Neutral Citation Number: [2024] EWHC 981 (KB)

Case No: KB-2023-002134

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26/04/2024

Before :

THE HONOURABLE MR JUSTICE SAINI

- -

Between :

PAYONE GBMH	**Claimant**
- and -	
JERRY KOFI LOGO	**Defendant**

- -
- -

Leo Davidson (instructed by **Orrick, Herrington & Sutcliffe (UK) LLP**) for the **Claimant**
The Defendant in person (by remote CVP attendance)

Hearing dates: 25 March 2024 and 17 April 2024

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Approved Judgment

This judgment was handed down remotely at 2pm on Friday 26 April 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE SAINI

Mr Justice Saini :

This judgment is in 5 main sections with Appendices as follows:

I. Overview

1. This is a claim brought by the Claimant against the Defendant, Jerry Kofi Logo ("Mr Logo") arising out of an employment relationship. That relationship has ended. Mr Logo claims to be a "whistleblower". He has made substantial disclosures of confidential documents which he unlawfully copied or removed from Payone during his employment. Mr Logo has also deployed such documents extensively in Employment Tribunal ("ET") proceedings brought against the Claimant. As appears below, the main issue before me is whether, in these circumstances, Mr Logo should be restrained by final injunction from making further use of documents which he misappropriated during his employment.

2. The Claimant is a payment services provider, incorporated and domiciled in Germany. It provides a range of cashless payment and risk management services to online and offline merchants, including credit and debit card processing, alternative payment methods, fraud prevention, and customer service. Between 15 November 2016 and 4 March 2021, Mr Logo carried out sales and account management functions for the Claimant. The employment relationship terminated on 4 March 2021, upon the expiry of notice given by Mr Logo on 4 February 2021.

3. The claim brought against Mr Logo alleges, in summary, that during his employment he misappropriated property and information belonging, and confidential, to the Claimant. It is also alleged that Mr Logo unlawfully retained documents following termination of his employment. It is not in issue that Mr Logo has disclosed that information (including confidential information and personal data) to third parties, including regulators and press addresses. Payone does not seek financial relief. Its claim is limited to injunctive relief, including delivery-up.

4. On 30 November 2023 Lane J struck out the document (a witness statement) put forward by Mr Logo as a defence and refused him permission to file a further Defence: see [2023] EWHC 3038 (QB). As identified by Lane J at [81] a further hearing would be required to determine the nature of any final injunctive relief to be granted to the Claimant. Although he struck out the purported defence/witness statement, Lane J gave permission to Mr Logo to file and serve a counterclaim ("the Counterclaim") in relation to his allegations that the Claimant had unlawfully failed to enrol him in a pension scheme. Mr Logo has served the Counterclaim.

5. By an Application Notice dated 13 March 2024 the Claimant applied for judgment in default under CPR 12.3(2)(a) in respect of the sole claim it made in the proceedings, a claim for a final injunction. That application came before me on Monday 25 March 2024. However, it was not until just before that hearing that the real issue in dispute between the parties emerged for the first time. The late emergence of the issue was because Mr Logo's basis for opposition to the granting of any final relief appeared in

his skeleton argument served on the Friday before the hearing. It was also set out in more detail in his witness statement dated 22 March 2024 (but which I did not receive until the morning of the hearing). The substantial bundle in support of that witness statement was also provided to the court at that time.

6. Following conclusion of oral arguments on 25 March 2024, I entered judgment for the Claimant on its claims for conversion, breach of contract and equitable breach of confidence. For oral reasons given that day, I also transferred Mr Logo's Counterclaim to the County Court at Birmingham, and I refused to direct that it be consolidated with an unrelated claim between Mr Logo and the Claimant proceeding in the Central London County Court. As to injunctive relief, I adjourned the hearing to come back before me and gave directions so that the court could properly consider the new issue which had been raised by Mr Logo, namely the effect (if any) of the ET proceedings between Mr Logo and the Claimant on the relief to be granted in the form of a final injunction. The issue was whether the Claimant should be granted relief even though some (or all) of the material which it seeks to protect by final injunction is said by Mr Logo to have entered the "public domain" through the ET proceedings. In summary, Mr Logo argued that reference to documents in the ET hearings and in ET public judgments, and their inclusion in bundles, negates their confidence. He also relied upon his free speech rights and the principle of open justice in this regard, submitting that if injuncted he would be in a "worse position" than a member of the public who could freely refer to the restricted information.

7. I received further helpful skeleton arguments and evidence from the parties on this matter and heard oral submissions on 17 April 2024. At the conclusion of that hearing I made a final injunction order and costs order (on an indemnity basis) against Mr Logo. I also directed that he make an interim payment on account of these costs to the Claimant. These are my reasons. I will need to refer to the ET proceedings in more detail below but an overall procedural summary appears in the Appendix.

II. The Facts

Mr Logo's role

8. Mr Logo was employed by Payone (or its predecessor) from 15 November 2016 to 4 March 2021. He was based in the United Kingdom, but reported to a German line manager, who was based in Germany but had been temporarily assigned to work in the UK. For a period of Mr Logo's employment, and at the time the employment terminated, he was the only employee of the Claimant based in the United Kingdom with duties related to the UK market.

9. In the course of his employment, Mr Logo was required to handle information relating to sales and account management for UK clients in what was called the "Fashion and Lifestyle vertical" at Payone. In particular, when "onboarding" a new client, it was Mr Logo's responsibility to carry out anti-money laundering and "know your client" (KYC) verifications. This role required him to obtain and review personal data, including sensitive financial information, from individuals. In carrying out his work, Mr Logo was able to access the following locations on Payone's internal network and third party platforms: intranet (a Sharepoint environment), shared network folders of the sales teams, enterprise resource planning software, client relationship management tools, HR self-service tools used for booking holidays, mandatory e-learning materials, as well as applications for expense management.

10. On 6 January 2021, the Defendant was signed off as unfit to work due to sickness. He was still on sickness leave when he submitted his resignation on 4 February 2021, and remained absent until his termination on 4 March 2021.

Contractual terms

11. The express terms of Mr Logo's contract of employment ("the Contract") were recorded, in English and German, in a document signed by him on 20 October 2016. The Contract was countersigned for and on behalf of B + S Card Service GmbH by Jürgen Schneider and Dr Frank Isfort, Managing Directors. B + S Card Service GmbH merged with the Claimant in the third quarter of 2017, whereupon the Claimant assumed the rights and duties of employer pursuant to the Contract.

12. By Clause 21.1, the Contract is to be governed by and construed in accordance with the law of England and Wales. By Clause 21.2, the parties submit to the jurisdiction of the courts of England and Wales as regards any claim, dispute or matter arising out of or relating to the Contract.

13. Clause 14 provided (in English):

> "**14. Confidentiality**
>
> 14.1. For the purposes of this agreement, "Confidential Information" means all information not in the public domain concerning the business and/or finances of the Company, any Group Company or the business and/or finances and credit card information and transactions of any customers, clients or suppliers of the Company or Group Company, which you shall have received or obtained at any time by reason of or in connection with your service with the Company including, without limitation: trade secrets; customer/client lists, contact details and banking and credit card details of clients, customers and suppliers and individuals within those organisations; details of clients' requirements, brands and markets, terms of business, technical information, know-how, research and development; financial projections, target details and accounts; fee levels, pricing policies, client profit margins, commissions and commission charges; budgets, forecasts, reports, interpretations, records and corporate and business plans; planned products and services; marketing and advertising plans, requirements and materials, marketing surveys and research reports and market share and pricing statistics; details of existing and former employees; salary levels; and computer software and passwords.
>
> 14.2. You must not both during your employment and after it ends:
>
> 14.2.1. use any Confidential Information for your own or another's purpose other than in performing your duties for the Company or any Group Company; or
>
> 14.2.2. disclose or allow any Confidential Information to be divulged to any person otherwise than in the course of performing your duties for the Company or any Group Company.
>
> 14.3. You must take all reasonable steps to safeguard any Confidential Information in your possession or control and in

particular must take care not to discuss it or reveal it in any public place.

14.4. If you rely on any information being publicly available, for example if the information is contained in client's literature, you must ensure that the information you use or disclose is taken from that public source only.

14.5. For the avoidance of doubt, you should be aware that because of the nature of the Company's business, any disclosure by you of any information of any kind relating to the Company, its business or clients to members of the press is prohibited unless such disclosure is made with the prior written consent of the Company.

14.6 It is a condition of you working on matters for certain clients of the Company that you may be required to sign and observe separate confidentiality agreements with those clients."

14. Clause 15 provided (in English):

"**15. Company Records and Property**

15.1. All documents and records of whatever nature created by you or which come into your possession in the course of your employment with the Company or which contain any confidential information belonging to the Company are the property of the Company. Such documents and records are referred to in this Agreement as "Company Records".

15.2. Company Records include, without limitation, notes, drawings, diagrams, lists, designs, letters and agreements, discs, tapes and computer memory and include any record of computer data in any computer whether the computer belongs to the Company or to you.

