Case No: QB-2020-004498

Neutral Citation number: [2021] EWHC 204 (QB)

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date:5th February 2021

Before :

GERAINT WEBB QC
sitting as a deputy High Court Judge

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Between :
(1) CREDICO MARKETING LIMITED
(2) PERDM TRADING LIMITED

Claimants/ Applicants

- and –

(1) BENJAMIN GREGORY LAMBERT
(2) S5 MARKETING LIMITED

Defendants/ Respondents

(3) GILLES JEAN BAUDET
(4) INTERACTIVE POWER LIMITED
(5) POWER 21 LIMITED
(6) INTERACTIVE IT LIMITED
(7) THE INTERACTIVE TEAM LIMITED

Respondents/ Proposed additional Defendants

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John Mehrzad QC and Matthew Sheridan (instructed by Addleshaw Goddard LLP) for the Claimants/Applicants
Andrew Burns QC (instructed by Collyer Bristow LLP) for the Defendants/Respondents
Ishaani Shrivastava (instructed by Niki Walker Employment Law) for the Respondents/proposed additional Defendants

Hearing date: 29 January 2021

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Geraint Webb QC (sitting as a deputy High Court Judge):

Introduction

1. The application to which this judgment relates was issued by the claimants on 22 January 2021. By the application the claimants seek orders (i) adding persons to the proceedings as defendants; (ii) amending the Claim Form to include claims against the proposed additional defendants for damages for tortiously inducing the defendants' breach of covenants and/or contractual undertakings; (iii) amending the Claim Form to include claims for damages and an account of profits against the defendants; and (iv) varying the directions to trial.

2. The claimants' application was issued with a one-hour time estimate. That was a plainly inadequate time estimate for a contested application seeking to add further defendants, to introduce new claims against existing defendants, and to revise the directions to trial. The oral submissions took over two hours, leaving insufficient time for a judgment to be delivered in the time available. Proper case management required a decision on the application to be made without delay given the tight timetable set for the expedited trial.

3. Accordingly, the parties were informed of the outcome of the application at the conclusion of the oral submissions. The outcome was that permission would be given to the claimants to add three proposed additional defendants to the proceedings and to amend the Claim Form to add the new claims. The parties were told that detailed reasons would be provided in due course given the lack of time remaining. This judgment provides those reasons. Consequential case management directions were then made at the hearing in light of those determinations to enable the parties to proceed in accordance with a revised timetable and without having to await this written judgment.

The existing claims

4. No Particulars of Claim had been served at the time of the hearing. The following background is taken from the draft Particulars of Claim provided for the purpose of the application and the skeleton arguments of the parties.

5. The First Claimant ("**Credico**") provides direct marketing services through a network of sub-contractors, described as 'marketing companies'. Those marketing companies engage Independent Sales Advisors ("**ISAs**") to sell products on behalf of Credico's clients. This includes residential door-to-door sales. The Second Claimant ("**PerDM**") is a direct marketing company which was acquired by Credico; PerDM's face-to-face marketing business was taken over and carried on by Credico from 1 January 2016.

6. The claimants' position is that PerDM engaged the Second Defendant ("**S5**") as one of its marketing companies pursuant to a written 'Marketing and Trading Agreement and Guarantee' of 4 August 2010 ("**the Trading Agreement**"). The Trading Agreement contained restrictive covenants against competition which applied during the currency of

the Trading Agreement (clause 21.1) and for six months after its termination (clause 21.2). The First Defendant, Mr Lambert, is the sole director and shareholder of S5. It is said that he agreed, personally, to abide by the covenants by signing the Guarantee.

7. The claimants' case is that in November 2020 they discovered that Mr Lambert had incorporated a new company through which he appeared to be carrying on business in breach of those restrictive covenants. On 7 December 2020, the defendants provided contractual undertakings to abide by the covenants. The claimants contend that the defendants continued to breach the covenants, notwithstanding those undertakings.

8. The claimants' solicitors sent the defendants a letter before action on 10 December 2020. The defendants gave notice of termination of the Trading Agreement on 11 December 2020, with notice terminating on 25 December 2020.

9. The claimants' draft Particulars of Claim focus on an allegation that the defendants and their ISAs were involved in December 2020 in a marketing campaign called the '60 Second Challenge' on behalf of Scottish Power ("**the Marketing Campaign**"); it is said that the defendants' involvement in the Marketing Campaign constituted a breach of the covenants.

