Neutral Citation Number: [2024] EWHC 2035 (Ch)

Case No: BL-2023-CDF-000001

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

Cardiff Civil and Family Justice Centre
2 Park St, Cardiff
CF10 1ET

Date: 05/08/2024

Before :

MR JUSTICE ZACAROLI

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Between :

(1) MR WILLIAM ALLAN JONES **(2) LUDLOW STREET INVESTMENT CORP**	**Claimants**
- and -	
(1) MR ANDREW SIMON MALLETT **(2) MRS CEIRIOS MALLETT**	**Defendants**

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Fraser Campbell (instructed by **Burges Salmon LLP**) for the **Claimants**
Jason Evans-Tovey (instructed by **Acuity Law Limited**) for the **Defendants**

Hearing dates: 11 and 12 July 2024

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JUDGMENT

Mr Justice Zacaroli :

1. The first defendant ("Mr Mallett") was, until November 2016, employed by various companies owned by the first claimant ("Mr Jones"). One such company was the second claimant, Ludlow Street Investment Corp ("LSIC"). The second defendant ("Mrs Mallett") is Mr Mallett's wife. She previously claimed also to have been employed by a company owned by Mr Jones.

2. The relationship between Mr Jones and Mr and Mrs Mallett broke down in 2016. Litigation ensued, both in the High Court and the Employment Tribunal. The litigation was settled by a written agreement dated 21 December 2018 (the "Settlement Agreement").

3. The parties to the Settlement Agreement are three companies owned by Mr Jones (defined as "Party A") and Mr and Mrs Mallett (defined as "Party B"). Mr Jones is identified as a "Related Party" to Party A. LSIC is also a Related Party. Clause 20 of the Settlement Agreement provides that the agreement is enforceable by any Related Party under the Contracts (Rights against Third Parties) Act 1999.

4. The following are the key terms of the Settlement Agreement of relevance to this dispute.

   (1) By clause 4.1, Mr and Mrs Mallett agreed:

   > "to deliver up to [the claimants] any and all Confidential Information held by them in hard copy by no later than 5pm on 18 January 2019, save that [the defendants] shall be entitled to retain in the possession of Hugh James copies of any documentation relating to the Employment Tribunal Proceedings and the High Court Proceedings."

   (2) By clause 4.2, Mr and Mrs Mallett agreed:

   > "to permanently delete by no later than 5pm on 18 January 2019 any and all Confidential Information held in electronic form, save that [the defendants] shall be entitled to retain in the possession of Hugh James copies of any electronic documentation relating to the Employment Tribunal Proceedings and the High Court Proceedings."

   (3) "Confidential Information" is defined by clause 1.1 to mean:

   > "any document (whether hard copy, electronic or any other format, whether an original or a copy, and including all meta data) that Party B or any of Party B's Related Parties have in their possession or control which relates in any way to the personal or business affairs of Party A or any of Party A's Related Parties."

   (4) By clause 4.3, Mr and Mrs Mallett warranted that, in performing their obligations under clauses 4.1 and 4.2, but save as expressly permitted under them:

   > "(a) Party B are delivering up all hard copy Confidential Information.

(b) Party B are not retaining possession or control of any Confidential Information.

(c) Party B have not at any stage without authority from Party A provided, and will at no stage provide, any Confidential Information to any person body or entity other than their legal team and insurers involved in the Disputes".

5. The claimants also relied in their pleading on a "non-disparagement" clause in the Settlement Agreement, and claimed that Mr Mallett had breached this clause. No relief was, however, sought in relation to that breach, and no time was spent at trial in investigating this point.

6. Pursuant to the Settlement Agreement, Mr and Mrs Mallett handed over a laptop, an ipad and their mobile phones to their then solicitors, Hugh James ("HJ"). An independent e-disclosure provider was retained to wipe the phones, to export material from the ipad and then to wipe it, to delete certain documents (as identified by Mr Mallett) on the laptop and to delete all emails to/from the following: @lshealthcare; @hughjames; andymallett@live.co.uk.

7. After the Settlement Agreement, Mr Jones brought proceedings against Andrew McCarthy ("Mr McCarthy"). Those proceedings related to an "Asset Swap Agreement" concerning a property in Mallorca owned by Mr McCarthy and a Fairline 74 yacht owned by Mr Jones. In the course of those proceedings, it came to light that Mr Mallett had retained certain documents relating to Mr Jones' affairs which he had provided to another person, Brian Proctor, for the purpose of them being passed to Mr McCarthy, apparently to assist in his defence.