15.3. You may not remove any Company Records from the premises of the Company except for the purpose of performing your duties for the Company. Company Records must not be kept off the premises of the Company for longer than is reasonably necessary in connection with the performance of your duties to the Company, unless you have the express written permission of the Company, identifying those documents or records.

15.4. All Company Records must be returned to the Company or delivered to the Company upon request from the Company at any time during your employment and must in any event be returned immediately on your leaving the employment of the Company for whatever reason. This applies to all forms and documents including emails and information received or stored electronically.

15.5. On the termination of your employment, you must also return all Company property to your Manager. Company

property includes, without limitation, office keys, credit cards and any equipment that may be in your possession."

15. Although not necessary for the resolution of the issue before me, I consider that as a result of conventional implied terms of the contract of employment, Mr Logo was bound during his employment by the Claimant by essentially the same obligations as those provided for under the Contract. In addition, Mr Logo owed an equitable duty of confidence in respect of such confidential information. The equitable duty owed was not to misuse, appropriate, copy or disclose information which he received which he knew or ought reasonably to have known was confidential to the Claimant.

Misappropriation

16. Mr Logo misappropriated substantial amounts of information including Confidential Information and Company Records during his period of employment and retained such material following his termination of his employment. Under well-established principles, these acts were unlawful. Substantial parts of this material were then deployed by him in the various ET Proceedings (summarised in the Appendix). That is the root of his defence to a final injunction based on the argument that the misappropriated materials have entered the "public domain" through the inclusion of these documents in ET bundles, and references to some of them at the hearing and in ET judgments.

17. As to the nature of the misappropriation, I will provide a brief overview. From 2018 to the termination of his employment with the Claimant, Mr Logo sent numerous emails from his work email account to one or more of his personal email accounts. Through forensic investigation of the email logs on his work laptop, the Claimant has identified approximately 150 emails being sent from the Defendant's work email account to his personal accounts. Forensic evidence indicates that on 5 January 2021 and 7 January 2021, Mr Logo "double-deleted" sent items from the email server, so that it would not be possible to identify what was sent on those dates. On 6 January 2021, Mr Logo was signed off as unfit to work due to sickness, and did not return to work. The Claimant is unable to identify how many emails were sent, to whom, or the contents of any attachments. I accept however that by necessary implication, all such emails and attachments are Company Records as defined at Clause 15.1 of the Contract and therefore are the Claimant's property. Moreover, they inevitably will have contained Confidential Information as defined at Clause 14.1 of the Contract, and for the purposes of the equitable doctrine of confidence.

18. I will need to return to the ET proceedings between Mr Logo and the Claimant in more detail but, for present purposes, I note that in the course of those proceedings, Mr Logo disclosed evidence which shows that, on various occasions during his employment, he took photographs of documents displayed on computer screens in order to record information without being detected. Those photographs were taken on his personal devices. There was no legitimate business reason for him to record information in this way. Many of the photographs were taken in January 2021, just prior to his resignation and at a time when he was medically unfit to work and not performing his duties. These photographs are Company Records as defined at Clause 15.1 of the Contract and are therefore the Claimant's property. Moreover, the photographs contain Confidential Information as defined at Clause 14.1 of the Contract, and for the purposes of the equitable doctrine of confidence. Photographs known to have been created in this way are set out in Schedule 5 to the Particulars of Claim. I note that they include images of presentation slides relating to the Claimant's structure and business; correspondence between the Claimant and its customers;

minutes and notes from internal meetings; internal correspondence; and internal policies. Mr Logo appears to have taken most of the photographs of emails, documents and calendar invites on his laptop screen on 12 and 18 January 2021.

19. Mr Logo also, on various occasions during his employment between October 2020 and December 2020, made covert recordings of conversations with employees of the Claimant. There was no legitimate business reason for him to record information in this way. These audio recordings are Company Records as defined at Clause 15.1 of the Contract and therefore are the Claimant's property. The audio recordings contain Confidential Information as defined at Clause 14.1 of the Contract, and for the purposes of the equitable doctrine of confidence.

20. On 29 March 2023, the Claimant reported Mr Logo's continuing retention of documents, containing large amounts of personal data, to the Information Commissioner's Office ("the ICO") . On 6 April 2023, the ICO sought further information from the Claimant in connection with a possible criminal investigation as to whether Mr Logo might be committing an offence contrary to section 170 of the Data Protection Act 2018 ("Unlawful obtaining etc of personal data"). On 4 May 2023, the ICO informed the Claimant that it was closing its investigation pending the outcome of other litigation between the Claimant and Mr Logo.

Disclosures to Regulators

21. On 28 July 2022, Mr Logo submitted a 58-page bundle of material to the Financial Conduct Authority ("FCA"), the German Federal Financial Supervisory Authority ("BaFin") and the Belgian Financial Services and Markets Authority ("FSMA Be"), relating to alleged deficiencies in the Claimant's anti-money laundering processes and due diligence. The bundle included:

    (i) emails to and from customers;

    (ii) customer agreements;

    (iii) a partially redacted photocopy of a current passport identification paper; and

    (iv) lists of customers.

22. On 29 January 2023, Mr Logo submitted this 58-page bundle of material to the Hessian Data Protection Authority (Hessischer Beauftragter für Datenschutz und Informationsfreiheit, "HBDI"), relating to alleged data security breaches.

23. On 16 February 2023, Mr Logo submitted one 96-page bundle of material and one 20-page bundle of material to the FCA, BaFin and the ICO relating to alleged deficiencies in the Claimant's anti-money laundering processes. He also included the press enquiries email address of the Protect charity (press@protect-advice.org.uk) as a primary recipient to this disclosure. The bundle did not feature any redactions, and included:

    (i) customer credit notes;

    (ii) customer agreements;

    (iii) third party bank details;

    (iv) photocopies of current and expired passport identification papers;

(v) a photocopy of a current driving licence identification; and

(vi) a photocopy of a council tax bill taken for identification purposes.

24. On 24 February, 7 March, 1 April and 26 April 2023 Mr Logo submitted material to both BaFin and the FCA regarding alleged errors by the Claimant in calculating "scheme fees", allegedly leading to overcharging of the Claimant's customers, which overcharge was not refunded. The material did not feature any redactions, and included:

    (i) lists of customers; and

    (ii) internal confidential Claimant emails (in German) between the Claimant's employees relating to this matter, which are commercially sensitive and which contain information relating to the Claimant's customers.

25. On 31 March 2023, Mr Logo submitted material to BaFin, the Solicitor's Regulation Authority, the FCA and the ICO following relating to the Claimant's request on 22 March 2023 to return Company Records and Property and Confidential Information. The material did not feature any redactions and included internal confidential emails between the Claimant's employees relating to anti-money laundering checks and requests for the Claimant's employees' Apple ID credentials, which are commercially sensitive and which contain information relating to the Claimant's customers.

26. On 1 April 2023 and 26 April 2023, Mr Logo submitted material in .pdf format to the HBDI relating to alleged breaches of the GDPR. The material did not feature any redactions, and included:

    (i) customer agreements;

    (ii) photocopies of current and expired passport identification papers;

    (iii) photocopies of a current driving licence identification paper;

    (iv) photocopies of a council tax bill taken for identification purposes;

    (v) third party bank details;

    (vi) emails to and from customers;

    (vii) customer credit notes;

    (viii) customer invoices; and

    (ix) internal confidential Claimant emails (in German) between the Claimant's employees, which are commercially sensitive and which contain information relating to the Claimant's customers.

27. On the evidence before me, none of the regulatory bodies to whom these materials were submitted has taken any form of regulatory action against the Claimant based on the materials. Counsel for the Claimant also confirmed this to be the case, without contradiction from Mr Logo.

The Claimant's actions, the ET Proceedings and the High Court Claim

28. The first ET proceedings were issued by Mr Logo against the Claimant on 16 March 2021 (see entry 1 in Appendix I). In May 2022, it came to the Claimant's attention that Mr Logo had taken and retained documents and confidential information. Mr

Logo says they knew of this earlier but I find nothing turns on this in relation to the issues I have to resolve. On 19 May 2022 and 1 June 2022, the Claimant wrote to Mr Logo demanding the return and deletion of files and information belonging to it. Mr Logo did not do so. He did however in July 2022 (after protracted correspondence) return devices which he had retained from his employment. In the meantime the ET proceedings continued as set out in the Appendix.

29. On 22 March 2023 the Claimant wrote again to Mr Logo requiring surrender of Company Records and delivery up and destruction of Confidential Information by 2 May 2023. The same day, Mr Logo replied to this letter, although little in his email responded substantively to the Claimant's letter. He asserted that the "*exercise is an entire waste of time, costs and the public purse should it proceed*". His email suggested alternative dispute resolution.