10. The claimants issued a Claim Form on 17 December 2020, claiming injunctive and declaratory relief against the defendants. They applied for an injunction to enforce the restrictive covenants and for orders for ancillary relief. By a Consent Order made by Jacobs J on 22 December 2020 the defendants consented to an order for injunctive and ancillary relief and to directions for a speedy trial (trial window commencing on 24 March 2021 and ending on 30 April 2021) with a time estimate of 5 days.

11. The directions to trial were then revised by a second Consent Order made by Steyn J on 11 January 2021 and the trial window was put back (to commence on 13 April 2021 and end on 14 May 2021). This extension was apparently requested by the defendants because of unforeseen issues relating to compliance with disclosure requirements.

The application for joinder

12. I shall summarise the basis of the proposed new claims and the evidence served in respect of the application in a little detail because the respondents submit that the joinder application should be dismissed on the grounds that the proposed claims against the proposed additional defendants do not have reasonable prospects of success.

13. The application is supported by the Second Witness Statement of Jenny Linney dated 22 January 2021, Credico's Global Chief Financial Officer. In summary, the claimants contend that on 9 December 2020 they were informed by Scottish Power that it was working with a marketing agency called "Interactive Team", which the claimants understood to be a reference to one or more of the proposed additional defendants. Credico's private investigators are said to have witnessed a number of ISAs meeting outside S5's place of business on 14 December 2020 and then travelling to a residential area to engage in face-to-face marketing on behalf of Scottish Power in respect of the Marketing Campaign. A written summary of the surveillance, with photographs, is exhibited to Ms Linney's statement.

14. The draft Particulars of Claim reflect the contents of Ms Linney's statement, focusing on the information provided by Scottish Power, the defendants' alleged involvement in the Marketing Campaign and the surveillance evidence. The draft pleading contends, amongst other things, that it is to be inferred that (i) one or more of the proposed additional defendants entered into an arrangement with the defendants resulting in the defendants providing marketing services in respect of the Marketing Campaign and (ii) the proposed additional defendants have induced the defendants' breaches of the covenant and/or their contractual undertakings.

15. The claimants also contend that the third proposed additional defendant, Mr Baudet, knew that Mr Lambert would be subject to the restrictive covenants because for a period of time prior to May 2013 Mr Baudet had himself been a director of a marketing company which had entered into a similar trading agreement with PerDM containing identical covenants. Further, it is said that as a matter of common-sense Mr Baudet must have appreciated (or turned a blind eye to) the reality that, as part of the claimants' network, the defendants would not be free to provide similar services to others.

16. The claimants also say that in December 2020 the proposed additional defendants entered into similar arrangements with two other marketing companies bound by similar covenants. It is said that, in total, 15 marketing companies in Credico's network have incorporated new companies since around November 2020, indicating that they might similarly be planning to breach their restrictive covenants.

17. A witness statement from Mr Baudet, dated 28 January 2021, was served by the proposed additional defendants in response to the application. Mr Baudet explains that he is dyslexic and would need reasonable adjustments to accommodate his condition during the trial preparation process and when giving evidence, including additional time to be factored into the timetable to allow him time to read and understand documents. I return to the issue of reasonable adjustments below.

18. Mr Baudet states that the fourth proposed additional defendant is a dormant company and that the sixth proposed additional defendant does not undertake any sales or marketing activity. At the outset of the hearing, it was confirmed on behalf of the claimants that they were not proceeding with their application to add the fourth and sixth proposed additional defendants.

19. According to Mr Baudet, the fifth proposed additional defendant ("**Power 21**") is engaged in the business of telesales, not face-to-face sales in the field. Scottish Power is a client of Power 21. The seventh proposed additional defendant ("**ITL**") provides subcontracted marketing services to end clients, including Scottish Power. He says that ITL does not engage (save for one exception) with direct sales or "*with any other owner director Marketing Company*" such as the defendants.

20. Mr Baudet confirms that he was engaged by PerDM as a direct sales consultant in about 2010 and worked with them, soon running his own marketing company, until 2013. He accepts that the copy of a trading agreement dated November 2010 produced by the claimants appears to be bear his signature; it contains restrictive covenants. However, he states that "*something is not right about this document*" because he says that the company named on the agreement did not bear that name until 2012. He has no recollection of the restrictive covenants. His marketing company, he says, worked for clients other than

PerDM and that he was not told that this was impermissible. His understanding is that marketing companies are generally not tied to providing services to one organization.

