IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
BIRMINGHAM DISTRICT REGISTRY
MERCANTILE COURT
HIS HONOUR JUDGE SIMON BROWN QC

CASE NO. 9BM40098

BETWEEN:

BALDWINS (ASHBY) LIMITED

Claimant

-and-

ANDREW JOHN MAIDSTONE

Defendant

JUDGMENT

Introduction

1. This claim arises out of a bitter battle between firms of accountants over clients in Leicestershire. It began with an injunction being sought arising out of the sale of the Defendant's substantial practice to Claimant, his employment by them and his subsequent move with some of his clients to a rival firm called Charnwoods whose managing partner was Mr Barnett. The bona fides and truthfulness of all concerned has, regrettably, been called into question and this judgment will have to resolve that in determining the claim for damages.

2. The claim is for damages for breach of covenant of the share sale agreement dated 14th September 2007 whereby the Defendant sold his accountancy business in Ashby de la Zouch in Leicestershire to the Claimants for approximately £1m. The Claimant alleges that the Defendant breached a 3 year covenant in the agreement protecting the goodwill in the company by *'canvassing, soliciting or endeavouring to entice away'* his former clients from them to a firm called Charnwoods in Loughborough where he commenced employment on 2nd November 2009. It identifies 7 such clients.

3. The Defendant accepts that a few of his former clients followed him to Charnwoods, where he legitimately commenced practising, but strenuously denies that he 'canvassed, solicited or enticed' them away. He, and indeed they, contend that it was their own independent decisions to move their

custom for the various reasons given by them in their witness evidence, as summarised in the Defendant's Closing notes which have duly been taken into account as part of the following judicial forensic analysis of the evidence.

4. It is therefore necessary:

   (1) to construe what is meant by '*canvassing, soliciting or enticing away*' in the contractual 'non solicitation' clause;

   (2) to determine whether the Defendant intended to do so in relation to his 7 identified former clients;

   (3) to determine whether the Defendant did any such acts in breach of that clause in respect of any of them; and

   (4) to calculate what loss, if any, has been sustained by the Claimant due to any such breach(es).

(1) Construction

5. Clause 10.1.2 of the Agreement prohibited the Defendant for a period of 3 years from Completion from soliciting any person who had been a client of the Company in the 2 years prior to Completion:

> *"for a period of 3 years from Completion he/she will not for the purpose of any business supplying products or services similar to or capable of being used in substitution for any product or service supplied by the Company within the 12 months preceding Completion canvass, solicit or endeavour to entice away from the Company any person who during the period of two years prior to Completion has been a client of the Company or who has purchased or agreed or offered to purchase services from the Company or has employed its services or who has been canvassed by the Company (otherwise than by general advertising) with a view to becoming a client of the Company"* [emphasis added]*;*

6. The Defendant accepts that the clause applied to all persons identified in the Schedule and also former clients who had been clients within 2 years of Completion, including the 7 identified by the Claimant.

7. Contextually, this is an express (cp implied) restrictive covenant between 'Vendor and Purchaser of Business', as distinct from one between "Employer and Employee". As Chitty remarks at 16-115 (29th edition) , *"Restrictive*

covenants between vendor and purchase are looked on with less disfavour by the court" :

> *'I think it is now generally conceded that it is to the advantage of the public to allow a trader who has established a lucrative business to dispose of it to a successor by whom it may be efficiently carried on. That object could not be accomplished if, upon the score of public policy, the law reserved to the seller an absolute and indefeasible right to start a rival concern the day after he sold. Accordingly it has been determined judicially, that in cases where the purchaser, for his own protection, obtains an obligation restraining the seller from competing with him, within bounds which having regard to the nature of the business are reasonable and are limited in respect of space, the obligation is not obnoxious to public policy, and is therefore capable of being enforced. Whether – when the circumstances of the case are such that a restraint unlimited in space becomes reasonably necessary in order to protect the purchaser against any attempt by the seller to resume the business which he sold – a covenant imposing that restraint must be invalidated by the principle of public policy is the substance of the question which your Lordships have to consider in this appeal'.* Per Lord Watson in Nordenfelt v. Maxim Nordenfelt Guns and Ammunition Co Ltd [1894] A.C. 535, 552-3.

8. The usual principles of contractual construction apply, as identified by Lord Hoffmann in Investors' Compensation Scheme v West Bromwich Building Society [1998] 1 WLR 896, 912H–913E.

> *'Interpretation is the ascertainment of the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract*.'

9. The 'objective' of such a clause is critical to its interpretation.

> *'Agreements in restraint of trade, like other agreements, must be construed with reference to the object sought to be attained by them*.' Per Sir Nathaniel Lindley MR in Haynes v Doman [1899] 2 Ch 13, at p.25, quoted with approval by Lord Denning MR in Littlewoods Organisation Ltd v Harris [1977] 1 WLR 1472, 1481.

10. The 'objective' is essentially to "protect the value of the goodwill' sold in the bargain struck.

11. There are two classic definitions of 'goodwill' that have stood the test of time: Lord Eldon in Cruttwell v Lye (1810) 7 Ves Jr 335:

> *'The goodwill which has been the subject of sale is nothing more than the probability that the old customers will resort to the old place';* and

Lord Macnaghten in Trego v Hunt [1896] AC 7:

> *'It is the whole advantage, whatever it may be, of the reputation and connection of the firm, which may have been built up by years of honest work or gained by lavish expenditure of money'.*

12. Since that time, courts around the world have grappled with defining the elusive concept of 'goodwill'. In Commissioner of Income-tax v. Setty [1981] 128 ITR 294 (SC) the Supreme Court of India illuminatingly did so:

> *"Goodwill denotes the benefit arising from connection and reputation. The original definition by Lord Eldon in Cruttwell v Lye [1810] 17 Ves 335 that goodwill was nothing more than "the probability that the old customers would resort to the old places" was expanded by Wood V.C. in Churton v. Douglas [1859] John 174 to encompass every positive advantage "that has been acquired by the old firm in carrying on its business, whether connected with the premises in which the business was previously carried on or with the name of the old firm, or with any other matter carrying with it the benefit of the business". In Trego v. Hunt [1896] AC 7 (HL) Lord Herschell described goodwill as a connection which tended to become permanent because of habit or otherwise. The benefit to the business varies with the nature of the business and also from one business to another. No business commenced for the first time possesses goodwill from the start. It is generated as the business is carried on and may be augmented with the passage of time. Lawson in his Introduction to the Law of the Property describes it as property of a highly peculiar kind. In CIT v. Chunilal Prabhudas & Co. [1970] 76 ITR 566 the Calcutta High Court reviewed the different approaches to the concept (pp. 577, 578):*
>
> > *It has been horticulturally and botanically viewed as 'a seed sprouting' or an 'acorn growing into the mighty oak of goodwill'. It has been geographically described by locality. It has been historically explained as growing and crystallising traditions in the business. It has been described in terms of a magnet as the 'attracting force'. In terms of comparative dynamics, goodwill has been described as the 'differential return of profit'. Philosophically it has been held to be intangible. Though immaterial, it is materially valued. Physically and psychologically, it is a 'habit' and sociologically it is a 'custom'. Biologically, it has been described by Lord Macnaghten in Trego v. Hunt [1896] AC 7 (HL) as the 'sap and life' of the business. Architecturally, it has been described as the 'cement' binding together the business and its assets as a whole and a going and developing concern."*

13. In the instant case, the 'goodwill' is the substantial tax accounting business the Defendant and his wife built up over 10 years in Leicestershire with strongly bonds developed with both personal and SME clients.

14. The clause was not, however, a strict "non-dealing" one that has a clear dividing line and is easier to police and adjudicate upon; it is an express "non-solicitation" of the type often described as a "Trego v. Hunt type clause".

15. As stated by Lord Herschell in Trego v. Hunt [supra] on page 20: *" it must be treated as settled that whenever the goodwill of a business is sold the vendor does not, by reason only of that sale, come under a restriction not to carry on a competing business".* Hence, in the instant case the Defendant was perfectly entitled to compete for business with the claimants in the area and to undertake work for his previous clients if they solicited him to do so without his importuning them.

16. However, the express terms of the clause prohibit him from "soliciting" them. The reason for this (and implied in Trego v. Hunt) is explained by Lord Macnaughten in Trego v. Hunt [supra] on page 25:

> *'The principle on which Labouchere v. Dawson rests has been presented in various ways. A man may not derogate from his own grant; the vendor is not at liberty to destroy or depreciate the thing which he has sold; there is an implied covenant, on the sale of goodwill, that the vendor does not solicit the custom which he has parted with: it would be a fraud on the contract to do so. These, as it seems to me, are only different turns and glimpses of a proposition which I take to be elementary. It is not right to profess and to purport to sell that which you do not mean the purchaser to have; it is not an honest thing to pocket the price and then to recapture the subject of sale, to decoy it away or call it back before the purchaser has had time to attach it to himself and make it his very own*.'

17. Lord Herschell explains on pages 20-21 the 'dividing line' between what is acceptable and what is not:

> *'This is really the strong point in the position of those who maintain that Labouchere v. Dawson was wrongly decided. Cotton L.J. says:*
>
> > *"It is admitted that a person who has sold the goodwill of his business may set up a similar business next door and say that he is the person who carried on the old business. Yet such proceedings manifestly tend to prevent the old customers from going to the old place. I cannot see where to draw the line. If he may, by his acts, invite the old customers to deal with him and not with the purchaser, why may he not apply to them and ask them to do so?"*

I quite feel the force of this argument, but it does not strike me as conclusive. It is often impossible to draw the line and yet possible to be perfectly certain that particular acts are on one side of it or the other. It does not seem to me to follow that because a man may, by his acts, invite all men to deal with him, and so, amongst the rest of mankind, invite the former customers of the firm, he may use the knowledge which he has acquired of what persons were customers of the old firm in order, by an appeal to them, to seek to weaken their habit of dealing where they have dealt before, or whatever else binds them to the old business, and so to secure their custom for himself.

This seems to me to be a direct and intentional dealing with the goodwill and an endeavour to destroy it. If a person who has previously been a partner in a firm sets up in business on his own account and appeals generally for custom, he only does that which any member of the public may do, and which those carrying on the same trade are already doing. It is true that those who were former customers of the firm to which he belonged may of their own accord transfer their custom to him; but this incidental advantage is unavoidable, and does not result from any act of his. He only conducts his business in precisely the same way as he would if he had never been a member of the firm to which he previously belonged.

But when he specifically and directly appeals to those who were customers of the previous firm he seeks to take advantage of the connection previously formed by his old firm, and of the knowledge of that connection which he has previously acquired, to take that which constitutes the goodwill away from the persons to whom it has been sold and to restore it to himself. It is said, indeed, that he may not represent himself as a successor of the old firm, or as carrying on a continuation of their business, but this in many cases appears to me of little importance, and of small practical advantage, if canvassing the customers of the old firm were allowed without restraint.' [emphasis added]

18. The Black's Law Dictionary (9th edition) definition of *"solicitation"* includes *"The act or an instance of requesting or seeking to obtain something" and "An attempt or effort to gain business...*".

19. In Austin Knight (UK) Limited v. Hinds [1994] FSR 52, Vinelott J. held that the act of contacting former clients had to be with the intent to entice away to be in breach of a non solicitation clause. Hence if, as upon the facts in that caswe it was to explain the reasons for dismissal (i.e. redundancy rather than misconduct or incompetence) then such would not be in breach of the clause even if subsequently clients did approach and follow to give their custom.

20. In Sweeney v. Astle [1923] NZLR 1198 (as referred to in Employee Competition (2nd Edition), Stout J. noted that 'solicit' was a common English

word, and in its simplified form, meant 'to ask' and that its other meanings included 'to call for', 'to make request', 'to petition', 'to entreat', 'to persuade.