8. Mr Jones accordingly brought this claim to enforce the Settlement Agreement. On 14 December 2021, HHJ Jarman KC ordered Mr Mallett, on a without notice basis, to preserve documents. The claim was issued on 6 January 2023. In September 2023, various applications came before District Judge Vernon, including the defendants' application for summary judgment, and the claimants' application to amend the Particulars of Claim.

9. Partly as a result of the judgment of District Judge Vernon dated 20 November 2023, and partly by way of concession by the claimants, it is now established that "Confidential Information" under the Settlement Agreement is limited to documents, and that the Settlement Agreement relates only to documents (falling within the definition of Confidential Information) which were in the possession or control of the defendants as at the date of the Settlement Agreement.

The pleaded case

10. As against Mr Mallett, the claimants originally relied on four emails to support the contention that he had breached the agreement. The third of those, an email to Mr Mallett from a former lawyer of Mr Jones after the date of the Settlement Agreement, was relied on in support of a claim for breach of an equitable duty of confidence. That claim and any other claim in respect of the third email are however, no longer pursued. The fourth email, dated 1 June 2021 from Mr Proctor to Mr Mallett was pleaded only to demonstrate Messrs Mallett's and Proctor's broader pattern of

supplying each other with historic emails for use (say the claimants) in actions taken by various third parties adverse to Mr Jones. No independent claim is based upon it.

11. The first email was one dated 1 April 2016 from Mr Mallett to Mrs Mallett, setting out details of the Asset Swap Agreement, and certain other matters relating to Mr Jones' affairs. Mr Mallett accepts that this is caught by the Settlement Agreement and should have been deleted. It was forwarded on 2 March 2020 by Mr Mallett to Mr Proctor. Mr Mallett accepts that this was a breach of the non-dissemination provision in the Settlement Agreement.

12. The second email was one of 25 November 2017 from Mr Proctor to Mr Mallett, forwarding a chain of emails between Mr Jones, Mr Proctor and Mr McCarthy from 2016. Mr Mallett forwarded it to Mr Proctor on 10 June 2021. Mr Mallett contends that this is not caught by the Settlement Agreement, because it is a document which was sent to him in his capacity as director of a company that he set up in November 2016 called Ceirios Limited ("CL"), in the course of that company's engagement for one or other of Mr Proctor's companies. He contends that the document therefore either belongs to CL, or belongs to Mr Proctor or one of his companies and – in either event – is not Confidential Information to which the Settlement Agreement applies.

13. As against Mrs Mallett, the claimants rely on an admission by her solicitors, in a letter of 25 January 2022, that "from a cursory look at [Mrs Mallett's] laptop, there appear to be one or two very old documents c2013 that may have been missed by the agreed search, but they have not been opened by Mrs Mallett to check what they relate to." In fact, the documents are on any view caught by the Settlement Agreement. They include: a draft document from April 2012 setting out a response to certain regulatory concerns raised in two of Mr Jones' companies; and a draft document from September 2012, setting out alleged breaches of duty by a director of one of Mr Jones' companies. I do not accept Mrs Mallett's explanation in evidence that these were innocuous documents because they were something "from the past".

14. The claimants also plead that it is to be inferred, from numerous matters, that there are likely to be many other emails retained by Mr and Mrs Mallett, and it is thus appropriate to grant relief, including by way of an injunction to compel specific performance of the Settlement Agreement, delivery up of Confidential Information still retained by the defendants, and orders compelling the defendants to reveal to what extent they have disseminated Confidential Information in breach of the Settlement Agreement and an injunction restraining further breaches.

15. By the end of the trial, there were two main issues between the parties. First, whether on the true construction of the Settlement Agreement, it applied at all to documents (such as the second email) which Mr Mallett alleged were owned by CL or by one or other of CL's clients. Second, the extent to which, if at all, the claimants were entitled to the relief claimed. I will address these points in turn.

Construction of the Settlement Agreement

16. Mr Mallett accepted that the reason Mr Proctor sent him emails which contained information relating to Mr Jones and his companies was so that he, Mr Mallett, could assist Mr Proctor in his disputes with Mr Jones. Mr Mallett, for example, assisted Mr

Proctor in preparing a letter before action which was given to Mr Jones at a Christmas party in 2017, with the express purpose of causing him embarrassment.