21. In addition, Mr Baudet's statement contains the following evidence relating to the existing claims against the defendants and the proposed claims against the proposed additional defendants:

    a. The Marketing Campaign is run by ITL on behalf of various energy providers, including Scottish Power, but Scottish Power does not work directly with ITL in respect of the campaign.
    b. ITL sells data obtained from that campaign to Power 21 which then uses the data to sell the services of Scottish Power (and others) via its call centres.
    c. ITL sub-contracts the delivery of its marketing services to other agencies, one of which is Energy Sales & Marketing Limited ("**ESM**"). ESM is engaged on the Marketing Campaign.
    d. In November 2020 he was contacted by a Mr Scroggan of ESM who told him that Mr Lambert, and other marketing companies in Credico's network, wished to be engaged by ESM because the claimants were not providing work. ESM had engaged Mr Lambert.
    e. Mr Scroggan asked Mr Baudet to speak to Mr Lambert to reassure Mr Lambert about ESM's credentials.
    f. Mr Baudet received a WhatsApp message from Mr Lambert on 27 November 2020 and met with him in the Lake District on 1 December 2020.
    g. At that meeting Mr Lambert confirmed that he had been engaged by ESM on the Marketing Campaign. Mr Baudet was told that "*the situation was desperate*" because of the Covid-19 pandemic and the claimants' inability to provide work. Mr Baudet says that he "*said nothing to encourage any breach of contract…*" and he had "*no reason to think that Credico would view any of this as a breach of contract*".

22. Mr Baudet's statement contains little detail about the content of his discussions with Mr Lambert on 1 December 2020. It is not clear why a face-to-face meeting was necessary if it was limited to the brief details contained in the statement. It is not even made clear whether ESM's "credentials" – the purported reason for the meeting – were discussed.

23. The statement of the defendants' solicitor, Mr Jean-Martin Louw of Collyer Bristow LLP, confirms that the defendants have been providing services to others in respect of the Marketing Campaign, but that the contract is not with any of the proposed additional defendants. No mention is made of ESM by name. He is instructed that the defendants have no contractual arrangements with the proposed additional defendants. No mention is made of any discussions or meeting between Mr Lambert and Mr Baudet. Otherwise, the statement focuses primarily on the implications of joinder in respect of the timetable.

The law relating to the joinder of new parties

24. CPR 19.4 provides that the court's permission is required to add a party once a claim form has been served. The addition of new parties is governed by CPR 19.2:

> *"(1) This rule applies where a party is to be added or substituted except where the case falls within rule 19.5 (special provisions about changing parties after the end of a relevant limitation period)*

(2) The court may order a person to be added as a new party if-

(a) it is desirable to add the new party so that the court can resolve all the matters in dispute in the proceedings; or

(b) there is an issue involving the new party and an existing party which is connected to the matters in dispute in the proceedings, and it is desirable to add the new party so that the court can resolve that issue."

25. It is common ground that limitation issues engaging CPR 19.5 do not arise in this application.

26. The respondents note, correctly, that permission will not be given to join a person as a defendant where there is no sufficiently arguable (and connected) cause of action pleaded against that person. In this regard, Ms Shrivastava, for the proposed additional defendants, relied on paragraph 37 of the judgment of HHJ Hacon in *PeCe Beheer BV v Alevere Ltd* [2016] EWHC 434 (IPEC). This, in turn, cited *Allergan Inc v Sauflon Pharmaceuticals Ltd* (2000) 23(4) I.P.D. 23030, in which Pumfrey J stated that "the facts pleaded against [the party sought to be joined] must be sufficient to give rise to a good arguable case against that party before joinder should be allowed".

27. The requirements of either one or other (or both) of the independent limbs of CPR r 19.2(2)(a) or (b) must be met. The claimants rely on both limbs.

28. In *In re Pablo Star Ltd* [2017] EWCA Civ 1768, [2018] 1 WLR 738, Sir Terence Etherton MR emphasised, at paragraph 48, that CPR r 19.2(2)(a) contains two conditions: "(1) the new party can assist the court to resolve all the matters in dispute in the proceedings, and (2) it is desirable to add the new party to achieve that end."

