statement in relation to these proceedings let alone been subject to cross-examination before me. Moreover, she would clearly have had an interest when interviewed by the police in minimising her involvement in and knowledge of the wrongdoing and in suggesting an alternative source for the information other than an insurance company. I make it clear that I am not making a finding as to whether her account of her understanding in relation to the source of the material was or was not truthful but simply that it cannot assist me in these proceedings.

24. It follows that the contentious oral evidence was that of the Defendant in which he denied knowledge that the material had been wrongfully obtained – a denial which the Claimant contends was untrue. In assessing the Defendant's oral evidence I am to take account of his demeanour and of the impression I formed having seen him answer questions in the witness box. However, in doing so I have to be conscious that by itself demeanour can be an unreliable guide to the reliability of a witness's evidence. What might appear to one judge to be evasion and a reluctance to answer questions indicative of unreliability in the evidence of a particular witness might to another judge be seen as commendable caution and care in giving evidence indicative of the reliability of the same witness's evidence.

25. In the current case I have to take account of the fact that the relevant events occurred in 2013 and 2014 and that the Defendant was giving evidence in

October 2019. I have borne that in mind when considering the repeated instances when the Defendant said that he did not recall matters or was not able to give an explanation of the meaning of text or Whatsapp exchanges between himself and Miss. Carruthers. However, in that regard it is of note that this is not a matter which has lain dormant in the period since 2014. The Defendant was arrested and interviewed in October 2014. He was aware at the outset that the police investigation related to his involvement in Miss. Carruthers's actions and that she had taken data from the Claimant. The Defendant's guilty plea in the criminal proceedings was not entered until January 2017 and sentencing was not until January 2018. The Claimant began this action began in December 2017. It follows that the Defendant was not being asked to comment on matters which he had not considered for some time. Rather he must have been aware throughout the period since 2014 that there was an issue as to the nature of his dealings with Miss. Carruthers and his knowledge or otherwise of her wrongdoing. In the light of that the extent of the Defendant's asserted absence of recollection and his inability to explain the meaning of the exchanges was at the very lowest surprising and unpersuasive.

26. The Defendant said that he had been suffering from depression and that this affected his recollection of his dealings with Miss. Carruthers. There was no medical evidence about this and the Defendant did not suggest that he was unable to take part in the trial. Indeed he stated in terms that he wished the trial to continue. The Defendant was subjected to lengthy cross-examination but was given breaks at approximately hourly intervals in the course of this. I accept that the Defendant has indeed suffered from depression to some extent but in the absence of medical evidence there is no basis for believing that it affected his recollection of the relevant matters or his ability to give evidence to any material degree. In that regard I caution myself against making assumptions without any medical evidence but I note that throughout a lengthy cross-examination the Defendant was able to give a robust account of himself and gave no indication of being unable to take a full part in that exercise.

27. In the light of that the position is that although I am to take account of the impression I formed from the Defendant's demeanour when he was giving oral evidence I must be careful not to place undue weight on. I must look at the oral evidence through the prism of the contemporaneous documents; of those events which are accepted or clearly demonstrated to have happened; and of inherent likelihood setting the impression made by the Defendant's demeanour against those matters. I have regard to the approach generally applicable that to the extent that the contemporaneous documents in particular show a picture different from that depicted by a particular witness it is the former and not the latter which I should regard as more likely to be an accurate account of what happened. As will be seen in this case the impression I derived from the Defendant's demeanour and that which emerged from the contemporaneous documents and inherent likelihood substantially coincided.

28. The Defendant answered "no comment" when interviewed by the police save for providing a very short prepared statement. He said that he had done this on the advice of his solicitor. The Claimant invited me to draw inferences adverse to the Defendant from this. The point being made by the Claimant was that if

the Defendant's current account that he had no knowledge of the wrongdoing was true he would have been expected to explain this and to answer the questions about what Miss. Carruthers had told him about the source of the information. The argument went a little further in that the Claimant pointed out that the Defendant had answered "no comment" in response to questions such as that as to how he came to give the police his daughter's mobile phone rather than his own at the time of the police search where (if his current account were true) a simple explanation was available which would have removed potentially harmful misunderstanding. I have concluded that it is not appropriate for me to draw inferences adverse to the Defendant from his failure to answer questions in the police interview. In order for me to do so I would have to undertake an exercise akin to that which jurors would undertake in a criminal trial of assessing whether I was satisfied that notwithstanding the alleged legal advice and the caution which the Defendant had been given the true explanation for his failure to answer questions was that he was guilty of the alleged wrongdoing and was seeking to avoid facing up to his guilt. On the current material I am not satisfied that I could reach such a conclusion in respect of the Defendant's responses in the police interview. I have also to be conscious of the difference in nature between the criminal investigation and the current proceedings. If the Defendant had asserted a denial of knowledge and had given a detailed account of his position the first time he was approached by the police in 2014 he would have been able to pray that in aid now as evidence of consistency. By failing to answer the questions of the police officers he has deprived himself of that argument but it is not appropriate to take the further step for which the Claimant contends and to regard that failure as evidence against the Defendant in this action.