21. In Equico Equipment Finance Ltd v. Enright Employment Relations Authority, Auckland, NZ (17th July 2009), the Member of the Authority usefully rehearsed Sweeney and English law about the meaning of "solicitation" (and 'enticement away') in this context up to that point:

> '[26] 'MMs Enright's counsel refers the Authority to Black's Law Dictionary definition of a non-solicitation agreement as this:-
>
> *"A promise in a contract for the sale of a business, a partnership agreement, or an employment contract, to refrain, for a specified time, from either (1) enticing employees to leave the company or (2) trying to lure customers away".*
> [27] It is also submitted that if solicit means to entice, then appropriate synonymous for 'entice' include "tempt", "lure", "persuade", and "inveigle". I accept that solicit should be interpreted similarly.
> [28] In *Sweeney v Astle* Stout J noted that 'solicit' was a common English word, and in its simplified form meant 'to ask' and that its other meanings included 'to call for', 'to make request', 'to petition', 'to entreat', 'to persuade'.
> [29] The Employment Court in *Deloitte & Touche Group-ICS Ltd v Halsall* referred to *Sweeney* and also the Shorter Oxford Dictionary definition "to seek assiduously to obtain", "to ask earnestly or persistently for" and 'request' or 'invite'. More recently, the High Court in *TAP (New Zealand) Pty Ltd v Origin Energy Resources NZ Ltd* considered that solicit in its ordinary use "has connotations of impropriety or persistence" and then cited the definition from the Shorter Oxford Dictionary that had also been referred to in *Deloitte*.
> [31] It matters not who initiates the contact. The question of whether solicitation occurs depends upon the substance of what passes between parties once they are in contact with each other. There is solicitation of a client by a former employee if the former employee in substance conveys the message that the former employee is willing to deal with the client and, by whatever means, encourages the client to do so.
> [32] In my view, "canvass" is synonymous with soliciting. Both words involve an approach to customers with a view to appropriating the customer's business or custom. I consider a degree of "influence" is required. There must be an active component and a positive intention'.

22. In my judgment, this is an excellent dissertation on the meaning of the words "canvassing, soliciting and enticing away" in the context of the "non-solicitation clause" in this case and the high authority of Trego v. Hunt. It provides helpful guidance as to where boundaries are to be drawn between acceptable and non acceptable acts.

23. As described in Employee Competition (2nd Edition), para. 5.255, questions posed such as these are instructive: *"Does the conduct evidence a specific purpose and intention to obtain orders from customers? Where it is his contact initiative with a customer, does he do something more than merely inform the customer of his departure?"*

24. Restrictive Covenants under Common and Competition Law (6th edition), paragraph 3.4.1, the customer approach *"must involve some direct or targeted behaviour".*

25. These different wordings chime with the authoritative *specific and direct appeal* test in Trego v. Hunt.

26. Therefore a general advertisement to the world about availability for custom at a new firm or a specific notification to a client of departure from one firm to another does not cross the borderline; any activity or behaviour beyond would.

27. The question to be determined is whether the Defendant crossed that threshold in respect of any of the seven identified former clients with the intention of "soliciting" their custom.

(2) Intention

28. There is no dispute that the Defendant did not carry out any accountancy work during the first 12 months after Completion. However on 1 November 2008 the Defendant began working for Baldwins once more. His primary role was to win new business for them.

29. However, on 9 December 2008, the Defendant secretly met with two partners of a different firm of accountants, Charnwoods (which is in not in Ashby, but is based 17 miles away in Loughborough). There was a discussion about how the Defendant could work with Charnwoods ,which was followed up by email.

30. By his email dated 14 December 2008, the Defendant proposed terms of working which included a 20% commission for "new clients introduced" on "all fees charged in each of the first five years". The Defendant described this as "success based remuneration" in cross-examination.

31. When it was initially put to the Defendant during cross examination that in order to have introduced a person that would require him "to do something",

he agreed, although he later attempted to resile from this when faced with the consequences of the answer.

32. In my judgment, the Defendant's first response was a true and accurate one and significant. It was freely given in response to an open and direct question and accords with the ordinary and natural meaning of the word "introduce". It is also in accord with the Defendant's description of the basis of remuneration as "success based", upon "new clients introduced", as per the terms he proposed to Charnwoods in his e-mail of 14th December 2008.

33. On 23 December 2008 Mr Barnett of Charnwoods emailed the Defendant and said *"we will need to cope with the extra workload you would undoubtedly bring with you"* (and referred to recruiting an additional person to be able to cope). Mr Barnett accepted in cross examination that at least in part, that was a reference to former Baldwins clients. It is unclear when, if at all, the Defendant discussed his restrictive covenants with Mr Barnett or anyone at Charnwoods prior to the pre-action correspondence in this litigation. There is no mention of the matter in any of the email correspondence which has been disclosed.

34. The Claimant submits that by 4 March 2009 an agreement had been reached between the Defendant and Charnwoods, which included that he would start work with Charnwoods on 2 November 2009; that he would *"be paid 20% for all fees charged to new clients that you introduce for the first five years"* and that he would hand in his resignation to the Claimant before 2 November 2009.

35. The Defendant and Mr Barnett deny that such an agreement had been reached at that stage. The Defendant's evidence was that he "*still felt [his] options were open"* and he just *"wanted to sound encouraging"* is at odds with the contemporaneous e-mail evidence involving him and Mr Barnett to which the Claimant's were not privy until disclosure. Similarly, Mr Barnett's initial evidence that it was *"only an informal agreement"* is at odds with the e-mail exchange he was party to and his engagement of Anna Brocklehurst as an inexperienced accountant to field the extra customers likely to be brought in by the Defendant pursuant to the agreement reached in e-mails by 4th March 2009.

36. The e-mail exchange of 4th March 2009 details the terms of the *"agreement"* between them and with Mr Maidstone due to officially starting work at Charnwoods on 2nd November 2009. Significantly, in Mr Maidstone's acceptance e-mail of even date he says *"it would be good to meet the other main men in early May as arranged. Please could you be reasonably discreet about my appointment in the meantime I would not like it to get back to Baldwins (e.g. via Jeni Bramley) before I hand in my notice"*

37. The witness evidence of both the Defendant and Mr Barnett about this is deeply unsatisfactory. It is collusive, highly improbable and at completely odds with the contemporaneous telling e-mails between them. I emphatically reject their witness evidence about it all.

38. In April 2009 the Defendant reduced his hours with the Claimant down to part time work. His evidence in cross examination was that he may have been *"subconsciously affected"* by his plan to start work with Charnwoods. Significantly, again the Defendant made no mention to the Claimant of his future plans. In my judgment, it is highly likely that he was starting his preparation for working for Charnwoods at around this time, as foreshadowed by his e-mail acceptance of 4th March [supra].

39. The Defendant accepts that in mid September 2009 he had a meeting with Anna Brocklehurst, the employee who had been recruited by Charnwoods to support the Defendant. She had only qualified as a chartered accountant in 2008. She had no qualifications as a tax adviser, had no tax experience, and could not advise on tax schemes. She was not professionally skilled or experienced to deal with the tax affairs of any of Mr Maidstone's former clients requiring such advice. She was patently a much more junior employee than the Defendant and in my judgment was there to formally "receive" customers 'introduced' by the Defendant pursuant to his agreement dated 4th March 2009. .