29. In *Molavi v Hibbert* John Kimbell QC, [2020] EWHC 121 (Ch), [2020] 4 WLR 46 sitting as a deputy High Court Judge, summarised the relevant principles, at paragraphs 64 to 70, in respect of an application under CPR r 19.2(2)(b):

"*64. For an applicant to succeed with an application under CPR r 19.2(1)(b)* [sic], *three conditions must be met: (1) an issue must be identified between the proposed new party and an existing party, (2) the issue must be connected to the matters already in dispute in the proceedings, (3) it is desirable to add the new party so that the court can* [sic] *the issue identified in condition (1).*

65. As to condition (1) it is clear that it is not necessary for the issue between the new party and the existing party to be a cause of action….

66 Condition (2) is the critical condition. The issue between the existing and the proposed new party must be connected to the matters already in issue in the proceedings. The nature of the required connection is not prescribed. In some cases, the connection will be in the form of an overlap of factual evidence between the existing proceedings and issue with the proposed new party—see, for example, Dunlop Haywords (DHL) Ltd v Erinaceous Insurance Services Ltd [2009] EWCA Civ 354; [2009] Lloyd's Rep IR 464, para 88.

…

70. Under condition (3) the court must be satisfied that the joinder is desirable to resolve the issue between the existing party and the proposed new party. In other

words, even if there is a connection between the new issue and the exiting issues in the proceedings, the question is whether it is really desirable that the proposed new party be joined to resolve that issue or whether it is better to let it be resolved in separate proceedings."

30. If the requirements of either r 19.2(2)(a) or (b) are met, then CPR 19.2(2) confers a discretion on the court to join a party. Thus, even if such requirements are met, joinder does not follow automatically and the court must have regard to the overriding objective and the circumstances of the case in respect of the exercise of the discretion; see *Molavi v Hibbert*, paragraphs 49 and 50.

31. In *In re Pablo Star Ltd* Sir Terence Etherton MR provided the following guidance at paragraph 60: *"In considering whether or not it is desirable to add a new party pursuant to CPR r 19.2(2) two lodestars are the policy objective of enabling parties to be heard if their rights may be affected by a decision in the case and the overriding objective in CPR Pt 1*".

The merits of the application to join the proposed additional defendants

32. The respondents submit that the proposed claims against the proposed additional defendants do not have reasonable prospects of success and that the application should be dismissed on this basis.

33. It was also contended by the respondents, at least initially, that the merits of the proposed new claims must be judged by reference to the draft pleading and that regard should not be had to the evidence contained in the witness statements. This contention appears to have arisen in response to the reliance placed on Mr Baudet's evidence by Mr Mehrzad Queen's Counsel in his oral submissions on behalf of the claimants.

34. This submission was founded on paragraphs 36 and 37 of the judgment of HHJ Hacon in *PeCe Beheer BV v Alevere Ltd* where the Judge noted that the correct test to be applied in relation to CPR 19.2(2)(b) is that which would be applied in an application to strike out a claim pursuant to CPR 3.4(2)(a) or (b). On this basis, the focus will be on whether the statement of case discloses reasonable grounds for bringing the claim on the hypothesis that the claimant will be able to establish the facts pleaded. In contrast, in a summary judgment application, a defendant may seek to rely on additional factors in witness statements to demonstrate that the claimant has no real prospects of success.

35. Nevertheless, having set out "the normal course", HHJ Hacon made clear, at paragraph 38, that he considered that it was appropriate, in that case, to have regard to the witness evidence served by both sides in respect of the merits of the claim, noting that no objection had been taken by the parties to that evidence.

36. Mr Baudet's evidence was adduced and relied upon by the proposed additional defendants for the purposes of contesting the application including, presumably, the challenge on the merits. In the circumstances, it is difficult to see on what basis the respondents can properly object to the claimants relying on, or the court having regard to, that evidence for the purpose of determining whether the proposed claims disclose a good arguable case. Indeed, the draft pleading pre-dated Mr Baudet's evidence and Mr Mehrzad QC made clear that if joinder were permitted then the draft Particulars of Claim would be revised to refer to the additional information contained in Mr Baudet's

evidence, including the admission of a meeting between Mr Baudet and Mr Lambert. Ultimately, the point was not pressed to any great extent by the respondents.

