Neutral Citation Number: [2025] EWHC 227 (KB)

Case No: KB-2024-002283

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 05/02/2025

Before :

MR JUSTICE SHELDON

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Between :

Dare International Ltd	**Claimant**
- and -	
(1) Stephen Soliman **(2) Ashley Hikmet**	**Defendants**

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- -

Mr Paul Goulding KC, Mr Jamie Susskind, Mr Christian Davies, Ms Aliya Al-Yassin (instructed by **Allen Overy Shearman Sterling LLP**) for the **Claimant**
Mr Adam Solomon KC, Mr Matthew Sheridan (instructed by **Farrer & Co LLP**) for the **First Defendant**
Mr Niran de Silva KC, Ms Sophia Berry (instructed by **Fox Williams LLP**) for the **Second Defendant**

Hearing dates: November 5-8, 11-15, 18-20, 22

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Approved Judgment

This judgment was handed down remotely at 10.30am on 5 February 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE SHELDON

Mr Justice Sheldon :

1. Dare International Ltd ("Dare") seeks damages and injunctive relief against two former employees, Stephen Soliman (D1) and Ashely Hikmet (D2) (D1 and D2 will be referred to collectively as "the Defendants"). D1 and D2 worked for Dare as Senior Traders. They have accepted offers of employment with Dare's principal rival, Onyx Capital Management Limited ("Onyx") to work in their nascent Dubai office.[1] Dare invites the Court to (i) enforce post-termination restraints by way of final injunction; (2) grant springboard relief to cancel the unlawful advantage gained by the Defendants' alleged wrongdoing whilst employed by Dare; and (3) make findings on liability with respect to alleged breaches of contract and fiduciary duty. Quantum (if any) will be addressed at a further hearing. Dare also alleges that the Defendants were unjustly enriched on the basis that they were paid their base salary under a mistake of fact: that the Defendants were too sick to work.

2. On 18 July 2024, Anthony Metzer KC, sitting as a deputy judge of the High Court, accepted undertakings from the Defendants that they would comply with the terms of the post-termination restraints contained in their contracts of employment, and ordered a speedy trial. Prior to the trial, there were a number of applications to determine case management matters.

3. The trial of the claim took place over 13 days, starting on 5 November 2024. At trial, I was asked to hear evidence in private with respect to (i) Dare's alleged confidential information; and (ii) D1's medical condition. I agreed to these requests on the basis that, in my judgment, with respect to (i) there was a strong *prima facie* case that the material which would be discussed was confidential to Dare and would cause damage if it was publicly aired. With respect to (ii), it was clear to me that the medical information went to the heart of D1's right to private life under Article 8 of the European Convention on Human Rights. In respect of both sets of information, I considered that a fair trial could only be ensured by holding parts of the hearing in private, and this outweighed the open justice principle on the very specific facts of this case.

4. At trial, I also made a number of restricted reporting orders, prohibiting the publication of very specific information that had inadvertently been mentioned in the public hearing regarding aspects of Dare's alleged confidential information and D1's confidential medical information.

5. During the trial, I heard evidence from Ayman Rahman, Dare's Chief Executive Officer and one of its founders, and Jonathan Ooi, Dare's Chief Investment Officer and Head of Trading and another one of Dare's founders. The Defendants gave evidence on behalf of themselves. The Court also heard evidence from four medical experts.

6. I did not hear evidence from Thomas Law, another former Senior Trader who had resigned from Dare at around the same time as D1. Dare also issued legal proceedings against Mr Law, and a speedy trial was ordered to commence on 20 January 2025[2]. I

[1] Strictly speaking, employment may be with another entity within the Onyx Group of companies – Axis Ltd. In this judgment, I will refer generically to Onyx whenever I am discussing a company within the Onyx Group, including Axis Ltd.

[2] I understand that the case has settled. I have not been notified of the terms of any settlement agreement. The fact of settlement has no bearing on the issues that I am asked to determine in these proceedings.

heard some evidence about Mr Law, and will be required to make some findings about his conversation with D2 on 8 May 2024 at the *Oka* restaurant, and whether or not D2 sought to solicit Mr Law to work for Onyx.