40. The sum of £320,100 was paid to the Defendant and his wife by the Claimant on 1 October 2009. This represented the final payment of commission under the Sale Agreement. The Defendant admitted, notwithstanding the above, that he had made a conscious decision to remain an employee of the Claimant until he received this final payment for fear of otherwise not receiving it.

41. On 14 October 2009 the Defendant sent an email to the Claimant tendering his resignation. The email explained that he had been giving his role detailed consideration *"over the past few weeks*". It also purported to give the reason for his leaving as being that he had become *"disillusioned and de-motivated"* about payments of pension contributions and expenses. He also said that he *had "no intention of setting up again in practice in Ashby or elsewhere",* but, economically with the truth, omitted to state that he intended to start working for Charnwoods as an employee.

42. The Defendant's explanation to the court was that he said these things because he was *"fearful"* of how he would be treated by the Claimant if he told the truth.

43. There is no dispute that the Defendant had an ensuing telephone call with Mr David Baldwin on 16 October 2009. Mr Baldwin gave evidence that the Defendant said he *"was not intending to get back into the accounting world".* The Defendant's evidence that the topic of what he was doing next simply didn't come up and was not discussed.

44. The Defendant also arranged a private meeting with Lisa Emery by telephone that day. Ms Emery was a director, shareholder and employee of the Claimant, and ran the Ashby office. She was plainly an important person to the firm. On the Defendant's evidence he set up this meeting, in a location away from the office, and asked her if the firm was trading whilst insolvent, whether dividends were legal and suggested that she *"think about her professional position in being a director".*

45. Where does the truth lie here as to the Defendant's intentions? Where there are discrepancies between witness evidence and between it and contemporaneous documentation, courts follow the classic guidance provided in the dissenting speech of Lord Pearce in the House of Lords in ***Onassis v Vergottis*** [1968] 2 Lloyds Rep 403 at p 431:

> *''Credibility' involves wider problems than mere 'demeanour' which is mostly concerned with whether the witness appears to be telling the truth as he now believes it to be. Credibility covers the following problems. First, is the witness a truthful or untruthful person? Secondly, is he, though a truthful person telling something less than the truth on this issue, or though an untruthful person, telling the truth on this issue? Thirdly, though he is a truthful person telling the truth as he sees it, did he register the intentions of the conversation correctly and, if so has his*

memory correctly retained them? Also, has his recollection been subsequently altered by unconscious bias or wishful thinking or by over much discussion of it with others? Witnesses, especially those who are emotional, who think that they are morally in the right, tend very easily and unconsciously to conjure up a legal right that did not exist. It is a truism, often used in accident cases, that with every day that passes the memory becomes fainter and the imagination becomes more active. For that reason a witness, however honest, rarely persuades a Judge that his present recollection is preferable to that which was taken down in writing immediately after the accident occurred. Therefore, contemporary documents are always of the utmost importance. [emphasis added] *And lastly, although the honest witness believes he heard or saw this or that, is it so improbable that it is on balance more likely that he was mistaken? On this point it is essential that the balance of probability is put correctly into the scales in weighing the credibility of a witness. And motive is one aspect of probability. All these problems compendiously are entailed when a Judge assesses the credibility of a witness; they are all part of one judicial process. And in the process contemporary documents and admitted or incontrovertible facts and probabilities must play their proper part.'*

46. In my judgment, the jigsaw of contemporaneous e-mail evidence is overwhelmingly of a secret agreement made on 4th March 2009 between the Defendant and a rival of the Claimant to introduce new business to Charnwoods and to solicit it secretly from Baldwins' client base acquired from Maidstones. The e-mail of that date by the Defendant expressly accepts the terms offered and states *"please can you ask people to be reasonably discreet about my appointment in the meantime – I would not like it to get back to Baldwins .... before I hand in my notice".*

47. In my judgment, the Defendant lied to the Claimant when he handed in his notice on 14th October and when he spoke to David Baldwin on 16th October 2009 when he said he was leaving because he was "disillusioned and de-motivated" and had "no intention of setting up again in practise in Ashby or elsewhere" and "was not intending to get back to the accounting world". I accept Mr Baldwin's account of the conversation on 16th October in preference to that given Mr Maidstone. Mr Baldwin was a patently honest witness and his account is consistent with all the contemporaneous documents; Mr Maidstone's is not and is implausible.

48. The truth, unrevealed to Baldwins, was that he had agreed back in March to work for Charnwoods as from 2nd November and was seeking to introduce clients to them whilst working for Baldwins. His explanation that he was "fearful" of how Baldwins would treat him if he had told them has a small

grain of truth about it in that he knew what he was doing was wrong and was in breach of the spirit of the agreement that required good faith on his part in not interfering with the customers he had sold as they were bound to feel loyalty to him, as their former tax advisor, rather than their new one at that stage (hence the non-solicitation clause for 3 years). .

49. Ms Emery was a director, shareholder and employee of the Claimant, and ran the Ashby office. She was a key person to the firm. On the Defendant's own evidence he set up this meeting, in a location away from the office, and asked her if the firm was trading whilst insolvent, whether dividends were legal and, insidiously in my judgment, suggested that she "think about her professional position in being a director".

50. In his witness statement dated 8th January 2010, he rehearsed his version of the meeting with Ms Emery on 16th October 2009. He made no mention of any contemporaneous notes. Ms Emery gave her version of the meeting in which she says that Mr Maidstone told her that he was "looking forward to "not doing anything". This was the same day that Mr Baldwin says that Mr Maidstone told him likewise only to be disabused of this upon learning he was working for Charnwoods. In his second witness statement, dated 16th December 2010, Mr Maidstone refers for the first time to "contemporaneous notes" of the meeting with Ms Emery purportedly typed up on 23rd October 2010 that self support his version of events and contradict Ms Emery's.

51. In my judgment, it would be incredible for a competent professional person, such as Mr Maidstone, to overlook such critical contemporaneous written evidence if it had existed. This is an example of Mr Maidstone manipulating, rather here "manufacturing", the evidence to suit his case as it developed. Both handwritten and typed documents are most likely to have been written in December 2010 in an effort to rebut the very serious case being mounted against him by Baldwins.