37. In my judgment, it would be wrong in principle, and artificial in practice, not to have regard to Mr Baudet's evidence, submitted for the application, when considering whether the claimants have satisfied the good arguable case threshold.

38. The claimants submit that they are able to plead a good arguable case in respect of each of the elements of the tort of inducing a breach of contract set out in *Aerostar Maintenance International Ltd v Wilson [2010] EWHC 2032* (Ch) at para.163 *per* Morgan J.

> *"[1] first, there must be a contract, [2] second, there must be a breach of that contract; [3] thirdly, the conduct of the relevant defendant must have been such as to procure or induce that breach; [4] fourthly, the relevant defendant must have known of the existence of the relevant term in the contract or turned a blind eye to the existence of such a term; and [5] fifthly, the relevant defendant must have actually realised that the conduct, which was being induced or procured, would result in a breach of the term."*

39. As to first requirement, the claimants rely on the Trading Agreement. As to breach, the claimants rely on the alleged breach of the restrictive covenants, particularly the defendants' involvement in the Marketing Campaign. As to the third requirement, it is alleged that the defendants directed ISAs to provide marketing services in respect of the Marketing Campaign pursuant to an arrangement with the proposed additional defendants. By entering into such an arrangement, it is contended, the proposed additional defendants induced the defendants' breach(es) of the covenants.

40. The defendants and the proposed additional defendants quite rightly emphasise that the claimants' draft pleaded case relies on inference in respect of the alleged "arrangement" between the proposed additional defendant and the defendants. It is in this regard that the claimants now also place reliance on Mr Baudet's witness evidence and his admission that he was involved, at least, in discussions with both Mr Scroggan of ESM and Mr Lambert about the defendants' involvement in the Marketing Campaign.

41. As to the knowledge requirements in the fourth and fifth elements of the cause of action as summarised by Morgan J, the claimants contend that Mr Baudet knew that that the claimants' trading agreements contained restrictive covenants because he had previously entered into a contract containing a corresponding clause in 2010. As set out above, Mr Baudet's position is that he does not remember such terms and, in any event, did not understand that the defendants would have been excluded from being involved in the Marketing Campaign. The claimants also rely on what they say is the commercial reality here, namely that individuals operating in this busines will know that restrictive covenants are usual; at the very least, they say, Mr Baudet turned a blind eye to any restrictions imposed on the defendants.

42. The court must not attempt to embark on an impermissible mini-trial of the issues at this stage, prior to close of pleadings and prior to disclosure. In my view, the matters set out at paragraph 21 above, including Mr Baudet's admission of his meeting with Mr Lambert in relation to the Marketing Campaign do provide some support for the essential elements

of the claimants' proposed new claims. Further, in light of the allegations of inducing breach of contract set out in the draft Particulars of Claim it is notable that Mr Baudet is silent, in his statement, as to the details of what he did discuss in his meeting with Mr Lambert on 1 December 2020. The question as to what, if any, inferences can be drawn from the totality of the evidence is not a matter for determination at this stage. On the basis of the material before me, I am satisfied that the case set out in the draft Particulars of Claim meets the threshold criteria of a good arguable case.

43. I turn now to the first of the two conditions set by CPR 19.2(2)(a), namely whether the proposed new party can assist the court to resolve all the matters in dispute in the proceedings.

44. It is, rightly, conceded by the defendants that there is "a connected issue" between the claims against the defendants and the claims against the proposed additional defendants. Similarly, the proposed additional defendants rightly accept that "*there is some overlap in the issues and the parties involved*"; they go further and also accept that "*if this was a normal trial and the parties were at the start of a normal trial timetable, there may be good case management reasons for joinder*".

45. The claims against the defendants will require the court to determine whether the restrictive covenants (if enforceable) were breached by the defendants as a result of their work on the Marketing Campaign. ITL ran the campaign and Power 21 received the data and benefit from it. Mr Baudet was approached to play at least some role in assisting the new commercial relationship between Mr Lambert and Mr Scroggan in relation to the campaign. In short, Mr Baudet's own statement places him at the heart of the issues in dispute in respect of the existing claims.

46. In such circumstances, I am satisfied that the joinder of Mr Baudet and his two companies to the proceedings (and the consequential disclosure and evidence that they are likely to be able to provide) will assist the court to resolve all of the matters (or, at least, core matters) in issue in the proceedings. I address the issue as to whether joinder is desirable below.