7. As I will explain, I have found that some of the information that Dare has sought to protect as confidential is rightly to be treated as confidential. So as to safeguard the confidentiality of that information, I shall refer to it generically in this judgment (and remove specific references from quoted documents) and will provide more detail in a short confidential annexe. I will also produce a confidential annexe which sets out more details of D1's medical condition and the evidence that was presented to the Court about it.

Approach to evidence

8. The Court was provided with voluminous written evidence. The Court also heard from each of the key actors over a period of days. I consider that each of the witnesses tried to be helpful to the Court and gave truthful and reliable evidence on most of the matters about which they were asked. For each of them, however, there were aspects of their evidence which was not reliable. As a result, contrary to the submissions of the parties, I do not automatically prefer the evidence of Dare's witnesses or that of either of the Defendants whenever there is a dispute between them with respect to a particular event or matter.

9. To give a flavour of some of the difficulties the Court had with the truthfulness or reliability of each of the witnesses, I will set out some examples. There were occasions when their oral evidence flew in the face of contemporaneous materials written by them or by third parties. For instance, Mr Ooi was asked questions about the mental health of traders at Dare, and in particular the email from Tris Murley (Dare's Performance Manager) dated 3 December 2023 which described Mr Murley's concerns about traders' mental health. Mr Ooi said in evidence that what was being described related only to the period following D1's resignation. That was plainly wrong. Whilst it may be the case that matters got worse after D1's resignation, the email from Mr Murley was clearly referring also to the period before D1's resignation. Similarly, Mr Rahman's evidence about whether or not he had used the term "partnership" with the Defendants when discussing a new arrangement for them in early 2021 was not reliable, as it was directly contradicted by a document that was disclosed by Dare, and produced to the Court, on day 9 of the trial (discussed further at paragraphs 35-39 below).

10. There were occasions when seemingly important evidence was provided to the Court which ought to have been included in their extensive and carefully crafted witness statements raising doubts as to its reliability. There were occasions when witnesses did not recall certain events or conversations. I found that this was defensive and was intended to conceal potentially harmful evidence from the Court, rather than a genuine expression of a failure in memory. Whilst I do not doubt that witnesses could not recall the detail of every conversation or meeting, there seemed to be an element of selectivity: remembering information that was thought to be helpful to one's case. This was especially the case with D1 who repeatedly said that he could not recall the content of conversations that he had with John Beckwith, the Chief People Officer of Onyx, but could remember details of other matters that occurred around the same time.

11. D2 belatedly acknowledged that he had deliberately deleted certain evidence -- emails from Mr Beckwith -- which had been drafted for D2 to send on to Dare in response to various requests or communications. D2 admitted that he had been requested to delete these emails by Mr Beckwith. This was presumably done so as to conceal Mr Beckwith's involvement in that correspondence if litigation did transpire. D2 also allowed his solicitors to give a false impression as to what happened to those emails when asked specifically about them in pre-trial correspondence with Dare's solicitors: Allen & Overy LLP (now A&O Shearman). The fact that D2 had done this meant that the Court was alive to the possibility that other relevant correspondence may have been deleted, and that other aspects of the evidence may not be totally reliable.

12. D2 had also allowed his solicitors to give a false impression to Dare's solicitors in their response to the letter before claim sent on 11 June 2024. In that letter, Fox Williams, the solicitors for D2, wrote that "Since his resignation, our client has not spoken to either Mr Soliman or Mr Law (nor any other employee of Dare) about his resignation from Dare or his plans for future employment". This was plainly untrue, as D2 had had the conversation with Mr Law at the *Oka* restaurant on 8 May 2024. In cross-examination, D2 said that he had not seen the reference to Mr Law in the letter when it was shown to him by his solicitors, but only the reference to D1. This was not a credible response: the letter did not just refer to D1 and Mr Law, it referred also to "any other employee of Dare".

13. Both Defendants have suggested that they did not always set out their true feelings and thoughts in some of the pre-resignation correspondence with, in particular, Mr Rahman. They both stated that they hid their disappointment with, and on occasion opposition to, Mr Rahman's statements or activities so as not to upset him. I accept that this may have happened on occasion, but it was not always the case. Mr Rahman accepted in cross-examination that when discussing the Dubai venture (discussed at paragraphs 31-34 below), D1 told him that he no longer trusted him, and he accused Mr Rahman to his face of lying.