30. On 24 March 2023, the Claimant reiterated its desire to avoid litigation and agreed to consider mediation. It said it would cover the costs of that process, subject to reassurance that Mr Logo would engage constructively. In the days that followed, the parties were unable to agree a timeframe for mediation. Mr Logo proposed a deadline of 30 July 2023, while the Claimant was not prepared to delay further than the first week of May 2023. On 31 March 2023, Mr Logo said:

> "Whilst I am interested in entering mediation, I shall not enter a mediation with a set deadline for May for the reasons explained in prior correspondence. Any claim will be defended robustly and met with aforementioned counterclaims."

31. On 25 April 2023, the Claimant made a further final attempt to avoid litigation, repeating its proposal for mediation, with a deadline of 19 May 2023, and conditional upon the parties agreeing the identity of the joint mediator and joint instructions by no later than 12 May 2023. On 4 May 2023, having received no satisfactory response from Mr Logo, the Claimant filed its Claim Form and application for an interim injunction seeking delivery up of appropriated materials and restraints on disclosure. This is the claim now before me.

32. On 4 May 2023, Mr Logo wrote to the Claimant stating he had:

> "…great concern regarding your recent letter before claim. Your threats and demands are baseless and without merit. As a litigant in person, I will not be intimidated by your attempts to bully and coerce me into withdrawing my regulatory disclosures".

33. The Claimant's application for interim relief came before Linden J on 19 May 2023. Linden J granted an interim injunction ("the Interim Injunction") in rather narrower terms than those sought by the Claimant. He also refused various related applications made by Mr Logo, including to adduce without prejudice material. Following the hearing, Mr Logo applied by email to Linden J for permission to appeal on five grounds, all of which were refused. The terms of the order were finalised on 6 June 2023. Unfortunately, the recording equipment at the hearing of the interim application was not working and there was accordingly no transcript of Linden J's judgment. Linden J helpfully prepared a document on 6 June 2023 which summarised his reasons for granting the injunction, the refusal of Mr Logo's applications and the refusal of

permission to appeal ("the Written Reasons"). I will refer to these reasons further below.

34. On 15 June 2023, Mr Logo applied to the Court of Appeal for permission to appeal against Linden J's Order and in particular against Linden J's refusal of his application to rely on without prejudice material. He also applied for a stay of execution, with "revised" grounds of appeal dated 19 June 2023. On 26 June 2023, Newey LJ granted a stay of execution in relation to paragraph 8 of the Interim Injunction, and paragraph 11 of that order insofar as it referred to paragraph 8. Newey LJ observed in his written reasons:

> "Paragraph 8 requires the appellant to delete documents. It is easy enough to understand why Linden J included the paragraph in his order, and its effect is qualified by paragraphs 9 and 10. On the other hand, deletion is not readily reversed. In the circumstances, and given the very limited time in which it is possible to explore the issues, I have been persuaded that it is appropriate to stay until the application for permission to appeal has been determined, or further order in the meantime, paragraph 8 of Linden J's order and also paragraph 11 to the extent (and only to this extent) that it refers to paragraph 8."

35. On 10 July 2023, Mr Logo made further applications to the Court of Appeal to adduce fresh evidence and for expedition of his permission to appeal application. On 6 September 2023, Falk LJ granted an extension of time but refused the applications for permission to appeal and to rely on, or adduce, further evidence (as well as confirming that the stay imposed by Newey LJ ceased to have effect). In written reasons, Falk LJ explained that the scope of the Interim Injunction made by Linden J was appropriate:

> "It is notable that the judge's summary makes clear at para 6 that the Appellant had told the judge that he had "made all of the disclosures to the regulators which he wished to make but he wished to be able to assist any regulators who wanted further information from him". Further, it is apparent that the judge took real care to avoid imposing an onerous burden or inappropriate restrictions on the Appellant (see paras 9 and 10 in particular), that he took account of the Appellant's submissions on the draft order by varying it (para 13), and that the judge's view was that the "regulators had been sent the documents which the [Appellant] considered they needed" and that while there was no evidence that the regulators were particularly concerned, "if they wanted more information there were various ways in which they could obtain it from the [Respondent]" (para 9). In any event the judge's order permitted further disclosures to regulators at para 6(e). The Appellant may also retain documents required for litigation. The judge did not grant relief in the form sought by the Respondent, but took care to narrow it with a view to ensuring that it was proportionate."

36. On 15 September 2023, the Claimant wrote to Mr Logo noting that, as the stay imposed by Newey LJ had ceased to have effect, Mr Logo was required to comply with paragraph 8 (deletion of files) – and, by extension, paragraph 11 (verification by witness statement) – of the Interim Injunction. The Claimant asked that he do so within four weeks (the same timeframe imposed in the Interim Injunction). The letter also reiterated the Claimant's concerns as to Mr Logo's compliance with paragraph 7 of the Interim Injunction, in that Mr Logo had not delivered up or surrendered any hard copy documents as required by that paragraph despite his previous assertions (and photographic and circumstantial evidence) that he possessed such documents.

37. On 7 July 2023, Mr Logo filed a "witness statement" in place of a Defence and Counterclaim, described in detail in Lane J's judgment at [12]-[39]. On 10 July 2023, he filed an updated "witness statement". On 11 July 2023, the Claimant's solicitors twice offered Mr Logo the opportunity to file and serve a compliant statement of case. Mr Logo refused both invitations: see Lane J's judgment at [48]-[49]. The Claimant therefore applied to strike out the "witness statement". On 14 November 2023, Lane J heard that application and struck out the "witness statement". As I noted above, he refused permission to file a further defence, but granted Mr Logo permission to file and serve a Counterclaim solely in relation to the Claimant's failure to enrol Mr Logo in a pension. I have transferred that claim to the Birmingham County Court.

38. On 21 December 2023, Mr Logo applied to the Court of Appeal for permission to appeal against the strike-out order of Lane J. By an Order of 26 February 2024 (as amended under the slip rule on 27 February 2024), Bean LJ refused the application for permission to appeal. Bean LJ explained:

> "In my judgment Lane J was clearly right to hold that no arguable defence to the claim has been shown. The notice and grounds of appeal put forward are, I am sorry to say, incoherent. Some of the points raised have already been considered in the employment tribunal, where I understand Mr Logo was unsuccessful and it would be an abuse of process to allow them to be run a second time. Others are apparently the subject matter of a pending claim in the county court being brought by Mr Logo, and again it would be an abuse to allow them to be run twice. For the rest, nothing in the grounds of appeal amounts to a defence to the company's claim. The counterclaims for breach of contract (other than any relating to pension payments) were also correctly struck out by the judge. Not only was he right to say that they have no reasonable connection with the company's claim, but I agree that as counterclaims they "dissolve on inspection" for the reasons set out by the judge in paragraphs 62 (use of UK mobile phone), 63 (use of Mr Logo's Apple ID) and 65 (taking of a photograph of a screen image)."

39. On 11 March 2024, Bean LJ refused Mr Logo's application under CPR 52.30 to reopen his appeal against Lane J's judgment. His reasons were:

> "CPR 52.30 is not an opportunity for dissatisfied applicant [sic] to reargue his application for permission to appeal. Mr Logo's recent witness statement contains nothing new and nothing to make this an exceptional case where reopening is required to prevent an injustice. I remain of the view that there is no

> prospect of a successful appeal from the decision of Lane J for the reasons given in my amended order of 26 February 2024."

40. Mr Logo told me at the hearing that he had made a second application under CPR 53.20 to reopen the appeal. He had not heard from the Court of Appeal about this application and said it was pending. However, the Claimant's Solicitors had been sent a court order from the Court of Appeal dated 20 March 2024 recording Bean LJ's dismissal of this yet further application for the following reasons:

> "By order of 26 and 27 February 2024 I refused Mr Logo's application for PTA against the decision of Lane J. I regret that Mr Logo considers that the reasons I gave for doing so were inadequate, but I remain of that view that they were all that the case required. I have already refused one application under CPR 52.30. I do not consider that an applicant under CPR 52.30 establishes a prima facie case of bias justifying recusal or reallocation of the case to a different member of the court, simply by alleging that the first judge's reasons were inadequate".

41. Regrettably, Mr Logo's applications did not end there. By the time of the adjourned hearing before me, Mr Logo had issued a yet further Application Notice seeking to set aside the Interim Injunction granted by Linden J, and Lane J's striking-out order, on grounds of "non-disclosure". He says that the Claimant misled Linden J and Lane J by not identifying that some or all of the material which would be restrained was in the public domain. I can dismiss that submission summarily. The hearings before these judges were not without notice matters (see *White Book* Vol. 1 (2023) at para. 25.3.5 as to when disclosure duties arise) and it was open to Mr Logo to make these points to Linden J and to Lane J. These points also do not represent what Mr Logo called "change in circumstances" justifying the earlier orders being set aside. Nothing has changed. Linden J's Written Reasons at [5] expressly refer to the documents in issue being included in the ET Bundles. He was well aware of the ET proceedings and his order made express reference to them. Any complaints Mr Logo has about the outcomes of these hearings were for an appeal to the Court of Appeal (which he has unsuccessfully pursued on other grounds). I consider the recent Application Notice to be totally without merit and will certify it as such.