The Extent of the Defendant's Knowledge.

29. The Defendant says that he was new to the claims management industry. He and others received data about potential contacts from many sources and these included sources which could have the information legitimately and who were, he believed, entitled to sell the information on. The market was one in which data such as this was frequently sold on often through a chain of buyers. He believed that the information being provided by Miss. Carruthers came from a credit hire company or a recovery company. The Defendant says that he had asked Miss. Carruthers what the source of the information was and whether it was legitimate. In reply to that he had been assured that the information had been obtained legitimately but that Miss. Carruthers would not reveal its source. He did not find that surprising because typically those who were providing information for sale would not reveal the source of the information for fear of the recipient seeking to cut them out by going directly to the source. It was the Defendant's position that he did not know that Miss. Carruthers worked for an insurance company nor did he know that she was accessing the information from her employer's records.

30. The Claimant's contention is that the Defendant's denial of knowledge is simply not credible in the light of the evidence. It says I should find that he knew that Miss. Carruthers was acting wrongfully and was encouraging her actions and paying for the information which she had obtained illicitly. That is an allegation of deliberate knowing participation in serious wrongdoing. The test I have to

apply in assessing whether the Defendant had that knowledge and participated in that way is that of whether the Claimant has shown on the balance of probabilities that the more likely explanation is that the Defendant had the knowledge alleged. In assessing the probabilities I have to keep in mind that the more serious the allegation and the more unusual the conduct alleged then in normal circumstances the less likely it is to have occurred. I am to take account of the inherent probability or improbability of the actions said to have taken place. In that exercise I must guard against undue scepticism and suspicion but I must not be unduly credulous or close my eyes to realistic explanations. Moreover, that assessment of the inherent probability or improbability of matters is to be undertaken with close attention to the particular circumstances of this case considering what is or is not inherently probable or improbable in the circumstances here and remembering at all times that the standard to be applied is that of the balance of probabilities neither more nor less (see *Re H* [1996] AC 563 per Lord Nicholls at 586 C – 587 G as explained by Lady Hale in *Re B* [2008] UKHL 35, [2009] 1 AC 11 at [62] – [73]).

31. What is the material which assists me in determining this issue?

32. I have already said that I derive no assistance from the statements made to the police by Miss. Carruthers and Miss. Firth.

33. The data which was provided to the Defendant was provided within a very short time of the accident being reported by the policyholders to the Claimant and so within a short time of the accidents in question. The list of policyholders was provided to Miss. Carruthers in the morning of the day after they had reported the accident to the Claimant. The evidence shows that such reports were made within a very short time of the accidents in question and frequently on the day of the accident. It also shows that Miss. Carruthers accessed the Claimant's systems to obtain fuller information about the policyholders on the mornings she received the spreadsheets from her employer and that she sent the spreadsheets she compiled from that information and the Claimant's records to the Defendant the same day. The exchanges between the Defendant and Miss. Carruthers included references to data being either "new" or "old". It is clear that the Defendant knew that the information related to recent accidents and this is shown by the fact that the invoices which he rendered to GPM Marketing Consultants described the data which was being sold as "24hr data". The Defendant said that the references to "new" and "old" data related to the length of time which Miss. Carruthers had been in possession of the information and the reference to 24 hours in the invoices to GPM Marketing Consultants related to the period of 24 hours from his receipt of the information from Miss. Carruthers. I reject that explanation. The period of time which Miss. Carruthers or the Defendant had been in possession of the information would have been have no interest to a potential buyer of the information whereas the period of time which had elapsed since the accident and/or the notification of the accident to the insurance company of those involved would clearly be of great interest to such a potential buyer. I have already explained that the closer in time to the accident the information was provided to a claims management company the greater the prospects of such a company being able to sell its services to those involved in the accident and so the greater the value of the information. The

Defendant was selling on data within 24 hours of accidents or at least within 24 hours of notification to the insurers and was selling it as "24 hour data". The only sensible explanation of this is that the Defendant knew that he was selling data which related to accidents which had happened or been reported very shortly before his receipt of it.