14. The Defendants sought to convey to the Court that they were scared of Mr Rahman. I do not find that this was how they viewed Mr Rahman during the period before their resignations from Dare. Overall, the evidence demonstrated that the Defendants had a good relationship with Mr Rahman. The numerous exchanges between them that were seen by the Court were friendly. I accept that Mr Rahman did raise his voice on the trading floor, and had the reputation of being something of a "warrior" when trading, but he was not alone in shouting on the trading floor. There was evidence that the trading floor was a loud place. The shouting was generally directed at junior employees, and the evidence was that D1 participated in this. There was evidence that on one occasion Mr Rahman had shouted at and belittled D1, but this was an isolated incident. There was also an occasion, on 26 September 2023, when Mr Rahman had spoken negatively to the Senior Trader group about their performance (see paragraph 177 below).

15. After they handed in their resignations, however, I find that both Defendants believed that Mr Rahman would be somewhat vengeful towards them during and after their notice period. That was reflected in the exchanges that D2 had with Mr Beckwith and later with Mr Law, discussed further below. Their concern about what Mr Rahman might do infected some of their responses and reactions in the post-resignation period.

16. The Court was shown a website called "Glass Door" which included anonymous reviews of the merits of working at Dare. The postings that I saw did not reflect well on Dare, as Mr Rahman accepted when this was put to him. One review posted on 17 May 2024 (after the departure of a number of staff) stated that:

> "Extremely toxic and cult like environment (known to be by far the worst in the industry). Not only do people overtly shout for no reason at juniors, it is actually encouraged. People have had to "make juniors cry" to get promoted. The better you fit into this toxic environment the more you get rewarded . . ."

On the other hand, a review posted on 24 January 2024 stated that:

> "I get the impression that if you are a trader, it's a really great place to work".

I do not regard these materials as being of any real help in determining what the environment was for the Defendants themselves. It is clear that the reviews were written by, or in respect of, junior traders and did not reflect the reality of the working life and experiences of Senior Traders.

17. A great deal of the evidence that was shown to the Court involved messages between various key actors in the events that the Court was required to consider: both WhatsApp messages and messages on the Microsoft Teams platform. For the period up until the time of the Defendants' resignations, I regard these messages as, by and large, reflecting and representing the reality of the situation involving the various actors and their genuine motivations and intentions. These messages were sent as part of the free-flow of communications between the senders and recipients, without thought of litigation and that they would be subject to the forensic scrutiny of a trial. They were also not written by, or with the assistance of, lawyers or others who had an interest in a particular narrative being developed. That situation changed following the resignations, when the spectre of litigation loomed large in the minds of the key participants, and so I treat the content of some of that later correspondence with more suspicion.

Factual Background

18. It is not possible to set out all of the evidence that was presented to the Court, and it would not be proportionate to do so. Rather, I intend to set out the key background facts and then focus on some of the areas which are of direct relevance to the main issues of dispute between the parties and have a bearing on the relief that Dare seeks. The fact that other material is not referred to does not mean that it was not properly considered in producing this judgment.

19. The key background facts are as follows. Dare is a proprietary trading business operating in the global energy markets. It trades securities on its own behalf and uses its own money to make profits. The securities that it trades are derivatives of energy commodities. Dare is based in London. The Defendants were Senior Traders at Dare: D1 was Head of the Propane and Naphtha desk, and D2 was Head of the Crude Oil desk.

20. D1 commenced employment for Dare on 11 February 2019. He had previously been a bond trader with Santander Corporate and Investment Banking. Following the end of his employment at Santander and before starting work with Dare, D1 travelled the world extensively and enjoyed what he described as "a year abroad". D2 commenced employment for Dare on 19 February 2018. He had previously been an energy trader with EDF.

Fresh contracts of employment

21. On 1 January 2021, the Defendants entered into fresh employment contracts with a previous corporate incarnation of Dare – Vercer Limited. The new contracts of employment required the Defendants to give 12 months' notice of termination, and subjected them to post-termination restraints for 12 months, with (as I shall subsequently discuss) the possibility of the restraint period being reduced according to the terms of a "Garden Leave" clause.

22. The contracts contained express obligations on the Defendants:

> "to disclose to the Company full details of his own wrongdoing and any wrongdoing by any employee of any Vercer Group Company where that wrongdoing is material to that employee's employment by the relevant company or to the interests or reputation of the Company and/or any Vercer Group Company".