47. Turning to CPR 19.2(2)(b), the first and second conditions are (1) whether there is an issue between the proposed new party and an existing party and (2) whether that the issue is connected to the matters already in dispute in the proceedings. As to the first condition, the key issue is whether Mr Baudet and/or ITL/Power 21 induced the defendants' breach of the restrictive covenants. As to the second condition, the issue of inducing the breach of contract is closely connected to the issue of whether there was a breach of the restrictive covenants, which is a central issue already in dispute in the proceedings. As noted above, the respondents rightly accept the existence of a connected issue.

48. I am therefore satisfied that the first and second conditions are met. There is a significant connection in the form of an overlap of factual evidence between the existing proceedings, in particular whether there was a breach of contract by the defendants, and the relevant issue in the proposed new proceedings, namely whether the proposed new parties induced any such breach of contract.

Whether joinder is desirable and consistent with the overriding objective

49. Even if the first condition of CPR r 19.2(2)(a) is met and/or the first and second conditions of CPR r 19.2(2)(b) are met, the court must still be satisfied that joinder is desirable for the purposes of CPR r19.2(2) and consistent with the overriding objective. If the requirements are not satisfied then the alternative is for the claims against the proposed additional defendants to proceed in separate proceedings.

50. A number of points were advance by the parties in their respective submissions. I set out below the main areas of focus of those submissions.

51. Mr Mehrzad QC submits that, as a matter of public policy, parallel proceedings should be avoided where possible; this is consistent with the overriding objective including, in particular, the need to allot an appropriate share of the court's resources to any particular case pursuant to CPR r. 1.1(2)(e). There is also the potential risk of inconsistent judgments if related claims proceed separately. In addition, the policy considerations underpinning the rule in *Henderson v Henderson* favour the bringing of all claims relating to common issues at the same time.

52. The claimants also relied on the decision of May J in *Georgiev v King's College Hospital NHS Foundation Trust Appeal [2016] EWHC 104* (QB) (15 January 2016) at paragraph 30, as authority for the proposition that if necessary, it is generally preferable to postpone a trial so that all claims can be heard together, rather than to refuse the amendment and require the parties to litigate additional claims in separate proceedings. In that case May J held that "*As I see it, the consolidation of all claims to be heard at one trial is so much more practical and economic in terms of time, trouble and cost both to the parties and to the court system generally than the alternative of sequential trials with possible duplication of evidence and/or prolonged satellite litigation that the amendment ought to be allowed now and a new timetable to trial should be set …"*

53. In the present case, the claimants do not suggest that it is necessary to postpone the trial window. To the contrary, Mr Mehrzad QC submits that there is sufficient time available between now and trial to enable the claims against the proposed additional defendants to be heard at the same time. The claims against the existing defendants are still at the earliest procedural stage as Particulars of Claim have yet to be served; the draft Particulars of Claim have been served on all respondents at the same time for the application. As to the increased burdens caused by joinder, it is the claimants' single legal team which will have to deal with all issues against all defendants, whereas the separate legal teams of the defendants and the additional defendants will each only have to deal with the issues affecting their clients.

54. The claimants' position is that the speedy trial should remain confined to issues of liability and injunctive relief notwithstanding that, if joinder is permitted, there will be claims for damages; a split trial will keep the issues for the expedited trial confined. It is said that those issues can be addressed within the existing 5 day time estimate, although if necessary, the time estimate could be extended and the trial could be pushed back; an 8 day trial could be accommodated if the trial window were moved to the end of June 2021. During the course of the hearing it was also established that, if necessary, the trial window could be moved back further (from 8 June to 30 July 2021).

55. As noted above, the proposed additional defendants accept, in their skeleton argument, that "if this was a normal trial and the parties were at the start of a normal trial timetable, there may be good case management reasons for joinder". However, it is said by Ms Shrivastava that this is not a normal trial or a normal timetable; it is a speedy trial. The trial window commences in only 10 weeks' time and ends in 14 weeks' time. It is said that taking the more complex new claims to trial in such a short period would be unfair, more expensive, and a disproportionate use of the court's resources. Reliance is also placed on Mr Baudet's severe dyslexia and the need for reasonable adjustments to be made both in respect of the preparation for trial and during the trial itself.