17. The claimants dispute whether the first email (or other emails in similar vein provided to Mr Mallett by Mr Proctor before the Settlement Agreement) was provided to Mr Mallett as part of his role as director of CL providing services to Mr Proctor, or one of Mr Proctor's companies, as a client of CL.

18. Mr Campbell, who appeared for the claimants, drew my attention in particular to the evidence of Mr Proctor (which was not challenged) that CL was engaged by one of his companies. Mr Mallett agreed in cross-examination that CL was engaged by one or more of Mr Proctor's companies, and not by Mr Proctor personally. Mr Campbell submitted that it was difficult to see how Mr Mallett's actions in assisting Mr Proctor in relation to his disputes with Mr Jones could be characterised as relating to any corporate engagement between CL and Mr Proctor's companies. I agree. If Mr Mallett wished to contend that the assistance he gave to Mr Proctor was only part of the services provided by CL to Mr Proctor's companies, then he needed to prove that. Despite Mr Mallett saying in cross-examination, however, that there was a written agreement setting out the terms on which CL was engaged by Mr Proctor's companies, and despite such agreement falling squarely within the list of issues for disclosure, no such agreement was produced in evidence. Mr Mallett also said that neither he nor CL was paid for the assistance he gave Mr Proctor.

19. In any event, whatever the reason the first email was sent to Mr Mallett, and whatever capacity he was acting in, I am satisfied that it is a document which constituted Confidential Information within the meaning of the Settlement Agreement, and should have been deleted.

20. Mr Evans-Tovey, who appeared for the defendants, contended that, on its true interpretation, the Settlement Agreement does not extend to "documents which were provided by and belonged to others such as [CL], [CL's] clients or other third parties."

21. I can deal shortly with the possibility that the Settlement Agreement does not extend to documents *belonging* to CL's clients or other third parties. The claim is (now) pursued only in relation to electronic documents, not hard copy documents. While it is theoretically possible for a document in Mr Mallett's possession (whether as a director of CL or otherwise) to belong to a third party, that is not so in relation to electronic documents, such as an email.

22. The first email (and other similar emails which were referred to in the course of the hearing) was sent to the email address: asmallett71@gmail.com. The copy of an email in the recipient's inbox (being a separate electronic document to the sent copy sitting in the sender's outbox) belongs to the recipient. Mr Evans-Tovey was unable to provide any support for the contention that the email sitting in Mr Mallett's inbox belonged to Mr Proctor. If, as he suggested at one point, the email contained information that was confidential to Mr Proctor, that is clearly insufficient to render the electronic document in Mr Mallett's possession the property of Mr Proctor.

23. As for the possibility that – assuming the email in the inbox of the asmallett71@gmail.com account *belonged* to CL (as opposed to any client of CL) – it

was not caught by the Settlement Agreement, Mr Evans-Tovey submitted that the use of the word "held" in both clauses 4.1 and 4.2 was to be interpreted as meaning documents that were owned by Mr and Mrs Mallett. Alternatively, there was to be implied a term that limited the agreement to documents owned by them. Accordingly, it did not extend to documents in the ownership of CL.

24. He submitted that the clauses should be interpreted this way "as a matter of common sense" and because Mr Jones was aware that Mr Mallett had incorporated, and was working for, CL and that its clients included Mr Proctor and Mr McCarthy. Had it been intended to include documents held by CL within the ambit of the Settlement Agreement, CL could either have been made a party or included as a Related Party of Party B.

25. I reject this submission. It ignores the fact that Confidential Information is defined as documents in the "possession or control" of Party B. The phrase "Confidential Information *held in electronic form*" (in clause 4.2) therefore means documents in Mr and Mrs Mallett's possession or control which relate to the personal or business affairs of Party A held in electronic form. I can see no reason why the use of the word "held" in that sentence would have been intended to override the broad concept of possession and control, and replace it with a concept of ownership.

26. The phrase "possession or control" has an established legal meaning, which would (as Mr Campbell submitted) be well-known to the lawyers for both parties involved in the Settlement Agreement. A document can be in someone's possession (let alone control) without it being owned by them: see, for example, *B v B* [1978] Fam 181, per Dunn J at p.187B-C. In the same case, at p.188-189, Dunn J considered the case of a one man company, i.e. one that is wholly owned by its sole director, and held that the documents of the company were within his power "in the sense that in truth and in fact he is able to obtain control of them." Mr Mallett is the sole shareholder and director of CL.