34. The data provided to the Defendant included a policy number for each of the names given and did so in a column headed "pol". The policy numbers commenced in limited number of ways with almost all beginning "MMV" or "MMO". The Claimant says that this showed the Defendant that the data included insurance policy numbers and came from one insurance company. The Defendant accepted that there were exchanges about policy numbers and that "pol" at the head of the column of policy numbers stood for "policy". He also accepted that the use of the same initial letters for many of the numbers meant that the vast majority of the contacts came from the same source. However, he did not accept that this was a reference to insurance policy numbers saying that he thought they could have been loan policy numbers or contract numbers of some other kind. I find that explanation untenable particularly when seen in the context of the exchanges to which I will now turn.

35. The Claimant says that the terms of the text and Whatsapp exchanges between the Defendant and Miss. Carruthers can only be explained on the basis that the Defendant knew that Miss. Carruthers worked for an insurance company and that she was giving him information obtained by accessing her employer's computer system while she was at work. There are a number of instances to which the Claimant referred and the following are by way of example only:

    i) On 19th March 2014 Miss. Carruthers said "been through all retail these were the best ones do you want any ib". The Defendant replied "yes". On 14th August 2014 Miss. Carruthers again used the terms "ib" and "retail". The Claimant says that this is significant with "retail" and "ib" being respectively references to insurance claims resulting from policies sold directly by the Claimant and to claims in relation to policies sold through brokers (intermediary business) and demonstrating that the information related to insurance claims and was coming directly from an insurer. The Defendant said that he did not know what Miss. Carruthers meant by "retail" and "ib". I cannot accept that explanation. Miss. Carruthers was selling the Defendant information. In this exchange she asked if he wanted information of a particular kind and he replied saying that he did. The only credible explanation is that the Defendant knew what was meant and for what he was being asked to pay.

    ii) On 20th March 2014 Miss. Carruthers said "claim volume low yesterday hence low volume". On 10th August 2014 she said "hopefully crap weather means more accidents". I accept the Claimant's contention that this is highly indicative of the information coming directly from an insurance company.

    iii) On 23rd July 2014 the Defendant asked Miss. Carruthers to check some details saying "think the handlers have been putting the wrong codes in". The Claimant says that this was a reference to insurance company claims

handlers demonstrating the Defendant's knowledge of the source of the information. The Defendant says that he was not here making a reference to insurance claims handlers but to call handlers. I cannot accept that explanation. When this exchange is seen in the context of the other exchanges and the dealings generally the reference can only have been to insurance claims handlers.

iv) On 24th July 2014 the Defendant asked Miss. Carruthers to "do 35 today please". On 14th September 2014 Miss. Carruthers said that she would not be "in at 8" but would be "in at 9" "so new stuff will be later". In my judgement the Claimant is right to say that this was demonstrating to the Defendant that Miss. Carruthers was accessing the information while at work. This is reinforced by the fact that no information was supplied in the period when Miss. Carruthers was away from work recovering from a broken leg. In the light of this the Defendant's assertion that he did not realise that Miss. Carruthers was accessing the information while she was at work is not credible.

v) On 30th July 2014 the Defendant asked Miss. Carruthers to "check the phone numbers on these". Similarly on 14th September 2014 he asked her to "send 30 tomorrow" and asked for "tp" details on a Mr. Martin giving the latter's policy number. On 17th September 2014 the Defendant asked Miss. Carruthers to "get TP and accident dates" in respect of three persons identified by name and policy number. The Claimant says that this showed the Defendant asking Miss. Carruthers to look up on the Claimant's system the details of the "third party" involved in an accident with one of the Claimant's policyholders and also the accident date. In my judgement this was significant evidence and was, indeed, strongly indicative that the Defendant knew that Miss. Carruthers had access to the computer systems of an insurer and that he was asking her to provide him with information from those systems. The Defendant was driven to accept that he was asking for information which would have to come ultimately from an insurance company but said that he thought that Miss. Carruthers was able to obtain this information legitimately and said that he did not know whether she was obtaining it directly or indirectly from the insurer. I cannot accept that explanation particularly when it is seen in the context of the exchanges and dealings as a whole.