52. In my judgment, the Defendant's intention in arranging this meeting was to further his own financial interests by disrupting the Claimant's business (and thereby potentially leaving many more potential clients available to him at his new employer, Charnwoods). This was a deliberate attempt to undermine Baldwin's at a time when they would be trying to build up the trust and confidence in those clients with them and so "attach" [using the term of Lord

Macnaughten in Trego v. Hunt [supra]) them to Baldwins. In my judgment, Ms Emery was a patently honest witness and it is difficult to see why Mr Maidstone took her to a furtive lunch in a pub to discuss Baldwins if it was not other than to undermine her position which he succeeded in doing – she subsequently resigned as a Director. She was, as she said, 'genuinely shocked' to find he had deceived her into believing he was not going to continue practising; whereas in truth he was by poaching back his former clients.

53. In my judgment, Mr Maidstone displayed himself during his appearance before the court as someone who is clever, devious and arrogant. He deliberately went behind their backs whilst still employed by them intending to join Charnwoolds and poach back the clients after he had sold to them for a further substantial second reward by way of commission payments. He was intending 'to have his cake and eat it' to use the vernacular: i.e. greedy. He did not concentrate on trying to give truthful and accurate answers to straightforward questions put to him in the witness box but could be seen to question spot during cross examination whilst endeavouring to give answers he thought that best supported his case. On one notable occasion he was caught out when he almost immediately had to backtrack on his answer that in order to have earned his introductory commission he would have had "to do something". Furthermore he (and Mr Barnett for that matter) was brazenly willing to give answers that were blatantly at odds with his own contemporaneously recorded e-mails with Mr Barnett about the secret agreement between them. By contrast, the contemporaneous e-mails and the straightforward evidence of Ms Emery and Mr Baldwin have exposed him as furtive and deceitful whilst intending to poach back the good will he had recently sold for about £1m. It is, as Lord Macnaughten explained in Trego v. Hunt [supra] *"not an honest thing to pocket the price and then recapture the subject of the sale"*.

54. In my judgment, this is what he was about. He was a dishonest and unreliable witness and Mr Barnett was an unreliable one; whereas Mr Baldwin and Miss Emery were honest and wholly credible.

55. In my judgment, the Defendant intended to solicit his former clients and entice them away to become clients of his at Charnwoods.

(3) Acts

56. On 2 November 2009 the Defendant commenced work at Charnwoods. He was provided with a letter of engagement and statement of employment particulars which reflected the agreement that the Defendant would be paid 20% commission for 5 years after "the introduction" of a client.

57. During the course of November 2009, the Claimant became aware that it was losing clients to Charnwoods, which had almost never happened before: the Court heard evidence that the Claimant had lost John Merison (MBC) Ltd to Charnwood in November 2008. The Claimant had become aware that the Defendant had taken up a position with Charnwoods, and believed the Defendant to be acting in breach of his restrictive covenants.

58. The Claimant by its solicitors sent a pre-action protocol letter to the Defendant on 19 November 2009. The Defendant maintained that he had "rigorously complied with the restrictive covenants" and intended to continue doing so.

59. Proceedings were issued on 18 December 2009. The Claimant identified to the best of its ability particulars of breach (including named clients) at paragraph 11 of the Particulars of Claim.

60. An interim injunction was sought, and was listed to be heard on 15 January 2010. The Defendant finally provided undertakings on that date.

61. The undertakings were expressed to expire until trial or further order or until 28 September 2010 (being the date when the covenants under the Sale Agreement expired). The Claimant lost no further client to Charnwoods over the period of the undertakings. Immediately after the undertakings expired the Defendant began actively targeting the Claimant's clients.

62. This factual background in the context of my finding as to the intentions of the Defendant and Charnwoods tends to infer that some soliciting of custom was being undertaken, although it is quite understandable that clients would want to follow their trusted tax accountant. The onus here is upon the Claimant to prove that the customer approach involved "some <u>direct</u> and <u>targeted</u> behaviour by Mr Maidstone".

63. Obviously, the Claimant was not privy to any of this being deliberately kept in the dark about client dealings by Mr Maidstone. I have already found Mr

Maidstone not to be a witness of truth as to his intentions and view his evidence upon what he actually did with the gravest of suspicion. He is therefore at best an unreliable witness and in that regard I have found Mr Barnett too is unreliable, particularly as his firm had a strong motive of gain and was not bound by the clause as Mr Maidstone was.

64. Therefore I hoped to be able to rely upon the objective evidence of the clients themselves to provide the answers as to whether or not they had been solicited by Mr Maidstone to move from Baldwins. However, my confidence in doing this was eroded by Mr Maidstone's personal involvement in orchestrating the production of their witness statements when such evidence is supposed to be in the witnesses own words and production normally undertaken by solicitors acting on behalf of the party producing the witness and as officers of the court. (Practice Direction 32-Evidence). It also emerged that he had involvement in the composition of some of their correspondence.

65. Furthermore, despite being in the witness box overnight and being warned by the court and his counsel not to speak to anyone about the case, it was brought to the courts attention that Mr Maidstone and his wife had driven Mr Bedford and Mrs Barnett to court the next morning before they were due to give evidence and had met Mr Oberheim at Snow Hill for a pre-arranged meeting before he gave evidence. The court acceded to the request by Claimant's counsel to order those witnesses thereafter to stay out of court apart from when giving their evidence in order to diminish any collusion. The court also warned each of the witnesses subsequently called that the "honesty" of Mr Maidstone and the truthfulness of his case was in issue (referring to the dicta of Lord Macnaughten in Trego v. Hunt [supra]; hence the truthfulness of their answers and partiality was also in issue.

66. In my judgment, this manipulative behaviour on the part of Mr Maidstone was reprehensible and it casts grave doubts upon his case and the reliability of the demonstrably partisan witnesses he brought to court to support it. Where nothing can be directly proved by the Claimant because it was not privy to the dealings between the Defendant, Charnwoods and these witnesses as clients, adverse inferences are entitled to be drawn and the court duly does so hereafter in evaluating his evidence and of the witnesses he brought to court to support his case in.

(1) IROB

Solicitation

67. The first evidence of contact between the Defendant and Mr Oberheim of IROB was back in February 2008. Mr Oberheim was obviously on friendly terms with the Defendant. Curiously, the Defendant told Mr Oberheim to "stay with Baldwins for the moment" (emphasis added). It is however the Defendant's case that he didn't in fact tell Mr Oberheim of his plans to move firms until late October 2009. In my judgment, that is highly improbable given the close personal relationship between the two men and what the Defendant delphically told Mr Oberheim about staying with Baldwin's "for the moment".