27. While it is possible that the agreement as a whole, construed in its context, might negate the well established meaning of possession and control, there is nothing in the circumstances of the Settlement Agreement that leads to that conclusion. The fact that Mr Jones was aware of the existence of CL, and of the fact that Mr Mallett used it to provide services to Mr Proctor and Mr McCarthy does not support Mr Mallett's case. The reasonable reader of the Settlement Agreement, knowing that Mr Mallett was the sole owner and director of CL, and knowing the usual meaning of "possession and control" would understand that any documents within CL's possession were within the possession and control of Mr Mallett.

28. As for an implied term, Mr Evans-Tovey's first submission was that if it had been suggested that Mr and Mrs Mallett would be obliged to deliver up hard copy documents belonging to third parties, or to destroy electronic documents belonging to clients, it is obvious that the parties would have agreed that the provisions did not extend to documents belonging to third parties. This proceeds on the false premise (see above), however, that electronic documents *belonged* to CL's clients.

29. As Mr Campbell submitted, it is common ground that the Settlement Agreement was intended to lead to a complete break between the parties, and (although Mr Jones did not give any evidence) it is accepted by the claimants that Mr Jones was already

aware that Mr Mallett had been using CL to provide services to Mr Proctor and Mr McCarthy. Had it been suggested to Mr Jones that the Settlement Agreement would not lead to the deletion of emails containing confidential information relating to Mr Jones and his companies, even though they were in Mr Mallett's email inbox, on the basis that they were held by him in his capacity as a director of CL, it is inconceivable that he would have agreed to them being excluded. The suggested term is clearly not one which was so obvious that it would go without saying: see *Ali v Petroleum Co of Trinidad and Tobago* [2017] UKPC 2, at §7; *Yoo Design Services Limited v Iliv Realty PTE Limited* [2021] EWCA Civ 560 at §51.

30. That is, in itself, sufficient to answer the case for an implied term. As to the remainder of the points made by Mr Evans-Tovey, they are mostly premised on the need for a term which protects information *belonging* to clients of CL. The short answer to them is that already noted: emails in Mr Mallett's inbox do not belong to anyone but him (save only to the extent that he held them on behalf of CL). There is nothing in the further points made in support of the implied term for excluding documents which Mr Mallett holds in his capacity as director of CL.

31. Moreover, the suggestion that the implied term is "necessary" because it is needed to preserve the property of third parties, or to preserve confidential information, or simply to preserve third party information misstates the test. The test is whether it is necessary for business efficacy. It is clearly not necessary – to ensure the clean break which the Settlement Agreement was intended to achieve – that Mr and Mrs Mallett could hold onto, and disseminate to third parties, confidential documents relating to Mr Jones and his companies, merely because those documents might also contain confidential information relating to others. In any event, as already noted, deletion of electronic documents belonging to the Malletts (or to CL) could not prejudice any third party to which the information in the document related.

Entitlement to relief

Isolated incidents?

32. The first issue to consider in relation to the claimants' entitlement to relief is whether they have established anything other than one or two isolated instances of a failure to comply with the Settlement Agreement by the defendants. If so, and if there is no realistic likelihood of there having been other failures to comply, then, particularly given that compliance with the Settlement Agreement in respect of those instances (by way of deletion of the relevant emails) is not opposed, the court would be unlikely to grant equitable relief by way of orders for specific performance of the agreement or injunctions against further breaches.

33. In addition to the admitted breach of the Settlement Agreement, in relation to the first email, in light of my conclusion on the construction of the Settlement Agreement, the claimants have established that the retention of the second email also constituted a breach of clause 4.2 of the Settlement Agreement. Moreover, the later dissemination of those emails constituted breaches of clause 4.3 of the Settlement Agreement. As I have noted above, the documents retained on Mrs Mallett's laptop also constituted a breach of clause 4.2 of the Settlement Agreement.

34. Mr Campbell submitted that I should infer that these are not isolated instances, but that there will have been other breaches of the Settlement Agreement. I agree. The very fact that Mr Mallett has taken the position (wrongly, as I have found) that he was free to retain any documents in his possession as at the date of the Settlement Agreement that he considered belonged to CL or to its clients indicates the likelihood that there were other such documents in that category. (Notwithstanding that the claimants did not rely on any further instances contained within the voluntary disclosure provided by him in January 2022) that disclosure nevertheless showed that was the case.