36. The callers who used the data to call the policyholders and to try to sell them services clearly knew that the information with which they had been provided related to customers of the Claimant. This is shown by the fact that a number of the policyholders whose data had been sold on by Miss. Carruthers told the Claimant that the caller had claimed to be calling from the Claimant or to have been put in touch with them by the Claimant. The persons saying this to the policyholders included those calling from KMG. The Claimant says that this is significant and contends that it indicates that the Defendant told those to whom he was passing the data that it related to the Claimant's policyholders. The Defendant accepted that those who used the data knew that it related to the Claimant's policyholders but says that he did not himself know this and sought to say that they must have learnt it in some other way (perhaps, he suggested,

through realising that the MMV and MMO prefixes related to the Claimant). I cannot accept that in circumstances where all the information related to the policyholders of a single insurance company and where those to whom the Defendant sold the data knew this the Defendant was himself unaware of that fact.

37. The Defendant said that he believed that he was being supplied with information derived from a credit hire or recovery company. However, I accept the point made by the Claimant that the Defendant must have known that such a business would have been unlikely to have been in possession of such information so soon after the accidents. The Defendant was initially evasive when asked whether he found it surprising that such businesses were in possession of such information so soon after the accidents. When pressed on this point he said that he did not find it surprising and that he believed many of those involved in accidents would contact such businesses before contacting their insurers. I reject that explanation as I also reject the Defendant's assertion that he did not think it odd that a recovery company was able to provide insurance policy numbers in respect of each name supplied. I find that those explanations were simply detached from the reality of the way in which such businesses operated. There was a further factor which the Claimant said would have demonstrated to the Defendant that the information did not come from a credit hire or recovery company namely the fact that every contact detail supplied to the Defendant related to a person who claimed not to have been at fault in the relevant accident. The Claimant argued that information coming from a credit hire or recovery business would be a mixture of fault and no fault cases. The Defendant accepted that would be the case but was unable to explain why in the light of that he believed the information supplied to him came from such a source.

38. I have already indicated that I must exercise caution in attaching weight to the impression formed by the Defendant's demeanour while giving evidence. Nonetheless, it is relevant to note that I found the Defendant to be markedly evasive in his replies to cross-examination. There were a number of occasions when he sought to avoid answering directly the questions which were put to him and others when he initially gave answers which he then had to accept were incorrect when referred to the documents.

39. The Claimant also relied on what the approach it said that the Defendant had taken in these proceedings. It described that as an approach of obstructiveness marked in particular by deficiencies in the Defendant's disclosure. There were repeated applications for disclosure and the procedural history is marked by a failure on the part of the Defendant to comply fully with his disclosure obligations. Thus when ordered to provide his bank statements the Defendant only disclosed an incomplete record. Similarly the Defendant's responses to the Claimant's requests for further information were uninformative. He was asked to provide the full names and addresses of three persons or companies to whom he appeared to have sold information. In respect of two he said that he knew neither the full name of the company nor its address. In respect of Miss. Firth he gave the name of "GMP Marketing" and said the address was not known. The correct trading name was "GPM Marketing" and while that misdescription may have been a simple error it is of more significance that the Defendant had

sent invoices to that business at an address of "Horton House, Exchange Flag, Liverpool". When he was cross-examined about this the Defendant initially said that it was correct that he did not know the address of GPM Marketing. When he was then shown the invoices giving an address he said that it had been an "oversight" on his part to say that he did not know the address. I cannot accept that explanation. The Defendant must have known that he rendered invoices to GPM Marketing (the bundle contains sixteen invoices from the period February to September 2014 including invoices for £19,250 and £20,000) and so that it was incorrect to say that he did not know the address. I am compelled to find that the Defendant's assertion that he did not know that address was a deliberate falsehood and that the Defendant had deliberately sought to avoid providing the Claimant with full information about his dealings with the data. I have taken this stance into account in considering whether I can accept the Defendant's assertion that he was ignorant of the source of the data.

40. In his statement of 8th October 2019 the Defendant said that he had been misled by Miss. Carruthers adding that his "mental condition … encourages me to avoid any form of confrontation often meaning that I am more inclined to take people at their word to avoid an increase in my anxiety". In the absence of any medical evidence I am not able to place any weight on that contention.

41. In the light of that material I find that the Defendant knew that Miss. Carruthers worked for an insurance company and in fact knew that she worked for the Claimant. He knew that the information being provided to him had been obtained by Miss. Carruthers accessing the Claimant's systems while she was at work and doing so illegitimately and without authority. The Defendant's assertion that he was ignorant of these matters simply cannot stand when the evidence is seen as a whole and assessed in the light of common sense and inherent likelihood. The conclusion that the Defendant knew about these matters is, in my judgement, not just the most likely explanation of the evidence but is the only realistic explanation.