See clause 3(c)(6).

> "to keep the Company (and, where appropriate the board of directors and/or members of any other Vercer Group Company) fully informed of his conduct and of the business, finances, or affairs of the Company or any other Vercer Group Company in a prompt and timely manner".

See clause 3(c)(7).

23. Clause 10 of the contract imposed obligations if the Defendants were absent from work as a result of sickness:

> "(a) If at any time Employee is unable to attend work by reason of sickness, ill health, or injury, he is required to contact his Manager by 10:00am on the first day of absence. Employee should explain the reason for absence, give an estimate of his expected return date, and indicate any outstanding matters that require attention while he is not at work.
>
> (b) On Employee's return to work, he must confirm the dates and reason for absence in writing by completing a self-certification form. For absences of seven or more consecutive days (including weekends), Employee is required to provide a doctor's medical certificate and to carry on providing certificates to cover the whole period of sickness, ill health, or injury absence. Failure to document adequately an illness, injury, or accident when

> requested to do so may be grounds for disciplinary action, up to and including termination of employment.
>
> . . .
>
> (e) If Employee is absent from work due to sickness or injury, or at any other time at the reasonable request of the Company, the Company may require Employee to undergo a medical examination by a medical practitioner appointed by the Company at any time. By signing this Agreement, Employee consents to being examined by a doctor or specialist selected by the Company and Employee authorizes that medical practitioner to disclose to the Company any report or test results prepared or obtained as a result of that examination and to discuss with it any matters arising out of the examination which are relevant to Employee's employment".

24. The post-termination restraints were as follows:

> 12. CONFIDENTIALITY AND NON-DISCLOSURE
>
> (a) Employee acknowledges that by virtue of this Agreement and Employee's employment with the Company, Employee has been or will be exposed to or has had or will have access to confidential and proprietary information regarding Vercer and the Vercer's Group's business, all of which are proprietary to Vercer and the Vercer Group. This information includes various trade secrets and other highly confidential information of Vercer and the Vercer Group that is not in the public domain, including, without limitation, (1) marketing and business development methods and plans, (2) any financial information relating to Vercer and/or the Vercer Group, (3) Vercer and/or the Vercer Group investor and other client lists, (4) information relating to existing and prospective brokers, market makers and other intermediary and trading counterparties, (5) confidential information received from prospective brokers, market makers and other intermediary and trading counterparties, (6) software, databases, financial models, trading tools, formulae, methodologies, and related technology used by Vercer and/or the Vercer Group in their business, (7) compensation and employment information regarding Vercer and/or Vercer Group employees or contractors, (8) targeted revenue opportunities, (9) information related to access to key brokers, market makers and counterparties, (10) information relating to or constituting source code for front end systems, information relating to technical connections to exchanges at which Vercer and/or the Vercer Group conducts business or is seeking to do business, structures of Vercer and/or the Vercer Group's internal network connections between servers and computers, and database management techniques and protocols, and (11) the historical performance return of any fund or entity of Vercer or the Vercer

Group, whether held in hardcopy, electronic or other form (all of the above are collectively referred to herein as "Field Materials").

. . .

13. POST-TERMINATION COVENANTS

(a) Employee acknowledges that by virtue of this Agreement and Employee's employment with the Company, Employee has or will become familiar with Vercer's and the Vercer Group's Field Materials, all of which are highly confidential and proprietary to Vercer and the Vercer Group. Employee further acknowledges that Vercer and the Vercer Group have expended substantial time and resources in the development of their Field Materials, that Vercer and the Vercer Group have a protectable business interest in their Field Materials, that Vercer and the Vercer Group have taken reasonable and appropriate precautions to protect the confidentiality of the Field Materials, and that if the Field Materials were to be obtained by a competitor of Vercer or the Vercer Group, it would materially and irreparably diminish Vercer's and the Vercer Group's competitive advantage. Additionally, Employee acknowledges that Vercer and the Vercer Group have expended substantial time and resources in the development and maintenance of relationships with brokers, market makers and other intermediary and trading counterparties and other client relationships, and in the recruitment, development, and training of their employees, consultants and contractors and Employee will acquire personal knowledge of and influence over such brokers, market makers and other intermediary and trading counterparties and the employees and contractors of, the Company and Vercer Group.