III. <u>Final Injunction</u>

A discretionary remedy even in cases of default judgment

42. The Claimant applies for default judgment on its only claim in these proceedings, a final injunction. As to liability, there can be no question of Mr Logo maintaining any defence to the claim. That was finally decided by Lane J on 30 November 2023, and the Court of Appeal has refused Mr Logo's applications for permission to appeal against Lane J's striking out. It follows that judgment on the pleaded claims must follow from the strike-out. There is no defence to its claims in conversion, breach of confidence and breach of contract. In any event, it is hard to see what defence Mr Logo would have had. It is well-established that the courts will not sanction employees helping themselves to, or retaining, their employer's documents for the purposes of future litigation, or anticipated regulatory issues or protected disclosures, or even taking legal advice.

43. In the standard case, the terms of the default judgment to which a party is entitled is such judgment as a claimant appears to be entitled to on their statement of case. But an injunction is a discretionary remedy and an important factor in the exercise of that discretion in a non-disclosure case is the right to free speech both under Article 10(1) (see section 12 of the HRA 1998) and at common law. The fact that judgment is a default judgment does not absolve the Court as a public authority from applying free speech principles in determining the nature and scope of any restraint imposed following default. A claimant is not entitled to ask the Court to simply grant an injunction on the terms of its prayer without more. Any interference with freedom of expression must be no more than is necessary or proportionate in pursuit of the legitimate aim pursued. In this case that aim is the protection of the Claimant's rights to confidentiality and property, as further described below. The Claimant also under this head seeks to protect information of clients and business partners. Protection of all these interests is a legitimate aim. I turn then to the basis upon which Mr Logo argues that I should not exercise the court's discretion in favour of final injunctive relief.

Mr Logo's basis of opposition

44. Mr Logo presented his main argument in opposition to the claim for a final injunction in clear and persuasive terms orally and in writing. He made a large number of points over about 2 days of hearing, supported by skeletons and a number of additional bundles. I have sought to organise his various points under a number of headings below. In short, his main overall submission is that no final and permanent restraint should be imposed because the documents which would be included within the defined Confidential Information are already in the "public domain". He submitted that the documents he took from the Claimant during his employment were included in the ET proceedings without objection. Mr Logo argued that the time of joint preparation of bundles was the opportunity for the Claimant to raise confidentiality or "sealing" issues but they did not do so. He argued that "by silence" they had accepted they were not confidential. Mr Logo said this was a form of waiver of confidentiality by analogy with cases from the field of privilege.

45. Mr Logo relied on what were said to be him to be "publicly accessible" bundles in the ET and referred me in particular to the bundles in the ET Preliminary Hearing (June 2022, approximately 1900 pages - "the PH Bundle": see entry 5 in Appendix I) and the ET Trial bundle (January-February 2023, approximately 2500 pages - "the Main Bundle": see entry 11 in Appendix I). When I asked him about the contents of the Main Bundle he said about 80% of it consisted of documents he had added to it and that not all but "a lot" of those were documents he had taken from the Claimant when employed by them. I will not here set out the rather involved history of the ET proceedings in the main body of this judgment. Appendix I identifies the two sets of proceedings (Employment Claim and Whistleblowing Claim) and where they have got to in the appellate processes.

46. In support of his arguments, Mr Logo underlined that the Claimant never raised any confidentiality related applications in any of the relevant ET proceedings, particularly after he disclosed possessing relevant documents. I will set out the relevant ET procedural rules below, but it is not in dispute that the Claimant did not make any applications in the ET Proceedings to restrict use of documents or to keep them within a form of confidentiality "ring" or other restraint. Mr Logo also relied strongly upon the submission that, in contrast to the Claimant, TJX UK Ltd, as a third party to the ET Proceedings, did file an application for what he called the "sealing" of documents, resulting in the exclusion of certain items from the PH Bundle. Mr Logo argued that Payone's failure to request "sealing" or confidentiality for its documents during the ET hearings was highly significant because these documents were, he said,

"publicly available" for over 18 months before the Claimant sought an injunction to restrict their use. He forcefully argued that this direct contradiction between the Claimant's current position and their inaction at the ET Proceedings fatally undermines their claim of confidentiality.

47. Mr Logo drew to my attention particular documents which he said had entered the public domain. He argued that the bundle before the ET included all categories of documents cited in Schedule D of the Interim Injunction. Mr Logo took me to references to confidential documents in parts of the Employment Tribunal judgment of 15 September 2023 (entry 28 of Appendix I - "the ET Judgment"). Mr Logo referred to what he argued were some 450 or so pages of documents that the Claimant seeks now to restrain. In the interests of brevity, I will confine myself to a few examples:

    (1) Claimant's internal financial sales report 2017 +2016. This was in the Main Bundle (page no. 786) and was also referred to in the ET Judgment reference: page 46 paragraph 210.
    (2) Claimant's SWOT analysis Q3.This was in the Main Bundle (page 788) and was referred to in the ET Judgment (paragraph 210).
    (3) Completion guide Contract POS Acquiring and network operations. This was in the Main Bundle (pages 815 -823) and was also referred to in the ET Judgment (paragraph 146).

Payone's response

48. In order to address my concern expressed at the first hearing as to the lack of clarity in relation to the history, and current state, of the ET proceedings, a helpful witness statement was submitted in advance of the adjourned hearing by Kelly Hagedorn of the Claimant's Solicitors, Orrick, Hetherington & Sutcliffe (UK) LLP ("Orrick"). That statement explains the chronology of the ET proceedings and the processes which were followed in preparing bundles for them. In relation to TJX (who are a former client of the Claimant and a third party to the Employment Claim) she explained, and I accept, there was not in fact any application to "seal" documents made by TJX but documents relevant to them were separated in a distinct process. Mr Logo attempted to disclose various documents pertaining to TJX and a few named employees and former employees of TJX in relation to the Employment Claim. This led to these intervenors making an application which was then scheduled to be heard in June 2022 at the Preliminary Hearing in relation to the Employment Claim. It was initially envisioned that the Claimant would prepare the Preliminary Hearing bundle. However, as Mr Logo began attempting to disclose various documents relating to the intervenors, Orrick decided on 7 June 2022 (after correspondence with Mr Logo), that documents relating to the intervenors would be included in a separate bundle to be managed by the intervenors. When this decision was made, the main bundle for the Preliminary Hearing was already part-way complete and the intervenors' documents were interspersed throughout the main hearing bundle for the Preliminary Hearing. To minimise both disruption and costs it was therefore decided that these documents would be marked in the main bundle for the Preliminary Hearing as being "omitted", rather than removing them from the index and bundle entirely, and those corresponding pages (and page numbers) were moved to a separate bundle. Mr Logo's submission that "omitted" documents in the Preliminary Hearing bundle were "sealed", is incorrect. Rather, they were merely placed in a separate bundle for the purpose of the intervenors' application.

49. As to Mr Logo's main argument opposing final injunctive relief, Counsel for the Claimant submitted that simple reference to documents in open court and in public judgments, much less mere inclusion in bundles, does not automatically negate

confidence. By reference to a number of cases, he submitted that confidence may be lost in one of two ways: from the extent of actual publicity (a question of fact and degree) or by virtue of the principle of open justice (unless outweighed by countervailing factors). Counsel relied on the fact that no application was made by any third party for documents during the ET hearings. He also said that following such hearings documents in ET proceedings can be obtained by third parties only upon an application to the ET (and no such application has been made). On well-known principles, such an application will involve a balancing exercise between promoting open justice and avoiding harm to persons party to those proceedings (including breach of confidentiality). Counsel submitted that on the present facts, the balancing exercise would come down in his client's favour. He further submitted that Mr Logo's complaint that he is in a worse position than the general public, even if arguably true, is "hollow". Counsel argued that the Claimant is entitled to restrain Mr Logo from further breaching his continuing contractual duties and in any event Mr Logo has access to more information than even the most diligent third party would be able to obtain.

50. By way of exception to the scope of relief, Counsel for the Claimant clarified that information which is contained in any public ET judgment is not relied upon as confidential and that Mr Logo may therefore use and/or disclose the judgment, or any part of it, to any third party. The Claimant argues however that it does not follow that confidence in any underlying document or associated information has also been lost. Reliance was also placed on the fact that a large body of material was misappropriated by Mr Logo and not all of it was referred to directly or even indirectly in the ET Judgment.

Analysis

51. My conclusions as to how my discretion should be exercised are at [76] below. I essentially accept the well-structured and concise submissions of Mr Davidson for the Claimant. In short, I conclude that the Confidential Information as defined has not lost the quality of confidence. Save insofar as express references are made to it in the ET Judgment, neither the information nor documents including the information have entered the "public domain" so as to defeat the entitlement of the Claimant to restrain further disclosure consistently with free speech considerations.

52. I will refer in more detail to relevant case law below, but at a high-level I consider the relevant legal principles to be as follows:

    (i) Disclosure or reference by the ET will not necessarily negate confidentiality.