68. It is the Defendant's case that he was contacted by Mr Oberheim who asked him about a tax matter, the Defendant told Mr Oberheim that he was leaving Baldwins, and when asked, he said he was moving to Charnwoods, which prompted Mr Oberheim to say he wanted to move his business there. As such that would not be in breach of the "non-solicitation" clause. However, in the light of all other evidence of the dealings of Mr Maidstone with his former client and his arrangements with Charnwoods, I believe it is highly likely that Mr Maidstone actively encouraged Mr Oberheim to follow him to Charnwoods in breach of the non-solicitation clause.

69. Indeed, the Defendant then says that he, rather than Mr Oberheim, contacted Anna Brocklehurst and told her that Mr Oberheim wanted to move to Charnwoods. The Defendant said in evidence he would describe this as being "an introduction" to Charnwoods. In my judgment, this is an admitted instance of "specific and targeted behaviour" on the part of the Defendant in breach of the non-solicitation clause for which he was entitled to, and was indeed ultimately rewarded, commission by Charnwoods.

70. On 2 November 2009 an engagement letter was prepared for Mr Oberheim, which it seems likely was also sent out. The Defendant's evidence was that he had nothing to do with this letter being produced and doesn't know how the person who prepared it obtained Mr Oberheim's address details. In my judgment, this is unlikely; the information is most likely to have come from Mr Maidstone as the admitted introducer of Mr Oberheim to Charnwoods.

71. On 16 November 2009 a new client meeting took place between the Defendant, Ms Brocklehurst, Mr Oberheim and Mr Oberheim's wife. Ms Brocklehurst made notes in the meeting which were subsequently reviewed and added to by the Defendant according to his evidence in cross examination.

72. The Defendant's evidence to the Court in cross examination was that the notes in his handwriting identifying specific schemes were added by him afterwards as he realised Ms Brocklehurst had omitted them. Mr Oberheim's initial evidence to the Court was that there was no discussion of specific schemes by name in that meeting that he could recall. He later significantly changed his evidence about that when challenged on his witness statement. In my judgment, the first answer he gave was the truthful one. Mr Oberheim remained Mr Maidstone's client and he was introduced to Charnwood as such by Mr Maidstone.

73. IROB is a company with a significant turnover (the Defendant says at least £1.5million) and which usually utilises some form of tax scheme each year.

74. The Defendant attended that new client meeting as the only person with any tax experience and the only person who could possibly have carried out tax planning. In my judgment, it is overwhelmingly probable that he gave advice – or undertook to advise on such issues in that meeting. He was the person who thereafter did this work for Mr Oberheim.

75. It is probable from Mr Oberheim's evidence that he agreed to become a Charnwoods client only after that meeting took place as he signed the letter of engagement subsequently on the 16 November 2009.

76. Mr Oberheim's evidence that he became a client of Charnwoods "above all as a result of Anna Brocklehurst making a suitably good impression when I met her" lacks any credibility. He hadn't even asked about her tax qualifications because it would be the Defendant who would do his tax planning as he

admitted during cross examination. Tax planning was valuable to his company and in my judgment the reason Mr Oberheim moved to Charnwoods was because he knew that Mr Maidstone would be handling his tax business.

77. There is strong supporting evidence that it was the Defendant who procured IROB's business in the fact that Charnwoods agreed to pay him 20% commission on all of IROB's fees for the next 5 years, as per the employment agreement between Mr Maidstone and Charnwoods dated 4th March 2009. In my judgment, these significant payments were under a contractual clause dependent upon "new client introduction" which is what occurred when Mr Maidstone introduced Mr Oberheim's name to Ms Brocklehurst.

78. In my judgment, Mr Maidstone clearly introduced IROB to Charnwoods in breach of his non-solicitation clause.

Loss

79. Mr Oberheim had undoubtedly experienced some dissatisfaction with the Claimant in 2008 and had contacted two other firms of accountants in that year but not Charnwoods.

80. Mr Oberheim had not raised any issue with the Claimant after 1 June 2009 when unfortunately the deadline for his corporation tax returns was missed: a £100 fine was raised and was paid by the Claimant. Mr Oberheim met with Ms Bramley of Charnwoods and after that it was Ms Bramley who dealt with his tax planning from that date. This was plainly a good working relationship as they went together to see a solicitor about preparing his will. She struck me from her appearance as a witness as a truthful and highly competent professional person. I accept her evidence that she was offering a good service (after she replaced Mr Clifford whom Mr Oberheim was undoubtedly dissatisfied with) that Mr Oberheim was happy with giving him no cause to move elsewhere.

81. In his witness statement, Mr Oberheim did not identify any complaint about the Claimant after 1 June 2009.

82. Mr Oberheim had not made any contact with other accountants in 2009, and if he was seriously thinking of leaving the Claimant then he surely he would have done so.

83. In light of the good working relationship between Mr Oberheim and Ms Bramley and that he had not contacted any other accountants, the most likely outcome but for the Defendant's solicitation, is that he would have stayed with the Claimant for the following year. In my judgment, the fee income loss to the Claimant was of the order of 1 year estimated recurring fee income as set out in the Schedule accompanying the Sale Agreement, namely £15,000.

(2) Redhall Garages

Solicitation

84. The Defendant telephoned Mr Bedford in early November 2009, apparently having heard through a 3rd party that Mr Bedford was "unhappy". Mr Bedford admitted in cross examination (contrary to his witness statement) that it was only during this call made by the Defendant that he found out the Defendant had moved to Charnwoods.

85. Although entirely omitted from the Defendant's witness statement, the Defendant also conducted a new client meeting with Mr Bedford on 9 November 2009. The Defendant admitted in cross examination that it was he who arranged this meeting on the telephone with Mr Bedford.

86. The letter of engagement was produced after the 9 November meeting and chased up by the Defendant on 17th November 2009. It was signed by Mr Bedford on 26th November 2009.

87. In my judgment each of the Defendant's actions above amounted to active steps to win over Mr Bedford's business, which were ultimately successful.

88. As with IROB, the Defendant was paid 20% commission on this account for 5 years on the basis he had 'introduced' the work.

89. In my judgment, the Defendant actively solicited the custom of Mr Bedford and Redhall Garages in breach of the non-solicitation clause.