(b) In this paragraph 13, the following expressions have the meanings set out below:

"Prospective Restricted Contact" means any person who is acting or might act in the capacity of a broker, market maker or other intermediary or trading counterparty to Vercer or any Vercer Group Company to whom Vercer or any Vercer Group Company has offered to supply services or has provided details of the terms on which it would or might be willing to supply services or has had any negotiations or discussions regarding the possible supply of services;

"Relevant Period" means the period of 12 months prior to the Termination Date; and

"Restrictions Payment" means a sum accruing during the Restrictions Payment Period at the annual rate equal to the yearly base salary payable under clause 5 as at the Termination Date;

"Restrictions Payment Period" means the period between the Termination Date and the expiration of the restrictions in paragraph 13(c), having regard, in particular, to the effect of paragraph 13(d);

"Restricted Contacts" means any person acting in the capacity of a broker, market maker or other intermediary or trading counterparty to Vercer or any Vercer Group Company;

"Termination Date" means the date Employee's employment terminates for any reason whatsoever.

(c) In recognition of Vercer's and the Vercer Group's efforts to protect their legitimate business interests in the Field Materials, relationships with Restricted Contacts, Prospective Restricted Clients and valued employee and consultant relationships and in recognition of the Restrictions Payment, Employee covenants and agrees that he will not, directly or indirectly, for his own account or for any other person, whether as a director, employee, agent, consultant, or otherwise, during the course of Employee's employment with the Company and:

(i) for the period of twelve (12) months following the Termination Date, establish, carry on, be engaged, concerned, interested in, or employed by any business which is in competition or about to be in competition with the business of Vercer or the Vercer Group (other than the passive holding of not more than 5% of the issued shares of a company which is listed on a recognized stock exchange), and with which Employee was materially involved at any time during the Relevant Period or in relation to which he had access to Field Material;

(ii) for the period of twelve (12) months from the Termination Date canvass or solicit (or attempt to canvass or solicit) in competition with the business of Vercer and/or any Vercer Group Company with which Employee was materially involved at any time during the Relevant Period the investment business of (or introduced by) any person who was at any time during the Relevant Period, a Restricted Contact and with whom during the Relevant Period Employee had material dealings and/or in relation to whom he had access to Field Materials;

(iii) for the period of twelve (12) months from the Termination Date canvass or solicit (or attempt to canvass or solicit) in competition with the business of Vercer and/or any Vercer Group Company with which Employee was materially involved

at any time during the Relevant Period the investment business of (or which might be introduced by) any person who was at any time during the Relevant Period, a Prospective Restricted Contact and with whom during the Relevant Period Employee had material dealings and/or in relation to whom he had access to Field Materials;

(iv) for the period of twelve (12) months from the Termination Date in competition with the business of Vercer and/or any Vercer Group Company with which Employee was materially involved at any time during the Relevant Period deal with any person who was at any time during the Relevant Period, a Restricted Contact and with whom during the Relevant Period Employee had material dealings and/or in relation to whom he had access to Field Materials;

(v) for the period of twelve (12) months from the Termination Date in competition with the business of Vercer and/or any Vercer Group Company with which Employee was materially involved at any time during the Relevant Period deal with any person who was at any time during the Relevant Period, a Prospective Restricted Client and with whom during the Relevant Period Employee had material dealings and/or in relation to whom he had access to Field Materials; and/or

(vi) for the period of twelve (12) months from the Termination Date employ, engage or entice away from (or attempt or assist to employ, engage or entice away from) Vercer and/or any Vercer Group Company any person who was during the Relevant Period, an employee, director, officer, agent, partner, contractor, or consultant of Vercer and or any Vercer Group Company, whom Employee managed, with whom he had material dealings or worked closely at any time during the Relevant Period and/or who is in possession of Field Materials and is likely to be able to assist or benefit a business in, or proposing to be in, competition with Vercer and/or any Vercer Group Company.

(d) The periods for which the restrictions in paragraphs 13(c) apply shall be reduced by any time Employee spends on Garden Leave immediately prior to the termination of his employment.