    (ii) That confidentiality may be lost in one of two ways, which can broadly be summarised as factual (i.e., the publicity has destroyed the secrecy necessary for confidentiality) and legal (i.e., the principle of open justice requires that the information be deemed public).

    (iii) Whether confidentiality is lost is a question of fact and degree.

    (iv) Where the open justice principle applies, the default will be that confidentiality is lost, but this may be rebutted if there is good reason.

    (v) A tribunal can impose confidentiality restrictions in advance of, or during, an open hearing. Restrictions on information once made public may even be imposed after the hearing or judgment referring to such information. The fundamental question remains the balance of competing interests. Delay in seeking restraints may be relevant.

(vi) Documents subject to the open justice principle in ET proceedings may be applied for and disclosure may be ordered after a hearing. The applicant must explain why they want the information and how granting him access will advance the open justice principle.

(vii) When considering such an application, the ET will carry out a fact-specific analysis, balancing competing interests (including confidentiality as well as practicality).

(viii) A key question will be the extent to which disclosure of the information would enable the public to understand the proceedings to which it relates.

(ix) Partial reference to a document does not mean that the entire document should be deemed to have been referred to in open court.

(x) A person may be treated differently to the general public because of continuing duties they owe in contract or equity.

53. I begin with definitions. In the draft Order sought by the Claimant "Confidential Information" is defined as follows:

> "…(subject to paragraph 16 of the Order [public domain]), information which came into the Defendant's possession during his employment with the Claimant and/or which was retained by him after the termination of such employment and which comprises or is contained in:
>
> personal data of personnel of the Claimant and of its customers and of its counterparties, including as contained in passports, driving licenses, utility bills, and any other identification documents and documentation provided for the purposes of anti-money laundering and/or identification for foreign contractual partners;
>
> customer/partner lists, customer/partner contracts, customer/partner pricing information, customer/partner pricing models (including dynamic currency conversion), customer/partner credit notes, customer/partner invoices, customer/partner bank details and/or communications relating to transactions, complaints, service issues and/or security concerns (including as contained within external communications between the Claimant, its customers and third parties);
>
> details of the Claimant's and/or its customers' and partners' transactions, sales volumes, turnover, revenue, profits and reorganisation plans, scheme fees, customer refund information and/or registrations with regulators (including as contained within internal communications between the Claimant's employees);
>
> analysis of customers, competitors and the Claimant's market position and service provision; and
>
> information captured by the Defendant during his employment in covert recordings of colleagues and meetings".

54. In advance of the ET Proceedings, it was open to the Claimant to seek to restrict third party access to confidential documents and/or to seek protections in the course of a hearing. As explained in Frewer v Google UK Limited [2022] EAT 34 at [32]-[34], by reference to the relevant procedural rules governing ET proceedings ("the ET Rules"), such tribunals have the power to make orders restricting "open justice" in order to protect trade secrets and commercially confidential information. As described by Judge Tayler in that case and in his judgment in Rozanov (see [65] below), the familiar "open justice" principle as developed and explained in a number of decisions of the higher courts applies to ET proceedings.

55. Rule 50 of the ET Rules allows for a hearing, or some parts of it, or some of the material that would otherwise be disclosed in it, to be kept private. The ET can issue an order at any stage in order to prevent or restrict public disclosure of any aspect of the proceedings (including even after a public judgment has named a person: see TYU v ILA SPA Limited [2022] ICR 298). As in other courts, the test is whether this is in the interests of justice, is necessary to protect the Convention rights of any person, or is necessary in certain specific circumstances.

56. Mr Logo's essential argument is that all of the information or material which he is said to have misappropriated has entered the "public domain" via the ET Proceedings and or through some form of "waiver" of confidentiality. It was not always clear to me what he meant by the "public domain". As I indicated during the adjourned hearing it is perhaps better to ask a different question: whether information which falls within the definition of Confidential Information has in fact lost its confidentiality, such that a court should not seek to restrain its use.

57. The extent to which reference or disclosure in open court negates confidentiality was considered in Mohammed v Ministry of Defence [2013] EWHC 4478 (QB). Leggatt J explained at [18] that information does not necessarily enter the public domain just because a document containing it is mentioned in open court, or even because the information itself is disclosed in open court. He explained that confidentiality may be lost in one of two ways:

> "19. First, sufficient publicity may be given to information disclosed in open court that it can no longer be regarded as confidential. This is a question of fact and degree. Frequently and no doubt typically, however, passing references to documents in open court do not attract sufficient publicity to cause them to lose their confidentiality in this way.
>
> 20. Second, there is a general public right of access, based on the principle of open justice, to documents read or referred to in court: see R (Guardian News & Media Ltd) v Westminster Magistrates Court [2013] QB 618. For this reason, I take the default position to be that reference to a document containing confidential information in open court will put the information into the public domain and deprive it of its confidential character. This is, however, subject to the power of the court to prevent or restrict the further publication or use of the information, and thereby preserve its confidentiality, if there is good reason to do so".

58. Leggatt J went on to refer to the provisions of CPR 31.22 and explained that in principle an application could be made "in subsequent proceedings to restrict or prohibit the use of a document by a party who has acquired the document from a party to whom it was disclosed in the earlier proceedings"; and the delay should not preclude the making of such an order "if it is still practicable to preserve the confidentiality of information contained in the document and the balance of competing interests is demonstrably in favour of doing so": [22].

59. This approach was applied in SL Claimants v Tesco Plc [2019] EWHC 3315 (Ch) in circumstances relevant to the present case. A confidential document (the "Majid Note") had been referred to in criminal proceedings and no application had been made under the relevant rules of procedure to maintain confidentiality. The Claimants contended that confidentiality had thereby been lost on both limbs in Mohammed. Hildyard J disagreed, reasoning at [42]:

> "(1) It is not contended that the Majid Note was deployed in such a way as to constitute waiver: only loss of confidentiality is in issue.
>
> (2) There is a distinction between the information in a document and the document itself. Whether references (whether by the court or counsel) are such as in fact to constitute such an exposure of the document to the public that confidentiality in it is lost is a matter of degree. In this case, the references did not, either in terms of their detail or their extent, amount to a loss of confidentiality in the document itself.
>
> (3) Noting that in fact no such application was made, I do not think it likely that an application under the Criminal Rules would have led to disclosure of the Majid Note as being necessary in order to understand what was going on. I do not think that the civil rules require any different approach.
>
> (4) The references to and the judge's reading of the document do not require its disclosure to enable the public to understand the approach of the court to the procedural decision before it (whether to issue a witness summons in respect of another document, the Morris Note).
>
> (5) Confidentiality in the document was not lost".

60. This approach was also applied in Eurasian Natural Resources Corp Ltd v Director of the Serious Fraud Office [2023] EWHC 2488 (Comm). Dame Clare Moulder held at [121] that the judge in previous proceedings who had read a document would not have "acceded to a request for an unredacted copy to be produced"; given the nature of the document it was "clearly appropriate for the balance to be struck in this case by preserving the confidentiality of Document A such that the default position should not apply".

61. In my judgment, neither of the limbs in the Mohammed case is engaged in this case.

62. Factually, none of the information outside the ET Judgment itself (or indeed any other public judgment in this case) was readily accessible to any member of the public. On the evidence before me, no true third parties (including the press) attended the hearings or applied to the ET for access to documents. There has been no reporting of

the proceedings other than by Mr Logo himself or by legal publications which only make reference to what is in the ET Judgment. No application was made by any third party for the witness statements or closing submissions during or after the hearing before the ET. The evidence of the Claimant establishes that there remains secrecy in the underlying information and documents which it is entitled to protect. Whilst some Company Records and Confidential Information have been publicly referred to in the ET Judgment, the underlying documents themselves are not readily accessible to the public. I will provide some examples by way of illustration. The ET Judgment of 15 September 2023 made it publicly known that the Claimant entered into a contract with Westgate shopping centre. However, the underlying terms of that contract remain confidential and could only be obtained by the public or press if an application were to be made to the ET (or, theoretically, a superior court or tribunal). The same point can be made about financial records such as the turnover of the Claimant's major clients. The fact that such turnover may have been referred to in the ET Judgment at a particular point does not render all aspects of the underlying turnover documents non-confidential. A similar point can be made about the specific examples of documents referred to in the ET Judgment as I have summarized at [47] above. I have considered each of the documents helpfully collated by Mr Logo in his Supplementary Bundle for the first hearing. In that bundle he provided the underlying documents, where they appear in the ET Bundle, and references to the documents/issue in the ET Judgment (by paragraph number). Having considered those documents, in my judgment the nature of the references in the ET Judgment does not undermine confidentiality in the documents themselves. Legally, the balance of interests falls firmly in favour of maintaining confidentiality.