42. I turn to consider the consequences of that finding for the claims asserted by the Claimant.

Breach of Confidence.

43. The relevant principles can be stated shortly by reference to the judgment of Megarry J in *Coco v A N Clark (Engineers) Ltd* [1969] RPC 41 at 47 – 49 and the review of the applicable law set out by HH Judge Curran QC in *Personal Management Solutions Ltd & another v Brakes Bros Ltd & others* [2014] EWHC 3495 (QB) at [161] – [190]. There is liability for breach of confidence if there is unauthorised use of information which is confidential in nature (which can include a compilation of otherwise public or non-confidential information) which has been obtained in circumstances giving rise to an obligation of confidence. A person who knows the information which he or she has obtained is confidential is subject to the obligation of confidence and that obligation particularly attaches to a person who has taken steps to obtain that information improperly.

44. Here the information was clearly confidential and the Defendant did not seek to argue to the contrary. Miss. Carruthers accessed the Claimant's systems and took from them information which was confidential to the Claimant and to its customers and was only to be used for their purposes. I have found that the Defendant knew that this was what Miss. Carruthers was doing and that he had obtained confidential information improperly. He was accordingly subject to an obligation of confidence. His use of the information was clearly unauthorised and was a breach of that obligation of confidence.

Inducing Breach of Contract.

45. A person who knowingly induces another to breach a contract with a third party is liable to that third party by reference to the principles derived from *Lumley v Gye* (1853) 2 E & B 216. The inducement can be committed by a person who agrees to pay for material which is being sold in breach of contract even if the initial offer to sell comes the person subject to the contract rather than the inducer (see per Roxburgh J at 211 G – 212A in *British Motor Trade Association v Salvadori & others* [1949] 1 All E R 208). In order to be liable the person inducing the breach must know that he is doing so and must intend to do so (*OBG v Allan* [2007] UKHL 21, [2008] 1 AC 1 at [39] – [43] per Lord Hoffmann and at [191] – [193] per Lord Nicholls).

46. Here the actions of Miss. Carruthers were clearly in breach of contract. There was an express term of confidentiality in her contract of employment but even without reference to that her actions were clearly a breach of the duty of fidelity enunciated in *Robb v Green* [1895] 2 QB 315.

47. My conclusion that the Defendant knew that the information for which he was paying Miss. Carruthers had been obtained from her employer without authority would be sufficient to establish liability under this head. In fact as explained above the Defendant did not limit himself to receiving the information provided by Miss. Carruthers but himself asked her to seek out particular details from the Claimant's systems.

Conspiracy.

48. The Claimant alleges an unlawful means conspiracy whereby the Defendant and Miss. Carruthers acted in concert to harm the Claimant using unlawful means namely the breaches of the Data Protection Act 1988 and the breaches of confidence. The necessary elements of this tort are combination; the use of unlawful means as part of that combination; and the direction of the actions at the claimant even if harming the claimant is not the predominant purpose of the parties: see *Kuwait Oil Tanker Co Sak & another v Al Bader & others* [2000] 2 All E R (Comm) 271 at [106] – [108].

49. Here again liability flows inevitably from my finding that the Defendant knew that Miss. Carruthers was providing him with information which she had obtained wrongfully from the Claimant. That was combined action using unlawful means which was intended to injure the Claimant by making unauthorised use of its confidential information.

Relief.

50. The question of the appropriate relief is rather less straightforward than other aspects of this case.

51. The Claimant says it suffered losses of £108,651.59 by reference to the remediation costs involved in the Achilles 2 exercise. It also says that the profits made by the Defendant should be seen in the light of the sums totalling £370,742 received by him. The Claimant accepts that the information available in respect of the profits made by the Defendant is incomplete. However, it says that this is the consequence of the Defendant's failures to provide proper disclosure. The Claimant does not wish the matter to be prolonged by a further and formal accounting exercise. Instead it invites me to make an assessment of the Defendant's profit if need be doing so on a conservative and cautious basis.