35. Mr Campbell relied on a number of other matters to support that inference.

36. First, he pointed to the inadequate nature of the exercise undertaken in purported compliance with the Settlement Agreement. It appears from the contemporaneous correspondence with HJ that only Mrs Mallett's laptop was provided to HJ. Moreover, the independent e-disclosure provider was instructed to delete only documents that were flagged for deletion by Mr Mallett and to delete emails to three specific domains/addresses. Importantly, those did not include either Mr or Mrs Mallett's gmail accounts.

37. Mr Campbell pointed also to the fact that Mr and Mrs Mallett have maintained throughout these proceeding (both in correspondence from their solicitors, Acuity law – "AL" – and in their witness statements) that the deletion of their electronic documents was undertaken by reference to keywords agreed by HJ with BS, which was simply untrue. I do not find that Mr and Mrs Mallett gave deliberately false evidence in this regard, but I infer that they have maintained this position (despite it being contradicted in correspondence by BS) without having sought to check with HJ. There was no good reason not to do so. Mr Mallett's suggestion that he did not check with HJ when providing evidence in the earlier injunction proceedings, because he was "tired and frightened" lacked credibility. That demonstrates at best a cavalier attitude towards ensuring compliance with the Settlement Agreement.

38. Second, Mr Campbell relied on the fact that Mr Mallett has demonstrated a propensity to help others in their disputes with Mr Jones. I was shown numerous examples of documents demonstrating Mr Mallett doing just that. The people he assisted include Mr Proctor, Mr Yorke-Smith, Barry Davies, Mr McCarthy and Richard Jones (Mr Jones' son). Mr Mallett accepted that he was providing help, in particular, to Mr Proctor and Mr McCarthy in their disputes with Mr Jones. He said that he did so because he regarded Mr Jones as "dishonest", "dangerous" and "litigious" and he wanted to see that justice was done.

39. Two other parts of Mr Mallett's evidence are telling in this respect. First, in answer to a question whether, in emailing Mr Yorke-Smith in December 2016, he was sharing information he had learned while working for Mr Jones, in order to assist someone who was on bad terms with Mr Jones, Mr Mallett said: "the context is I was no longer tied under my employment contract, yes". Second, he acknowledged that on leaving Mr Jones' employment he took with him a carrier bag full of documents he had printed off. While he said this was to show to his lawyers in the context of his dispute with Mr Jones, when put in the context of the first point, it suggests that he would have felt no compunction in using documents acquired or generated while working closely with Mr Jones later to help others in dispute with him.

40. Mr Evans-Tovey objected that there is nothing (whether in the Settlement Agreement or otherwise) to stop Mr Mallett helping others in dispute with Mr Jones. I agree, but this was not Mr Campbell's point. Rather, it was that the fact that Mr Mallett has a propensity to do this supports the inference that the documents so far revealed to have been retained in breach of the Settlement Agreement were not isolated incidents. That is further supported by Mr Mallett's conduct in scanning hard copies of historic emails to email to himself or his wife. This, too, suggests a propensity to store documents away for potential future use. I do not doubt – given the clear hostility between the parties – that Mr Mallett genuinely believes that he was serving the interests of justice. His motivation, however, is irrelevant if his conduct involved him retaining Confidential Information in breach of the Settlement Agreement.

41. On the basis of these matters, I consider it is to be inferred that there are likely to have been a significant number of breaches of the Settlement Agreement beyond those identified in the particulars of claim.

42. Mr Campbell also relied in support of this inference on the disclosure process undertaken in this litigation. I describe this in more detail below in connection with the appropriate relief. I do not regard it as adding materially to the points made above in support of the inference that there are likely to be further breaches of the Settlement Agreement beyond those already identified.

The appropriate relief

43. In the amended particulars of claim the claimants seek orders:

(1) Requiring each of Mr and Mrs Mallett to deliver up to the Claimants all Confidential Information (as defined in the Settlement Agreement) and other information confidential to the Claimants (whether in hard copy or electronic form) which they have in their possession and/or control and then to delete any remaining versions from their systems and records;

(2) Requiring them to co-operate with an electronic data specialist appointed by the Claimants to verify their compliance with the order above;

(3) Requiring them to give a full account (by way of witness statements verified with statements of truth) of all receipt, use and dissemination by them, directly or indirectly, of Confidential Information (as defined in the Settlement Agreement) and other information confidential to the Claimants (whether in documentary form or otherwise) since the date of the Settlement Agreement; and

(4) Restraining them, under a penal notice, from any further retention or dissemination of Confidential Information (as defined in the Settlement Agreement) and other information confidential to the Claimants.