(e) Employee acknowledges and agrees that the Company and the Vercer Group's business is global in nature, that the Restricted Contacts and Prospective Restricted Contacts served or who might be served by the Company and the Vercer Group are not dependent on the geographic location of personnel or the businesses by which they are employed, and that the Field Materials could be wrongfully disclosed and/or used to the irreparable detriment of the Company and the Vercer Group's business from any geographic location in the world with electronic access to exchanges that make markets in in any

> product, security, commodity, derivative, or contract during the eighteen (18) months preceding the date of determination.
>
> (f) Employee acknowledges that he has received sufficient consideration for the restrictions set forth in this paragraph 13 by virtue of entering into an employment relationship with the Company on the terms and conditions set forth in this Agreement (including and in particular the consideration offered in the Restrictions Payment and the period of notice to which he is entitled under paragraph 6(a) and he agrees that each of the restrictions in paragraph 13(c) is reasonable (including having regard to the ability of Employee to earn a living) and extends no further than is necessary for the protection of the legitimate business interests of Vercer and the Vercer Group.
>
> (g) Each of the restrictions contained in paragraph 13(c) constitutes an entirely separate and independent covenant. If any covenant is found to be invalid this will not affect the validity or enforceability of any of the other covenants.
>
> (h) If Employee applies for or is otherwise offered employment or an engagement, appointment, or consultancy at any time during his employment, Employee will immediately inform the Company of such offer of employment or engagement and Employee will provide a copy of this paragraph 13 to the person or entity that he has applied to or has made such offer.
>
> . . .
>
> (I) Provided that and for so long as Employee complies with the terms of paragraph 13, the Company will pay to Employee the Restrictions Payment in respect of the Restrictions Payment Period . . ."

25. The "Garden Leave" provision was as follows (clause 7):

> "(a) Following service of notice to terminate Employees employment by any party, or if Employee purports to terminate his employment in breach of contract, the Company may at its discretion require Employee not to perform any services (or to perform only specified services) for the Company until a specified date or the termination of Employee s employment ("Garden Leave").
>
> (b) During any period of Garden Leave, the Company shall be under no obligation to provide any work to, or vest any powers in, Employee who shall have no right to perform any services for the Company. The Company may assign Employee other duties and may appoint another person to carry out Employee s duties in substitution for him. Employee shall continue to receive his basic salary and all contractual benefits in the usual way, shall

> remain an employee of the Company and be bound by the terms of this Agreement, particularly in relation to any duties of confidentiality and fidelity. Employee must not be employed by or provide services to any third party during any period of Garden Leave.
>
> (c) During any period of Garden Leave, Employee shall not, without the prior written consent of his manager, attend his place of work or any other premises of the Company; nor, without the prior written consent of his manager, contact or deal with (or attempt to contact or deal with) any officer, employee, consultant, broker, market maker, other intermediary or trading counterparty, supplier, agent, distributor, shareholder, adviser, or other business contact of the Company or the Vercer Group; shall provide such assistance as required to effect an orderly handover or his duties and responsibilities to the best of his ability; and (except during any periods taken as holiday in the usual way) ensure that his manager knows where he will be and how he can be contacted during each working day, shall make himself available to deal with requests for information, and shall comply with any written requests to contact a specified employee, officer or consultant of the Company at specified intervals.
>
> (d) Employee acknowledges and agrees that the exercise by the Company of any of its rights under this clause 7 is fair, reasonable and necessary to protect the legitimate business interests of the Company and Employee anticipates, without prejudice to the other terms of this Agreement, that the Company is likely to exercise such rights".

26. The fresh contracts of employment were not foisted on the Defendants. The Defendants were provided with time to consider them in draft. Among other things, D1 asked further questions about the post-termination restraints and the interaction with the notice period. In an email exchange on 8 February 2021, D1 asked whether Dare could confirm that "if I were to leave the firm, I can definitely work somewhere else from 12 months after my notice is handed in? It's not totally clear if it's 12 months after the notice is given, or if it's 12 months after you stop working (ie. If one is made to work their notice period)"." Mr Rahman's response was "Our intention would be to keep leavers out for only 12 months". This response was somewhat ambiguous, but D1 has not pleaded that there was any misrepresentation made by Dare when the contract of employment was signed. As I will explain, on its face the contract of employment allows Dare to require staff to work out their notice and then stay out of the market for a further 12 months, assuming that the post-termination restraints are enforceable.

The Defendants' roles at Dare

27. The Defendants headed their respective trading desks and set the gameplan for the trades carried out on those desks. They were successful traders and were very well remunerated for their efforts. They were an important part of Dare's business, being personally responsible for a significant portion of Dare's revenue.