56. Ms Shrivastava indicated early during the hearing that the proposed additional defendants would be prepared to give an undertaking to abide by the findings of the court in respect of the breach of contract claims against the defendants. It was said that this would mean that the relevance of the accepted overlap between the two sets of claims would fall away and would enable the claims to proceed separately with no risk of inconsistent judgments.

57. On behalf of the defendants Mr Burns, Queen's Counsel, supports the submissions of the proposed additional defendants. In addition, he emphasises that the defendant is a very small business with limited resources, whereas the claimants are part of a global marketing group. The defendants are concerned that the application is a tactic designed to pile additional and unnecessary cost on them. He submits that the restrictive covenants claim is apt for a speedy trial and Mr Lambert needs this issue to be determined quickly because the restrictive covenants, even if enforceable, will cease to have effect on 25 June 2021. Conversely, it is said that the more complex inducement of breach of contract claims are not apt for an expedited trial and do not need to be resolved swiftly. It was also suggested that there might need to be several additional witnesses called and that the time estimate would need to be extended, although the position will be clearer following close of pleadings. The proposal of hiving off quantum issues, if such claims were permitted, was resisted, including on the grounds that it would be likely to increase costs.

58. In my view, the witness statement provided by Mr Baudet gives a helpful insight into the extent of the likely overlap of the factual issues arising in both claims. Disclosure from the defendants and the proposed additional defendants is likely to be relevant to both sets of claims; the WhatsApp message(s) exchanged between Mr Baudet and Mr Lambert provides a simple example. Similarly, it is apparent that evidence from both Mr Baudet and Mr Lambert is likely to be relevant to both claims; the details of the matters discussed at the meeting on 1 December 2020 provide another clear example.

59. Thus, whilst I accept that the type of undertaking offered by the proposed additional defendants would meet the specific risk of inconsistent judgments, it remains desirable, in my judgment, for the breach of contract claim and the claim for inducing a breach of contract to be heard together if practicable, so that the totality of the evidence relating to the interconnected factual issues can be considered by the court at the same time.

60. Ms Shrivastava is correct to say that, if added, the proposed additional defendants will have to undertake a significant amount of work in a short period in order to be ready for a trial. However, the factual issues set out in the draft Particulars of Claim against the three proposed additional defendants are reasonably confined and Mr Baudet's own statement suggests that the factual narrative is unlikely to be very complex. Further, given that Particulars of Claim have yet to be served, the proposed additional defendants, if

joined now, would be "in" from the start of the proceedings and not forced to play "catch up" to any significant extent.

61. I note the concerns raised in respect of Mr Baudet's dyslexia and the need for reasonable adjustments to be made. In this regard, it is relevant that, if necessary, the trial window can, at this stage, be pushed back by some weeks and the time estimate can be increased to 8, or 9, days. Mr Baudet's solicitors will, no doubt, ensure that the court is properly informed, in good time before trial and with supporting evidence where appropriate, of the matters that need to be taken into account and of suggested reasonable adjustments.

62. I note Mr Burns QC's concern that this application is a tactic designed to place pressure on Mr Lambert and his small marketing business. However, I have determined that there is a good arguable case against the proposed additional defendants and I do not accept the contention (if it is put this highly) that this application has been pursued solely to put pressure on the defendants.

63. I also consider that confining the speedy trial to issues of liability and injunctive relief ought to mitigate some of the defendants' concerns as to pressure of work and costs in preparing for the trial. There is also, of course, the potential for a saving of costs in respect of quantum if the breach of contract claims fail.

64. Mr Burns QC rightly points out that the trial window currently ends on 14 May 2021, which is already only six weeks before the expiry of the six-month duration of the restrictive covenants, if enforceable. If the trial window is pushed back further then little or nothing will be left of that six-week period. I accept, however, that there is some force to Mr Mehrzad QC's response that the normal cross-undertaking in damages has been given and will be effective if the court later finds that the order for the interim injunction has caused loss to the defendants and that they should be compensated for any such loss.

65. In summary, in light of the interconnected issues of fact in respect of the claim for breach of contract and the claim for inducing the breach of contract, it is desirable, in my judgment, that all the parties should be before the Court at the trial to enable those issues to be resolved together and determined fairly and proportionately. This, in my view, is consistent with the overriding objective.

Conclusion on the joinder application

66. I am satisfied that the conditions set out in both 19.2(2)(a) and (b) have been met and that, having regard to the overriding objective, the appropriate exercise of discretion is to allow the joinder of the three proposed additional defendants, with permission given to amend the claim form to add the claim for damages against those three defendants.