63. On the other hand, there would be little if any advancement of the principle of open justice in any further disclosure. The ET Judgment of EJ George, Mrs Bhatt and Mr Solford is an impressive document of nearly 500 paragraphs. It is thorough and detailed, describing the proceedings themselves at length as well as the reasons for dismissing the claims. It also covers case management decisions and obiter consideration of remedy issues. It is telling that the few press reports which relate to the ET proceedings were able to rely exclusively on that judgment, without recourse to any underlying documents. Where parts of documents are referred to in the ET Judgment, that already reflects a deliberate choice by the ET to extract the information which is necessary to explain its reasoning without unduly revealing confidential information. Meanwhile, many of the documents in the Main Bundle were of no relevance either to the claim itself or to the decision reached by the Tribunal. Indeed, there is no evidence that many of them were even read by the Tribunal, let alone referred to in the hearing.

64. Meanwhile, to the extent that open justice is engaged, on the facts before me it is in my judgment substantially outweighed by the interests of the Claimant and affected third parties, who would suffer prejudice if the information was made public. Indeed, that threatened prejudice was the very basis on which the claim has succeeded and on which Linden J granted interim relief. It is significant that, unlike in the authorities set out above, the relevant documents were put before the ET by the person seeking to use them. In other words, Mr Logo pre-empted the ordinary disclosure process by unlawfully appropriating documents at his whim, then introduced them regardless of relevance into the ET Bundles. It would be an odd situation indeed for confidentiality to be lost in these circumstances. It would allow the open justice principle to be abused to enable a person in Mr Logo's position to nullify his obligations under contract and in equity – or at the very least afford him a windfall.

Accessibility of ET documents following an ET hearing

65. Documents in ET proceedings cannot be accessed by third parties after the conclusion of a hearing except by an application to the ET. The extent to which the open justice principle enables access to documents by non-parties was clarified in Cape Intermediate Holdings v Dring [2019] UKSC 3. The question in this case was how broad the court's powers were to order disclosure of documents to non-parties. The conclusion was that open justice allows a court to release everything, provided the applicant explains how granting access will advance the open justice principle. This principle was applied in Guardian News & Media Ltd v Rozanov [2022] EAT 12. The applicant in that case was a journalist who had attended the relevant ET hearing. He wrote to the ET a few months after the conclusion of proceedings asking for copies of documents referred to in the ET's judgment. He supported his request with reasons from a journalistic perspective. The ET refused on the basis that the open justice principle was not strongly engaged. Judge Tayler allowed the journalist's appeal, holding that the public interest in the subject matter of the proceedings weighed in favour of granting the application. He ordered that the statements, submissions and certain documents from the hearing bundle to were made available to the journalist.

66. In principle, a third party could now apply to the ET for disclosure of the documents referred to in the ET Judgment in the present case. No such application has been made. The Claimant is right to submit that upon a potential application it is unlikely that the ET would order information to be made available to the public. It is hard to see what reason an applicant might have for seeking disclosure (or, indeed, who such an applicant might be). Certainly, there is no obvious journalistic or other public interest in what is, objectively, a run-of-the-mill ET claim. I note that the ET itself criticized Mr Logo for "document harvesting" which, along with covert recordings, would have resulted in a 100% chance of Mr Logo's dismissal or resignation after investigation. The ET explained at ET Judgment [475]: "Although the claimant denied harvesting documents it seems clear to us that the claimant has not got any explanation for having the specific documents set out in RSUB. para 126 in his possession. The claimant was utterly unconvincing on this point. He was taking copies of these documents for litigation". Further, given the passage of time and the need to identify, categorise and redact different categories of confidential information, any such order for public disclosure would present considerable practical difficulties.

67. In Rozanov, the EAT addressed the practical problems which might arise on such applications in the ET at [107] (emphasis added):

> "107. In this appeal the documentation that it is contended the employment tribunal should have ordered be supplied to GNM is considerably more limited than that sought in the original application made to the employment tribunal. The practical problems in dealing with such applications after a hearing are potentially much greater where documentation is sought from the bundle which may include material that raises Article 8 issues or otherwise infringes confidentiality rights of the parties, or others. In such cases it may be necessary for the matter to be considered at a hearing, as was suggested should be the general approach at paragraph 38 of Goodley v The Hut Group [2021] EWHC 1993. A particular issue may arise where, as is commonly the case, only part of a document has been referred to in an open hearing, often because only part of the document is relevant. Such documents are generally put in the bundles in their complete form so that any relevant section can be read in context. This means that there may be a great deal of irrelevant information that may raise issues of confidentiality and/or under Article 8. I do not consider that the fact that a

section of a document has been referred to in an open hearing necessarily means that the whole document should also be treated as having been referred to in the open hearing. There could be a document that may be relevant because it includes details of matters such as the claimant's pay and personal information but also includes details about other employees' pay and personal information that is confidential and in respect of which there is no proper reason for the material to be put into the public domain".

Waiver

68. I reject the proposition that an employer whose confidential documents have effectively been stolen and then deployed against them in the ET waives rights of confidence in those documents against the employee unless the employer applies under Rule 50 for extensive restrictions, including a private hearing in the ET. Such an employer knows they may face a disclosure application from a third party or the press once proceedings start but that is a very different thing to a wholesale waiver in the form contended for by Mr Logo. The Claimant did not deploy the documents in issue - they were deployed (following misappropriation) by Mr Logo. I accept on the evidence before me that in its dealings with Mr Logo, the Claimant has sought wherever possible to adopt a light-touch and focused approach. The evidence before me shows that the Claimant's approach has been to limit rather than proliferate issues, with the goal of achieving finality while minimising costs as much as possible. For this reason, as accepted by Linden J (Written Reasons [4]) it waited as long as it could, and tried every reasonable alternative, before proactively seeking to restrain Mr Logo. In my judgment, it was not necessary for a separate application to be made to the ET, nor did Mr Logo suggest at the time (or at any point prior to 22 March 2024) that any such additional application was necessary. Lack of contemporaneous restrictions is no bar to confidentiality trumping open justice. On the basis of Mr Logo's arguments, the Claimant should have taken the wholly unrealistic steps of seeking privacy restrictions in relation to almost the entire Main Bundle and a hearing in private of all parts of the trial where documents he had taken from the Claimant were going to be referred to. That in itself would have been a major in-road on the principle of open justice. The history of the proceedings also makes clear to me that agreeing some form of privacy or confidentiality regime with Mr Logo would have been time-consuming and, most likely, impossible.

69. For completeness, I should record that towards the end of the adjourned hearing, Mr Logo produced a judgment of 26 June 2023 of EJ Goodman in support of his argument that the Claimant could have made an application to maintain confidentiality. I have considered that judgment. It dealt with an application by the Claimant before the main hearing (which led to the ET Judgment) to exclude material from Mr Logo's witness statement on grounds of relevance and privilege. The application succeeded. It does not appear to me to be relevant to the issues before me which are concerned with a wider confidentiality restraint in relation to misappropriated material. One thing however that does stand out from this episode is as follows. The way in which EJ Goodman had to address this issue and then the further time spent by EJ Spencer in the main ET hearing provide ample evidence of Mr Logo's obstructive approach to these issues.

Mr Logo is not in the same position as a member of the public

70. Mr Logo forcefully argued that that he is in "a worse position" than a member of the public. In my judgment, it is appropriate for him to be treated differently to someone like a journalist, or other true third party. This is for the following reasons.

71. First, Mr Logo appropriated and retained the information in breach of the Contract, and any further misuse would be an additional breach of continuing contractual duties. The circumstances by which an individual came to possess information is relevant in imparting obligations of secrecy in respect of what might otherwise be public (or publicly accessible) knowledge: in Hilton v Barker Booth & Eastwood (a firm) [2005] 1 WLR 567 disclosure by an individual's solicitor of their client's bankruptcy and conviction was found to be a breach of the duties they owed him, despite the fact that those matters were a matter of public record and not confidential: [33]-[34].

72. Secondly, the fact of that relationship and the betrayal of the trust reposed in Mr Logo as an employee is a reason to hold him to a higher standard than a member of the public, even in the context of equitable confidence. The editors of *Toulson & Phipps on Confidentiality* (4th Edition) explain the reasons for this at 4-089 and following.

73. Thirdly, Mr Logo is the only person to whom, in reality, the information is accessible. Anyone else would need to apply to the ET for statements of case, witness statements, submissions and bundle documents and justify to the ET their need to obtain them. In the unlikely event anyone were to make such an application, the Claimant would be able to respond to it and explain why its rights of confidentiality outweigh the principle of open justice in the circumstances.

74. Fourthly, even if it were the case that some information was accessible to the public, Mr Logo possesses and knows considerably more information than that – and therefore more than even a diligent and motivated member of the public would be able to obtain even if access to ET documents was granted. This includes a plethora of documents which have never been disclosed in any court or tribunal proceedings, as well as his knowledge and understanding derived from his role as an employee of the Claimant. He can therefore contextualise and conjoin the public information with private, confidential information in a way which members of the public cannot and even with great effort never could, to the detriment of the Claimant and the third parties whose private and sensitive information is included among the material which he unlawfully appropriated. It is therefore appropriate that his use of confidential information should be tightly constrained in order to afford effective protection to those persons and their interests.