44. As Mr Evans-Tovey submitted, the relief sought goes significantly beyond the obligations in the Settlement Agreement. First, it seeks relief in respect of "other" confidential information. That, however, was in support of the claim for breach of an equitable duty of confidence, which is not pursued. Second, the only obligation in the Settlement Agreement relating to electronic documents is that they be deleted, whereas the relief sought is that such documents be delivered up to the claimants, and

then deleted, and that the Malletts provide a full account, on oath, of what they have done with the Confidential Information since the date of the Settlement Agreement.

45. Mr Campbell submitted that this extended relief was justified on the basis that, where it was established that there had been a breach of the obligation to delete Confidential Information, it was necessary to order delivery up of documents wrongly retained in order to enable the claimants to see what use had been made of the Confidential Information in the meantime. He submitted that it is open to the court to require an account of the retention and use of confidential information in order to assist in giving effect to the injunctive relief or to assist the claimant in undoing the harm.

46. In substance, as Mr Campbell accepted in closing submissions, the claimants want two things: (1) compliance with the obligation in the Settlement Agreement to delete Confidential Information; and (2) information, in light of the concern that the non-dissemination obligation has been breached, as to the extent to which Confidential Information has been provided to third parties.

47. I accept that, in an appropriate case, the court can require information from those found to have breached an obligation, such as that contained in cause 4.2 of the Settlement Agreement.

48. In support of that point, Mr Campbell referred me to *City Site Solutions Ltd v Baker* [2023] EWHC 2064 (KB). That case concerned an interlocutory injunction against former employees of the claimant accused of misappropriation of confidential information in breach of the terms of their employment contracts. Nigel Cooper KC, sitting as a deputy High Court Judge, made orders, including that the defendants provide details of confidential information retained by them, and the use to which it was put, and of persons to whom they had provided it. At §76, he said:

> "I accept that in principle the Court has jurisdiction to grant a disclosure order of the type sought by the Claimant provided that the purpose of the order is to obtain information which is required to either to assist in giving effect to the injunctive relief or to assist a claimant in undoing the harm, which has been unlawfully done."

49. On that basis, while ordering certain disclosure, he refrained from making orders that crossed the boundary into requiring the defendants to identify all that they had done which was or might be wrong.

50. Mr Campbell accepted that the court has a discretion in determining what, if any, of the various heads of equitable relief sought by the claimants should be granted.

51. Mr Evans-Tovey submitted that the court should exercise its discretion by granting none of the relief claimed, or at least very little of it. He characterised the claimants' conduct in this action as precipitous, aggressive and unreasonable, constantly demanding action from the Malletts that goes beyond the scope of the Settlement Agreement, and – whatever the Malletts provide by way of disclosure – coming back with more complaints and queries.

52. There is clearly considerable hostility and lack of trust between the parties. On Mr Jones' side that is no doubt fuelled by Mr Mallett's willingness to help others who are

in dispute with Mr Jones. As I have pointed out, there is nothing wrong, *per se*, in Mr Mallett doing so, provided he is not using Confidential Information.

53. There are a number of matters to be taken into account in considering the exercise of my discretion as to the relief to be granted.

54. First, the inadequate nature of the initial compliance with the Settlement Agreement (see paragraph 36 above), exacerbated by the fact that the Malletts have wrongly maintained throughout these proceedings that this was a process which would have identified everything of relevance, because it was done by reference to key word searches agreed with BS.

55. Second, it is implicit in the defence advanced in these proceedings – that documents received by Mr Mallett from clients in his capacity as director of CL were outside the scope of the Settlement Agreement – that there are other documents within this category beyond the second email (as is confirmed by the fact that others were included in the documents voluntarily disclosed in January 2022).