Loss

90. Mr Bedford was not a credible witness. He was caught out colluding with the Defendant in his evidence. He had confirmed untruthful evidence in his statement as to when he found out which firm the Defendant was practicing from. He also entirely omitted from his witness statement – as drafted by the

Defendant and typed up by his secretary according to Mr Bedford- any reference to the Defendant attending the new client meeting, or the Defendant's involvement in his affairs after that date. He said he did not see the Defendant on 8 January 2010 but later admitted he had – albeit maintaining he had not discussed his witness statement even though that was the day his witness statement was signed by him. This is manifestly implausible.

91. I reject Mr Bedford's evidence that he would have left the Claimant in any event. He had not contacted any other accountants before the Defendant's call.

92. One issue Mr Bedford had raised was in June 2009 with a query on his accounts, which he signed around that time. Contrary to Mr Bedford's initial evidence that he only did so because the deadline was looming, the relevant deadline was well beyond that: 31 January 2010. If Mr Bedford had genuinely been unhappy he would not have signed – there was no reason for him to have done so.

93. In my judgment, it is likely that Mr Bedford would have kept his business with the Claimant for at least another year, but for the Defendant's solicitation. Fee income of £4,153 was accordingly lost by the Claimant.

(3) Ivanhoe Feeds

Solicitation

94. The Defendant and Mrs Barnett gave an account of a chance meeting in a fish and chip shop and the Defendant doing nothing more than responding to an enquiry as to what he was now doing.

95. However, in the Defendant's account in relation to this client he wholly omitted to refer in his witness statement to the new client meeting he attended with Mrs Barnett after the contact in the fish and chip shop. No explanation has been provided as to why no notes of that meeting have been disclosed. Nor is there any explanation as to why the first engagement letter has never been disclosed. The letter which has been disclosed dated March 2010 curiously does not bear the Defendant's initials in the reference, as might be expected.

96. The Defendant had considerable involvement in Mrs Barnett's evidence. She admitted that the 8 January 2010 letter (sent on Ivanhoe headed paper) had in fact come entirely from someone (she claimed not to know who) at Charnwoods (at odds with the Defendant's account that he had had input into one sentence only). Mrs Barnett also admitted that the Defendant had produced her witness statement for her and the Defendant had driven her to Court on the day she gave her evidence whilst the Defendant was still under oath giving witness evidence

97. As with IROB and Redhall Garages, the Defendant was paid commission as having introduced this client to Charnwoods.

98. In my judgment this all points inexorably to solicitation on the part of the Defendant for which he was duly rewarded under his agreement with Charnwoods, probably in the fish and chip shop and then by his attendance and contribution to the new client meeting which undoubtedly took place.

Loss

99. Mrs Barnett gave evidence that he was planning to move her work in any event.

100. The issues Mrs Barnett had raised with the Claimant had been in 2008 and resolved by Ms Bramley taking over the account around that time. Ms Bramley prepared the July 2008 accounts and Mrs Barnett was happy with them as she said in cross examination. She admitted too had not made any enquiries of other accountants at any stage before meeting the Defendant.

101. In my judgment, her bald assertion that she was going to move is untrue; but for the Defendant's solicitation, she would not have moved at least for the next year and a recurring fee of £7,200 is the fair estimate of income loss to the Claimant.

(4) Keller Construction

Solicitation

102. The Defendant's position was that the acquisition of this client had "nothing to do" with him.

103. Nobody from Kellers was called to give evidence.

104. However, there is clear indication in contemporary e-mails dated 20th November 2009, 15th December 2009 and on 13th January 2009 that the Defendant did have involvement with the acquisition of this client.

105. An e-mail from Dianne Conway of Kellers to Mr Maidstone on 13th January 2010 stating that *"Joanne Keller will be dropping of records for the above to you at home"* was spurned by Mr Maidstone with a reply *"Please liaise with Dave B on this – he will explain why. Perhaps someone else could pick them up"*. When Dianne Conway cancelled the instruction, Mr Maidstone responded with *"Thanks Dianne. It's only for a while until things settle down – then should be fine"*.

106. Mr Barnett of Charnwoods gave evidence in support of the Defendant on this issue.

107. In his letter to Baldwins dated 17th December 2009, he seeks to "confirm that there is no plan for Andrew Maidstone to become involved at this stage as part of the team servicing the client (Keller). "

108. His evidence in cross examination was that it was "quite probable" that he had been shown the 19 November 2009 letter from the Claimant's solicitors raising the issue of the Defendant's restrictive covenants and requiring undertakings not to solicit his former clients.

109. This initial email to the Kellers was immediately subsequent: 20 November 2009. The other subsequent e-mails referred to above need to be seen in that context where Mr Maidstone was obviously involved in helping to "service the client" with papers to be sent directly to his home address but apparently trying to distance himself personally *"for a while until things settle down – then should be fine"*.

110. In my judgment, the e-mails show on a balance of probabilities that Mr Maidstone was involved in secretly soliciting Kellers between November 2009 and January 2010 and servicing them for Charnwoods. This was an instance where there is no record of him receiving commission from Charnwoods for the introduction. In my judgment, that was because he and Charnwoods had been rumbled by Baldwins following the fateful 16th December 2009 events.

111. There is no other plausible explanation for the e-mail admission of involvement of Mr Maidstone in the Keller account: no evidence has been called from Dianne Conway to contradict or explain it otherwise. I reject Mr Maidstone's account of no involvement at all.

112. I reject Mr Barnett's evidence. The e-mails and letters implicate his involvement with Mr Maidstone in the soliciting of Keller's custom in the knowledge it was in breach of Mr Maidstone's non-solicitation clause. His evidence is completely undermined by the fact it was written "jointly" with Mr Maidstone when there was no valid reason for doing so. In my judgment, this was another example of Mr Maidstone cynically manipulating the evidence to suit his case and damage the case against him.

113. In my judgment, it is more likely than not that the Defendant encouraged the Kellers and Keller Construction to transfer to Charnwoods in breach of his restrictive covenants.

Loss

114. There is no suggestion that the Kellers were otherwise unhappy with the Claimant or were looking to leave. Significantly, they had not acceded to Mr Barnett's own attempt to win their business in May 2009 (letter of 18th May)– curiously around the time that Mr Maidstone said in his acceptance e-mail of 4th March that it "would be good to meet the other main men in early May as arranged" and after he had gone "part-time" at Baldwins.

115. Mr Barnett does not say in his witness statement that the Kellers had indicated that they were in any way dissatisfied with the Claimant's service.