75. Fifthly, Mr Logo is the only person who is threatening to act in breach of confidence. Injunctions should be limited in scope to what is reasonably necessary to protect the relevant interests. On the facts before me, it is appropriate for an injunction to restrain Mr Logo from doing things which others could (theoretically) do lawfully. The court should be particularly hesitant to give Mr Logo a windfall licence to disclose information when it is he who has – in breach of his obligations – attempted to bring that information into the public domain by abusing the principle of open justice.

Discretion

76. Against this background, I stand back and ask whether I should as a matter of discretion restrain Mr Logo from further use of the Confidential Information. It is not in issue that unless restrained he wishes to make use of the Confidential Information in ways which are not permitted by the draft Order before me. At the risk of repeating some of my conclusions above, I will summarise why I am satisfied that further and final restraint is justified:

    (i) The starting point is to recognise that Mr Logo acted wrongly and unlawfully in his mass appropriation of the Confidential Information. Although Mr Logo has already used substantial parts of such material in his ET Proceedings, this

court should seek to prevent further disclosure of such information unless it would serve no proper purpose because it is already public.

(ii) The fact that the Claimant could have acted to restrain public reference to this material in the ET Proceedings is a factor for me to consider but it is not determinative. Equally, the fact that it did not immediately seek relief in the High Court is a factor but it is not determinative.

(iii) Even though parts of the Confidential Information may have been referred to in a public ET hearing, included in the ET Bundle and referred to in the ET Judgment, I do not consider that the information in the underlying documents has by reason of that alone lost the quality of confidence.

(iv) Had a third party applied for and obtained disclosure of the ET Bundle on an "open justice" basis the position might have been different. But there has been no such application and I consider it would face an uphill challenge for the reasons given above.

(v) When one considers the nature of the Confidential Information and in particular matters such as personal data of personnel of the Claimant and of its customers and of its counterparties, including as contained in passports, driving licenses, utility bills, and any other identification documents and documentation, there remains a real need to protect such information from further disclosure. It is hard to see any public interest in allowing Mr Logo to use or disseminate such information. He did not at the hearings before me make any concessions that he accepted restraints in relation to this type of information (whether or not it was in the ET Bundles). Equally, it is hard to see why he should be able to make further use of documents such as the Claimant's or its customers' and partners' transactions, sales volumes, turnover, revenue, profits and reorganisation plans, scheme fees, customer refund information and registrations with regulators. This is all classically confidential material. It is hard to see how there does not remain a reasonable expectation of confidentiality in respect of information of such a nature.

(vi) Even if information has become public in some respects through references in the ET Judgment, that does not in itself mean that the Claimant should be denied protection in equity from use by Mr Logo of underlying documents and material which have never become public. The fact that there may be existing intrusions into confidentiality or privacy does not in itself disable a claimant from seeking to restrain further intrusions at the hands of an employee who has acted unlawfully in mass collection of his employer's confidential information.

(vii) Mr Logo will suffer no prejudice by the restraint sought because the "carve-outs" in the injunction will permit him to make appropriate use in the ET proceedings of the Confidential Information. The restraint will only prevent improper disclosure to third parties of what is commercially sensitive information including private financial details of third parties including customers.

(viii) Overall, I have balanced the limited free speech rights in issue in this case against the Claimant's legitimate interests in protecting its own and its clients' confidentiality and the Claimant's property interests. The balance comes clearly down in favour of restraining Mr Logo.

77. If any true third party such as a journalist seeks access to the ET Bundle that application will no doubt be considered on its merits by the ET in accordance with the principles comprehensively set out in by Eady J in Amooba v Michael Garrett Associates [2024] EAT 30 at [193]-[211].

Terms of the Final Injunction

78. I turn to the terms of the restraint. My starting point has been the terms of Linden J's Interim Injunction. I consider that the terms fashioned by Linden J were proportionate and contained safeguards to protect Mr Logo's rights and the public interest. In my judgment, the balance struck by Linden J should with some minor modifications be maintained on a permanent basis.

79. I underline the following matters:

    (i) First, it maintains a "carve-out" in relation to purported whistleblowing. This is a generous exemption and it covers all communications with the listed bodies, regardless of whether on the facts those communications amount to or contain public interest disclosures (in either the narrow statutory sense or the broader common law sense). Nor is it limited to existing matters, or to responses to approaches from those regulators, despite Mr Logo having indicated to Linden J that "*he had made all of the disclosures to the regulators which he wished to make but he wished to be able to assist any regulators who wanted further information from him*" (Written Reasons at [6]).

    (ii) Second, it maintains a "carve-out" in relation to ongoing litigation. Mr Logo will not be prejudiced in relation to those proceedings. I have added a minor amendment: a proviso that the exception should last "*for so long as any such proceedings are ongoing, including any appeals*".

    (iii) Third, I note that Linden J was concerned that the definition of "confidential information" proposed by the Claimant was too wide, and so "*made an order which protected much narrower and more specific categories of information than had been proposed by the Claimant*" (Written Reasons at [10]). I have followed the narrow and specific protection in the terms identified by Linden J.

The WhatsApp Messages

80. An issue on the topic of Mr Logo's *WhatsApp* messages was raised towards the end of adjourned hearing by him. What I record in this paragraph was not the subject of evidence but I will summarise what Mr Logo said orally. He told me that about 4000 such messages between himself and current/former employees of the Claimant exist and they contain parts of the defined Confidential Information amongst other personal and private content. Mr Logo said that he had deleted all electronic versions of these messages. He could not be precise about the date on which he did this. However, Mr Logo also told me that prior to deletion he printed all of these messages (amounting to 150 pages or so) and they are in the current ET Bundles. Under the Final Injunction Order Mr Logo cannot use these messages (which are Disclosed Documents as defined in that Order) following conclusion of the ET Proceedings. Mr Logo complains that this is unfair to him. He said that it will be a difficult task to edit/delete these messages to remove the Confidential Information and the only practical way forward might be mass deletion including all the private and personal content. That, argued Mr Logo, would interfere with his right to private life and in particular his rights under Article 8 ECHR. I have little sympathy with this submission. A person who mixes information from confidential information with his own private

communications only has himself to blame if identifying documents for deletion is onerous or requires, for practical purposes, deletion of all the messages. It also appears to me that filtering software can in fact assist in this process. In any event, even if Article 8 ECHR is engaged, and giving effect to the Claimant's entitlement to respect for its confidential information means private material must be deleted, that is a fair balance under Article 8(2).

Witness statement/deletion

81. On 23 June 2023, Mr Logo served a two-page witness statement dealing with his compliance with the Interim Injunction, in which he claimed not to have any hard copy documents to surrender or deliver up. He did not refer to his disclosures to regulators. Further, the witness statement did not address the hard copy documents which Mr Logo had previously asserted he held, sent photographs of, and disclosed in the course of litigation. On his own admission he does appear to have further material. Mr Logo notified the Claimant on 6 December 2023 that he had made new discoveries of files *"after a detailed review of unlocated files"*. Following the lifting of the stay of execution on paragraph 8 of the Interim Injunction by Falk LJ, Mr Logo should have made a witness statement identifying the steps he has taken to delete the documents as required by the Interim Injunction. He has not done so. To address what appear to me to be deficiencies in Mr Logo's compliance with the Interim Injunction, the Final Injunction repeats the requirement to delete documents (most if not all of which should already have been deleted), and to verify compliance with a witness statement. In my judgment this is necessary due to the inadequacy of the witness statement provided in purported compliance with paragraph 11 of the Interim Injunction, and the grounds for doubting that the substantive requirements have been complied with.

IV. Costs

82. The Claimant has succeeded in its claim. In my judgment, the costs of the claim – including the interim application, the strike-out application and this hearing – should follow the event. The Claimant seeks costs on an indemnity basis. It has submitted a costs schedule which Mr Davidson submitted "reflects a fraction of the actual time and expense incurred". The total costs sought are in the region of £300,000.00.

83. For the Claimant it was argued that costs should be assessed on the indemnity basis. It was submitted that, on the basis of the history, Mr Logo left the Claimant with no choice but to initiate these proceedings. Reference was made to the fact that it made repeated efforts, including offering to pay for ADR, to avoid litigation. Counsel argued that Mr Logo's conduct during the case has made the proceedings longer and more complicated than they needed to be. Against these points, Mr Logo referred to his mental health and physical health challenges (relying upon medical notes) and child caring responsibilities. He also referred to his status as a self-represented litigant.

84. I have sympathy with these points but they do not come close to explaining the attitude and approach he has adopted in these proceedings. That is an attitude characterised by steps to maximise costs and complication at all stages and to make repeat applications with little or no merit. Although there is no special rule for those who represent themselves, I accept that one might accept slips and errors by a person unfamiliar with processes. But even making some allowance for that, I am satisfied that Mr Logo's conduct takes the case out of the norm justifying an indemnity order.

85. In summary, my reasons are as follows:

(i) First, the claim should never have been necessary. Mr Logo's defence to the causes of action was in my judgment hopeless and flew in the face of established case law. I refer back to and respectfully adopt Linden J's Written Reasons at [8] and Lane J's judgment at [53], [57], [59], [60] and [65].