56. Third, I find it unlikely that Mr Mallett believed, at the time of the Settlement Agreement, that documents could be excluded from the Settlement Agreement on the basis that they belonged to CL. He did not have a separate email address in his capacity as director of CL, and there was no reference in any contemporaneous communications with HJ that emails might belong to CL rather than him. When Mr Mallett was shown an email from him to HJ from January 2019, in which he referred to not wanting to "lose Ceirios's own documents", he suggested that this might – though he could not remember – have been referring to CL. The context (in particular an earlier reference to Ceirios in the same email) shows that this was clearly a reference to his wife. Mr Mallett's attempt to suggest that it might mean the company was simple opportunism. The fact that he is now seeking to defend the retention of documents on a basis which was not understood to be a justification at the time of the settlement agreement increases the cause for concern.

57. Fourth, the extent to which there has been compliance with disclosure requirements throughout these proceedings.

58. Mr Evans-Tovey disputed that there was anything deficient in the Malletts' disclosure. He pointed to the voluntary disclosure in January 2022. That is undoubtedly a point in the defendants' favour, although I cannot be satisfied that a sufficiently rigorous search was conducted in order to identify all documents wrongfully retained by the defendants.

59. He pointed also to the fact that, pursuant to the order for extended disclosure (in March 2024), by reference to keyword search terms, approximately 15,000 documents had been identified, which when reviewed for relevance (to issues in the proceedings, rather than as being caught by the Settlement Agreement) reduced down to 168.

60. Mr Campbell objected, however, that the keywords used by the defendants were only those which they had identified, and that they had ignored the claimants' suggested keywords. That issue was resolved at a hearing before HHJ Jarman in June 2024, at which he concluded that the defendants had failed to engage properly with the claimants over the electronic searches they were to carry out. He ordered them to

carry out a further search, using the keywords suggested by the claimants. Given that this was estimated (rightly as it turns out) by the defendants to produce a further 87,000 "hits", HHJ Jarman ordered the defendants to produce at the first stage only a list of the number of hits each keyword search produced, with a view to the parties liaising over how to narrow down the searches.

61. The defendants reviewed approximately 1000 of these documents, but found nothing of relevance. On this basis, they determined that there was unlikely to be anything of relevance in the remaining 86,000 documents and downed tools.

62. The claimants contend that this did not comply with the order of HHJ Jarman, which required the defendants to "work with their e-disclosure provider to explore and outline proposals as to how technology can be used to review the c.85,000 documents returned by the keyword searches…" Mr Campbell submitted that the defendants should have used the 178 relevant documents which were obtained from the earlier review (of the 15,000 documents returned when conducting the initial extended disclosure exercise) to assist in training the computer in searching the 86,000 documents for relevance.

63. In considering this issue, I start from the premise, as found by HHJ Jarman, that the defendants had, prior to the hearing before him, failed to engage properly with their disclosure obligations. Their decision not to take further action having found nothing relevant in a small portion of the 87,000 documents is, in my judgment, a continuing failure to engage with those obligations.

64. I bear in mind, nevertheless, that this is a debate over disclosure in the context of this action (i.e. documents relevant to the issues in this action, including the case based on the non-disparagement clause in the Settlement Agreement). If there are documents within the remaining 86,000 un-reviewed documents that fall within the scope of the Settlement Agreement, the likelihood is that there will be relatively few.

65. Mr Evans-Tovey took me to the large file of correspondence between the parties and their solicitors, in order to demonstrate his overall point that the claimants have acted in an overly aggressive way, and are more concerned with raising ever more questions of the defendants, rather than with the documents that have in fact been provided. There are points within that bundle of correspondence that – to some extent at least – support the defendants' case in this regard.

66. One example relates to the offer made by the defendants to hand over their laptops at a very early stage. There is some uncertainty – which neither side sought to explain at the hearing – about the number of laptops or other computers held by the defendants at various points. That aside, however, on 25 January 2022, AL wrote to BS offering to hand over the Malletts' laptops. The claimants failed to give any response to that offer until 4 August 2022, when they rejected it on the basis that they wanted full compliance with the terms of relief set out in the draft particulars of claim. I have not seen the draft particulars of claim, but I infer that the relief sought reflected at least that sought in the actual particulars of claim. On that basis, as I have noted above, the relief sought went beyond that to which the claimants are entitled.

67. Mr Campbell submitted that the offer was a hollow one, seen in the light of the fact that when the claimants ultimately sought to take the defendants up on that offer,

hurdles were put in place which were never in fact overcome. I am not, however, prepared to conclude either that those hurdles (which related to the need to protect confidential information) were improper, or that they would not have been overcome had the claimants engaged immediately with the offer. It may well be that matters were much harder to resolve later, as the relations deteriorated further. The claimants' failure to engage at an early stage with the offer is something which I should take into account when assessing the appropriate relief to grant in this case.