52. The Claimant accepts that it cannot recover both damages and an account of profits for the same head of claim. However, through Mr. McCluggage it invited me to award damages based on the cost of the remediation exercise for the torts of conspiracy and inducing breach of contract but also to grant an account of profits by way of relief for the breach of confidence claim. This was on the footing that an account of profits is an equitable remedy available for the breach of confidence claim but not, the Claimant contended, for the tort claims. Alternatively the Claimant submitted that I should award it negotiating damages calculated by reference to the sums received by the Defendant for the breach of confidence claim together with damages in the amount of the cost of the remediation exercise for the tortious claims. The Claimant accepted that in respect of a single head of claim it would have to elect between damages and an account of profits and could not recover twice for the same loss but said that this did not apply here because the claims were brought on wholly different bases.

53. I accept that the costs incurred by the Claimant in the Achilles 2 exercise including the costs of the staff time involved are properly recoverable as damages for the tort claims reflecting the costs of remediation (applying the approach adopted, for example, in *British Motor Trade Association v Salvadori* supra at 214 A – D and *Nationwide Building Society v Dunlop Haywards Ltd* [2009] EWHC 254 (Comm), [2010] 1 WLR 258 at [15] – [18]). I am also satisfied that the Claimant would be entitled to relief by way of an account of profits or, subject to the point I consider below as to the formulation of the claim, to negotiating damages. In that regard I am also satisfied that the Defendant's lack of frankness extended to the financial consequences of his dealings with the wrongfully obtained information and that it would be open to the court to take a robust approach in that regard.

54. The question of the interrelation between the potential elements of the relief sought is less clear-cut. In my judgement the key to determining the correct approach is to keep in mind that the Claimant's claim is based on a single series of wrongful acts. Those acts constitute a number of different legal wrongs but they form a single series of acts with a single set of consequences for the Claimant. The underlying principle is that damages are to be compensatory and that an injured party cannot obtain double recovery for a single loss. The

Claimant cannot escape from the consequences of that by referring to different causes of action when all derive from the same actions of the Defendant and relate to the same loss. The fundamental flaw in Mr. McCluggage's submissions was that he sought to focus on the different potential legal claims while overlooking the crucial element that they all arose from the same acts of wrongdoing and the same loss. The fact that the wrongdoing can be characterised in different ways does not mean that the Claimant can recover compensation more than once for its consequences nor that relief can be granted in multiple ways for the same wrongdoing.

55. In the light of that conclusion that the Claimant is entitled only to redress in one form for the wrongdoing and loss on which its claim is based I turn to the question of the form which that redress should take.

56. An award of negotiating damages is not appropriate here. There is no suggestion in the Amended Particulars of Claim that such redress was being sought nor was there any material in the evidence by reference to which such an award could be quantified. In reality Mr. McCluggage in advocating this course was inviting me to speculate and to do little more than pluck a figure out of the air.

57. The proposed course of an account of profits would also involve a considerable degree of speculation. The Claimant did not wish the matter to be prolonged by a formal accounting exercise but instead invited me to adopt a broad brush approach and identify now a figure which could be said to represent the profits made by the Defendant from the use of the Claimant's confidential information. It would not be appropriate to engage in such an exercise in this case where the material before me was not expressly directed to that question and where the Claimant accepts the court does not have the full picture. I accept the Claimant's point that the Defendant's lack of frankness is the principal cause of the lack of information but there would be a risk of injustice to the Defendant in taking a robust approach to the assessment of the profits made. This is because it is by no means clear that the sums received by the Defendant relate solely to the information obtained from Miss. Carruthers. If an account of profits were the only way in which relief could be given in respect of the Defendant's wrongdoing then it might be appropriate to say that the Defendant should bear the consequences of his lack of frankness and should run the risk of adverse conclusions being drawn. In this case, however, there is an alternative course.

58. That alternative course is to have regard to the loss caused to the Claimant by the Defendant's actions and to compensate the Claimant by way of damages. I am satisfied on the evidence that the Defendant was the sole person to whom Miss. Carruthers provided the information taken from the Claimant. In part that is because no other recipient has been identified but more directly it is the consequence of having regard to the way in which Miss. Carruthers operated. She compiled a spreadsheet and sent that electronically to the Defendant receiving payment from him and the electronic exchanges show that the Defendant was willing to take all the information which Miss. Carruthers could provide. In those circumstances there would be no need or reason for Miss. Carruthers to supply others as well as the Defendant. It follows that the Achilles 2 exercise was the result of the Defendant's actions. I am satisfied that the remediation exercise in which the Defendant engaged was appropriate and that

the calculation of the costs of that exercise has been undertaken in a proper manner. It follows that I am satisfied that the Claimant is to be awarded damages in the amount of £108,651.59 being the costs of that exercise.