(ii) Second, I have been provided with an extensive correspondence bundle which evidences efforts by the Claimant's advisers to deal with matters in a proportionate way. The substantive and procedural defects were frequently pointed out to Mr Logo both in correspondence and by the court, which has found his submissions to be *"incoherent"* and potentially to amount to an *"abuse of process"* (Bean LJ).

(iii) Third, his persistence in pursuing totally meritless points reflected his "*propensity to say anything that he thinks might keep the current litigation going, regardless of any underlying merits*" (Lane J) at [63] and are indications of his "*being little concerned with genuine grievances, as opposed to seeking very belatedly to rake over the past and scrape together anything he thinks might prolong the litigation*" (Lane J) at [76]**.** I consider the Claimant is right to say his defence has been vexatious and abusive.

(iv) Fourth, he was also unreasonable in refusing to mediate within a reasonable timeframe. That refusal necessitated the bringing of the claim.

(v) Fifth, Mr Logo's conduct of the litigation has been inconvenient and disproportionate. He attempts to relitigate decided matters and retake points which have been shown to be misconceived or misleading. This included, in his written materials for the hearing before me on 25 March 2024 (albeit not pursued in his oral submissions), attempting to set aside or circumvent Lane J's strike-out (see, e.g., his witness statement at [45] and his skeleton argument at [35]-[36], both dated 22 March 2024). He has also made a yet further totally without merit application before me seeking to set aside Linden J's and Lane J's orders: see [41] above.

86. I was not willing to make a final summary assessment of the costs of the claim at the hearing as argued by Mr Davidson. Fairness to Mr Logo requires that he should have a fuller opportunity to challenge the costs in a detailed assessment process. I did however order an interim payment on account of those costs in the sum £100,000.00. I consider this to be well within the sum the Claimant is likely to recover at the conclusion of a detailed assessment.

V. <u>Conclusion</u>

87. I will make a final injunction. The Claimant is entitled to its costs of the claim, including the applications to which I have made reference, such costs to be assessed on an indemnity basis, if not agreed. Mr Logo is ordered to make an interim payment of £100,000.00 on account of those costs. Mr Logo's Application Notice seeking to set aside the orders of Linden J and Lane J is dismissed and certified as totally without merit.

APPENDIX: PROCEDURAL CHRONOLOGY

Employment Claim, Whistleblowing Claim and High Court Injunction Claim

	Date	Description	Proceedings
1.	**16 March 2021**	Mr Logo issued the Employment Claim for direct and indirect race discrimination and harassment and constructive unfair dismissal (case number: 3303093/2021).	Employment Claim
2.	**10 May 2022**	Employment Claim disclosure process was to take place.	Employment Claim
3.	**19 May 2022**	Payone's first letter to Mr Logo demanding the return of Payone's Company Records and Property.	Injunction Claim

4.	**1 June 2022**	Payone's second letter to Mr Logo demanding the return of Payone's Company Records and Property.	Injunction Claim
5.	**21 – 22 June; 18 – 19 July 2022**	Preliminary hearing in Watford Employment Tribunal.	Employment Claim
6.	**5 August 2022**	Following Payone's application heard at the preliminary hearing, claims of indirect discrimination (the only claims against all but two named respondents) were struck out by EJ Maxwell on the basis that they had no reasonable prospects of success (see line 24 below for current status of this decision on appeal).	Employment Claim
7.	**22 August 2022**	Mr Logo issued a "Whistleblowing" Claim relating to alleged post-employment detriments under s.47B Employment Rights Act 1996 arising from Mr Logo's alleged protected disclosures (case number: 2206197/2022).	Whistleblowing Claim
8.	**13 September 2022**	Mr Logo issued an Employment Appeal Tribunal appeal in relation to the ET's decision to strike out indirect discrimination complaints (case number: EA-2022-000886) ("Employment Appeal 1"). Mr Logo also sought reconsideration from EJ Maxwell which was refused.	Employment Appeal 1
9.	**8 November 2022**	Employment Appeal 1 initially did not make the sift.	Employment Appeal 1
10.	**20 January 2023**	Rule 3(10) hearing in Employment Appeal 1.	Employment Appeal 1
11.	**23 January – 3 February 2023**	Main hearing in Employment Claim at Watford Employment Tribunal. Hearing concluded as per entry 17 below.	Employment Claim
12.	**27 February 2023**	Mr Logo issued an application to amend the Whistleblowing Claim to include further detriments.	Whistleblowing Claim
13.	**2 March 2023**	Whistleblowing Claim amendment refused by EJ Burns.	Whistleblowing Claim
14.	**8 March 2023**	Mr Logo issued an Employment Appeal Tribunal appeal in relation to the ET's decision not to permit amendments to Whistleblowing Claim (case number: EA-2023-000193) ("Whistleblowing Appeal 1").	Whistleblowing Appeal 1
15.	**22 March 2023**	Payone's letter before action to Mr Logo.	Injunction Claim
16.	**2 – 27 April 2023**	Disclosure process in Whistleblowing Claim took place.	Whistleblowing Claim
17.	**24 April 2023**	Employment Claim final hearing.	Employment Claim

18.	**4 May 2023**	Payone issued Injunction Claim.	Injunction Claim
19.	**19 May 2023**	Interim hearing in the Injunction Claim, resulting in Linden J granting an interim injunction in favour of Payone.	Injunction Claim
20.	**6 June 2023**	Revised order of 19 May 2023 including Linden J's Written Reasons (sealed 7 June 2023).	Injunction Claim

21.	**15 June 2023**	Mr Logo appeal against the order of Linden J (application revised 19 June 2023) ("Injunction Appeal 1").	Injunction Appeal 1
22.	**27 – 29 June 2023**	Hearing in Whistleblowing Claim proceedings.	Whistleblowing Claim
23.	**5 July 2023**	Whistleblowing Judgment of EJ Spencer and lay members in favour of Payone.	Whistleblowing Claim
24.	**12 July 2023**	Payone issued an application for strike out of Mr Logo's defence.	Injunction Claim
25.	**26 July 2023**	Mr Logo appeal against the substantive judgment in the Whistleblowing Claim (case number: EA-2023000822) ("Whistleblowing Appeal 2").	Whistleblowing Appeal 2
26.	**5 September 2023**	Whistleblowing Appeal 2 refused at the sift. Mr Logo exercised his right to an oral Rule 3(10) hearing to be heard 1 May 2024.	Whistleblowing Appeal 2
27.	**6 September 2023**	Mr Logo's application for permission to appeal Linden J's order refused by Falk LJ.	Injunction Appeal 1
28.	**15 September 2023**	Judgment of EJ George and lay members in favour of Payone on the Employment Claim.	Employment Claim
29.	**21 September 2023**	Whistleblowing Appeal 1 did not make the sift. Mr Logo exercised his right to an oral Rule 3(10) hearing and HHJ Beard dismissed the appeal in its entirety.	Whistleblowing Appeal 1
30.	**17 October 2023**	Mr Logo issued an appeal to the Court of Appeal regarding the decision not to allow the Whistleblowing 1 Appeal (case number: CA-2023-002027).	Whistleblowing Appeal 1
31.	**27 October 2023**	Mr Logo issued an appeal against the substantive judgment in the Employment Claim (case number: EA2023-001266) ("Employment Appeal 2").	Employment Appeal 2
32.	**9 November 2023**	Hearing in Employment Appeal 1 before HHJ Tayler.	Employment Appeal 1
33.	**14 November 2023**	Hearing for Payone's application to strike out Mr Logo's defence.	Injunction Claim
34.	**30 November 2023**	Judgment of Lane J in favour of Payone.	Injunction Claim
35.	**21 December 2023**	Mr Logo appeal against the judgment of Lane J (sealed 11 January 2024) ("Injunction Appeal 2").	Injunction Appeal 2
36.	**8 February 2024**	HHJ Tayler allows appeal in Employment Appeal 1 and remits to Employment Tribunal.	Employment Appeal 1
37.	**26 February 2024**	Mr Logo's application for permission to appeal against the judgment of Lane J refused by Bean LJ.	Injunction Appeal 2
38.	**11 March 2024**	Mr Logo application to reopen Bean LJ's refusal of permission to appeal refused by Bean LJ.	Injunction Appeal 2
39.	**13 March 2024**	Permission to appeal the decision of the Employment Appeals Tribunal in Whistleblowing Appeal 1 refused by the Court of Appeal.	Whistleblowing Appeal 1
40.	**20 March 2024**	Mr Logo's second application to reopen Bean	

		LJ's refusal of permission to appeal refused by Bean LJ	
41.	**25 March 2024**	Hearing in the Injunction Claim (adjourned to 17 April 2024) before Saini J.	Injunction Claim
42.	**1 May 2024**	Pre-sift hearing for Employment Appeal 2 to be heard.	Employment Appeal 2
		Rule 3(10) hearing for Whistleblowing Appeal 2 to be heard.	Whistleblowing Appeal 2