The application to amend the claims against the defendants

67. The claimants seek permission to amend the Claim Form to add a claim against the existing defendants for damages for breach of contract and for misuse of confidential information and a claim for an account of profits for breach of the alleged equitable duty of confidence. The draft Particulars of Claim aver that Credico's losses are continuing and that a schedule of loss will be provided in due course. No particulars of loss are given, but it is proposed to amend the Claim Form to indicate a claim for over £200,000 and to pay the increased court fee.

68. Mr Mehrzad QC explains the absence of the claims for damages and/or an account of profits in the original Claim Form on the basis that the focus at the time of issuing proceedings was on the need for injunctive relief and obtaining the injunction.

69. The application is opposed. It is said that the claim for damages and assessment of any damages would increase the length of the trial and would require the timetable to be extended to allow for schedules of loss and counter-schedules. It is also said that the claims for loss and damage could have been made at the outset.

70. The application is made under CPR 17.1. Permission of the court is required. Again, it is not suggested that any limitation issues arise. Mr Mehrzad QC relies, in particular, on the dictum of Peter Gibson LJ in *Cobbold v Greenwich LBC* [1999] EWCA 2074 (CA):

> *"The overriding objective is that the court should deal with cases justly. That includes, so far as practicable, ensuring that each case is dealt with not only expeditiously but also fairly. Amendments in general ought to be allowed so that the real dispute between the parties can be adjudicated upon provided that any prejudice to the other party or parties caused by the amendment can be compensated for in costs, and the public interest in the efficient administration of justice is not significantly harmed."*

71. In my judgment, the proposed amendments should be allowed. The original claim was for injunctive relief to restrain breach of covenants and to restrain misuse and/or disclosure of confidential information in breach of contract and/or in breach of the equitable duty of confidence and it can come of no great surprise to the defendants that the claimants are now seeking to add claims for damages in respect of such matters and/or for an account of profits. The concerns as to prejudice raised by the defendants in respect of the difficulties of dealing with those claims within the existing timetable and existing time estimate can be met, in large part, by limiting the speedy trial to issues of liability and injunctive relief.

Variations to the existing directions

72. In light of the decisions made at the hearing on the issues of joinder and the amendment of the claims against the defendants I confirmed that the trial window should be pushed back (two options as to date ranges being made available to the parties at the hearing), that the trial time estimate should be increased to 8 days and that the speedy trial should be limited to issues of liability and injunctive relief. Having made those determinations the parties were able to agree the relevant variations to the timetable.

Costs

73. The claimants sought their costs of the applications and the respondents contended that costs should be reserved. I gave my decision at the hearing that the costs of the application should be costs in the case. I now give my reasons.

74. In support of his application for costs, Mr Mehrzad QC contended that the application had been successful and that costs should follow the event and, further, relied on the fact that at the time of issuing the application, on 22 January 2021, the claimants offered to

agree to costs in the case if the application was not opposed, but put the respondents on notice that they would seek their costs if it was opposed.

75. The defendants, whose submissions were adopted by the additional defendants, emphasised that the application had not been pursued in respect of two of the five proposed additional defendants. Points were taken about the manner in which the application was made: (i) the intention to bring claims against the additional defendants should have been raised when seeking the speedy trial on 22 December 2020 and (ii) the application was made in a manner which allowed insufficient time for the parties to explore the possibility of a consent order prior to the hearing. It was suggested that it might have been possible to reach agreement on some or all of the issues had more notice been given. The defendants proposed that costs should be reserved to the trial judge and determined once the merits of the new claims were known; but it was accepted that an order for costs in the case would also meet that concern.

76. I do not consider that the claimants can properly be criticised for any significant delay in making this application given their developing understanding of the factual position. Having taken the decision to make the application, the claimants needed to proceed swiftly given the tight timetable to the speedy trial. However, I am not persuaded that the claimants should benefit from a costs order in their favour simply because they were largely successful on their application; applicants who obtain permission to amend will often be ordered to pay the other parties' costs of and caused by the application. Nor, in the circumstances of this application, do I consider that it is appropriate to penalise the respondents in costs for failing to consent to the application, particularly given the limited time afforded to them. Having regard to these competing considerations, the appropriate order, in my judgment, is for the costs of the application to be costs in the case.