116. The Court has not heard any evidence from Kellers on this.

117. In my judgment, it is probable that would have continued to place their business with the Claimant for at least one more year; a loss of income of £5,354.

(5) Mr and Mrs Hall

Solicitation

118. Mr and Mrs Hall were identified on the Schedule to the Sale Agreement and the Defendant expected these clients to produce a recurring fee income.

They had after all based the price of goodwill upon the premise that it would devolve to them and that Mr Maidstone would keep the way clear for them to do so for a reasonable period.

119. The Defendant's evidence as to his historical dealings with Mr and Mrs Hall was contradictory. In his witness statement he said that "*I had always completed the tax returns through the Maidstone practice… I did not complete his tax return for the year ending April 2008 …"* giving the clear impression that he personally had always completed the returns for Mr and Mrs Hall, who were his parents in law. However in cross examination he suggested that in fact the 2009 accounts were the <u>first</u> he had prepared.

120. These clients were not called to give evidence.

121. In my judgment, this is another instance of Mr Maidstone giving evidence opportunistically to best suit the outcome of his case. I reject his evidence they just happened to approach him in 2009 and asked him to do the work for free. In my judgment, as with other clients above, I find he habitually solicited custom here away from Baldwins to their detriment. There is no evidence that it was for his own personal financial gain.

122. Accordingly, I find on the balance of probabilities that Mr Maidstone solicited their modest custom and so denied it to Baldwins. That would be a striking coincidence and the Defendant's conduct with other clients suggests that it is far more likely that the Defendant approached Mr and Mrs Hall and suggested he take on their work.

Loss

123. There is no suggestion that Mr and Mrs Hall were anything but happy with the work done by the Claimant. The los of income to the Claimant is one year's recurring fee income, namely £168.

<u>Further Breaches (No Loss)</u>

124. In addition to the above, the Court is invited to find further breaches of the non-solicitation clause in relation to Quiet Storm, T Wainwright Haulage and the advert in the Ashby Times.

(6) Quiet Storm

125. This client was identified on the Schedule to the Sale Agreement. The Defendant contacted the client on 3 November 2009 from Charnwoods offices.

126. The Defendant's suggestion in cross examination that this was just a social call because Mr Megson was *"a close friend [he] had lost touch with"* and it "*was not to win his business*" is, in my judgment, wholly incredible and another example of Mr Maidstone's drive and determination to win new 'old" business for Charnwood's and earn substantial commission for himself.

(7) T Wainwright Haulage

127. The Defendant admits speaking to a female relative of Mr Wainwright (there is a debate whether this was a Sharon or a Sandra) and mentioning Mr Wainwright.

128. Mr Hall, audit manager of Baldwins, made a written statement dated 9th December 2009, in which he states *"On the 25th November 2009 I met Thomas (Wainwright) for the usual year end meeting at Wainwright's premises. Thomas and Sandra had met the Defendant at a seminar and that Sandra had been told her father that Andrew had started business again and that if there was anything he could do to help business-wise to let him know. Sandra had been told to pass the news around about the Defendant's location"*.

129. Although Mr Hall's evidence was admitted under the Civil Evidence Act, I have no reason to doubt it and it fits the pattern of behaviour of Mr Maidstone at this time of busily soliciting business for Charnwood's and himself.

130. This is evidence of soliciting for business. In the instance of Mr Wainwright such is "targeted and direct" in breach of the non solicitation clause. No loss flows from it as Wainwright's custom was not 'enticed away'. By contrast, the exhortation to *"pass the news around"* is non specific and therefore not in breach of the non-solicitation clause.

Advert in the Ashby Times

131. The Defendant posed for this photo, spoke to the PR representative, and read the copy before it was placed. The advert was in fact placed in the Ashby Times, the area in which the Claimant's clients are of course most likely to be. The Claimant took active steps in relation to this advert and it is

submitted by the Claimant that his aim in taking such steps must have been to persuade more of the Claimant's clients to move their business to him.

132. In my judgment, it probably was. However, it was not per se in breach of the non solicitation clause as it was not sufficiently "targeted" at former clients' custom.

LOSS

133. The proper approach to loss is for the Court to assess the damages which may be fairly and reasonably considered as arising from the breach of contract itself.

134. Mr Mitchell for the Defendant submits that any loss to the Claimant should be assessed on (1) a net, not gross, profit basis and (2) a loss of a chance basis:

(1) Gross v Net fee income? The losses above in this case for the agreed maximum one year amount to a total of £31,875. It is self evident that had those fees been received they would have gone straight to the Claimant's bottom line – the Claimant was running an established business and it could not reasonably be suggested that it has failed to mitigate its losses by not cutting overheads. The direct loss to the Claimant is therefore the gross amount. Moreover, all references to fee income within the Sale Agreement were to gross recurring fees, and the Defendant's own commission was calculated on gross fees. It is difficult to adopt any other measure of the currency of loss in those circumstances without an exhaustive (and expensive) accountancy exercise upon the Claimant firms accounts – something which the court was not asked to do, nor would the same have been proportionate. The Defendant relies upon CMS Dolphin Ltd v Simonet [2001] 2 BCLC 704 as the legal basis for his submissions. However, that is in a very different context -there an account of profits was sought against a director who in breach of fiduciary duty set up a new business, not an existing one that would obviously require an offset for new overheads. In my judgment, gross not net fee income is the currency of damages for the breach of contract between these parties.

(2) Loss of a Chance: This is a case where the clients in question were already clients of the Claimant; very different from the 'potential client' in IDC v Cooley [1972] 1WLR 443, relied upon by the Defendant. For the reasons given above, in my judgment it is more likely than not that each of the clients analysed would have placed their business with the Claimant for at least 1 more year, and it would be wrong to hazard the loss of a chance approach.

CONCLUSION

135. Taking the above findings both separately and compendiously, it is my judgment that the Defendant acted in breach of clause 10.1.2 of the contract and that the Claimant has proved losses in accordance with the schedule served: a total of £31,875.

136. This sum is but a fraction of what was really being bitterly contested here: the ownership of £1m worth of goodwill and the reputations, both personal and professional, of numerous individuals and of firms of accountant. This judgment has not sought to resolve those matters, save as inevitably incidental to determining the claim for damages.

137. Accordingly, there should be judgment for the Claimant upon the Claim in the sum of £31,875.

3rd June 2011

His Honour Judge Simon Brown QC
Specialist Mercantile Judge
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