68. A further example relates to Mrs Mallett's insistence that arrangements should be made to protect meta data in the documents stored on her computer, before she opened those documents. She wished to preserve the proof that the documents had not been opened in many years (which would be lost once they were opened). The claimants ultimately accepted that was a good point, but only after months of objecting.

69. Not untypically, however, and standing back from the detail, a review of the correspondence shows that while there are some points in favour of the defendants, others favour the claimants. For example, the defendants continued to insist in the correspondence that the initial disclosure had been done on the basis of search terms agreed with BS, and that certain documents were held by CL and for that reason were outside the scope of the Settlement Agreement.

70. Taking account of all of the above matters, I consider that the claimants are entitled to at least some relief, but not the full relief claimed. While I am satisfied that the defendants have retained more than isolated examples of Confidential Information, and that Mr Mallett has disseminated at least some of the wrongfully retained documents to third parties, I consider the claimants have overreached themselves in some respects (insofar as they claimed, or acted on the basis that, the Settlement Agreement related to information, more broadly than documents, or to documents otherwise than in existence as at the date of the agreement) and failed to engage constructively with the defendants at an early stage.

71. The fairest outcome, which satisfies the two substantive matters sought by the claimants, while reflecting the points I have made above, is as follows:

(1) The defendants will be ordered to delete all instances of Confidential Information held in electronic form by them including, for the avoidance of doubt, any such Confidential Information held by either of them in their capacity as directors or officers of CL, and any such Confidential Information supplied to them by any third party. It will include all of the Confidential Information already identified, and any Confidential Information that may yet be identified within the 86,000 documents thrown up by the recent disclosure searches. (The possibility was raised by Mr Evans-Tovey during the hearing of the defendants simply deleting all those remaining electronic documents, to avoid the expense of reviewing them to find any which fall within the category of Confidential Information. Given that my order requires them to delete, rather than deliver up, Confidential Information, it is open to them to take this course.) The precise details of how any review is to be conducted, and verified, and/or how the deletion process is to be verified will be determined at a hearing to deal with consequential matters following the hand-down of this judgment. A key consideration will be to ensure that it is done at the least cost to anyone.

(2) Mr Mallett shall be required to file and serve a witness statement, verified by a statement of truth, identifying to the best of his knowledge and belief any person to whom he has provided any Confidential Information since the date of the Settlement Agreement and the nature of the Confidential Information provided to each person.

72. I will not, therefore, grant an injunction restraining further breaches of the Settlement Agreement. The deletion of any remaining Confidential Information renders any further breach a remote possibility at best.

73. Nor will I order delivery up of Confidential Information to the claimants. That goes beyond specific performance of the Settlement Agreement. I accept, as noted above, that there is jurisdiction to make an order for delivery up of any Confidential Information to enable the claimants to protect their confidential information from being further disseminated or used by third parties. I consider, however, that taking into account all the circumstances of the case, it is fair and proportionate to limit the relief under this head to the witness statement from Mr Mallett to which I refer above. I accept that, without delivery up of all the Confidential Information, it will be harder for the claimants to police compliance by Mr Mallett with his obligation to disclose all instances of wrongful dissemination. As against that (in addition to the factors I have referred to above in balancing the nature of the relief to grant), I take into account the following two points.

74. First, this is at the less serious end of the spectrum of confidential information cases: it is not suggested that Mr Jones or his companies have suffered, or are likely to suffer, any real harm by the wrongful retention or dissemination of Confidential Information, particularly as any documents to which the Settlement Agreement relates are at least six years old, and many will be much older. Moreover, the main instances of dissemination relied on, certainly so far as Mr Proctor is concerned, relate to information which Mr Proctor already had himself.

75. Second, the dissemination to third parties has been, on Mr Mallett's admission, to assist them in disputes with Mr Jones and his companies. If any such Confidential Information is ever used, there is a real risk that it could be traced back to Mr Mallett (as the experience in relation to Mr Jones' dispute with Mr McCarthy shows). If – as the claimants would be entitled to do – the order served on Mr Mallett requiring the production of a witness statement is coupled with a penal notice, then Mr Mallett will be fully aware of the seriousness of failing to comply with his obligation in providing that witness statement.