28. At the date of D1's resignation, there were two other significant traders on the Propane and Naphtha desk: Georgi Belinchev who was D1's 'number two', and Rowan Nijjar, who was in charge of trading the Naphtha book. There were also two Associate Traders and two other employees working on the desk. D1 made the majority of the trading decisions on Propane. D1 had no decision-making authority with respect to hiring and firing staff who worked on the desk. D1 did not know the specific bonuses or salaries of those working on the desk. He occasionally carried out appraisals and managed performance of traders working on his desk, and had some participation in interviewing candidates for roles at Dare. D1 had no involvement in the formal or structured training of staff, but acknowledged in evidence that staff who spent time on the desk would learn from him and I have no doubt that he sought to provide them with on-the-job type training.

29. In the period before his resignation, D1 was in discussion with Mr Rahman about trading a different product. D1 attended a dinner hosted by the exchange for that product and was introduced as the future of Dare in that product.

30. D2 worked with four junior traders on the Crude Oil desk. They would rotate individually onto the desk, and he provided them with day-to-day on the job training. This was evidenced by a WhatsApp message sent by D2 to Mr Beckwith of Onyx on 15 February 2024 (two days after D2's resignation) in which he referred to his having "trained to senior associate or associate level employees on my desk Amir and Erman". D2 was not involved, however, in hiring or firing decisions on these junior traders, and did not know their individual remuneration packages.

The possibility of Dare opening an office in Dubai

31. In 2023, a number of Senior Traders proposed to Mr Rahman that Dare should open an office in Dubai. Dare spent time and money in exploring the logistics of the move and drafting relevant contracts of employment. The Defendants were both interested in the proposal, with D2 being especially keen. D2 and his wife even took a number of concrete steps towards relocating to Dubai in anticipation of the move: they turned down school places in London for their daughter and D2's wife resigned from her job as an in-house lawyer.

32. Ultimately, the Senior Traders did not agree to sign up to the fresh contractual arrangements which they regarded as unfair and disadvantageous to them as compared to their arrangements in the London office. From Dare's perspective, the proposed arrangements for Dubai were necessary to provide similar protections to what they could achieve via the non-competition restraints in senior traders' contracts. I am told that the Courts in Dubai are less willing to enforce non-competition covenants than domestic courts.

33. The Defendants blamed Mr Rahman for what had taken place. D1 said that Mr Rahman had actively encouraged him to go to Dubai, and that Mr Rahman had lied about the contractual arrangements that would be put in place. D2 said that Mr Rahman had changed his mind about the move to Dubai, having originally been supportive of it. Mr Rahman said in evidence that whilst he had been content for the Senior Traders to move to Dubai, he did not want the venture to introduce unnecessary risk to the business.

34. It is not necessary to make findings about what actually happened. What is relevant to this case is that both Defendants were clearly disappointed that the move to Dubai had not taken place, they blamed Mr Rahman for it, and it did lead to a loss of trust in Mr Rahman. It also made both Defendants feel less wedded to Dare, so that when a generous offer from Onyx to work in Dubai was dangled before them, they seized it.

Growth Share Plan

35. A further cause of disappointment for D1 was the Growth Share Plan that Dare presented to him in August 2023. D1 told the Court that he had been promised by Mr Rahman that he would be made a partner and would get a significant equity stake in the business. The Growth Share Plan that was produced by Dare did not meet D1's expectations and, after taking legal advice, he did not sign up to it.

36. In his witness statement, Mr Rahman had said that

> "Starting in around 2020/2021, I wanted to develop a scheme that would reward and incentivise the most senior employees of Dare, and encourage them to stay with us for the long term. I began to discuss with senior staff the idea of introducing a management incentive plan. At this stage, it was just an idea, and entirely separate from the employment contracts which were being varied around that time".

He had also said that

> "We had not promised anyone anything. I was not required to introduce the scheme at all".

37. In cross-examination by Mr Adam Solomon KC, Mr Rahman denied that he had promised any form of partnership to D1, and that they had only discussed equity allocation.

> Q. We have talked about the new contract in 2021, the one that is extant now. The reason he entered that is because he was promised by you that he would be made a partner in Dare, isn't it? That is the basis?
>
> A. No.
>
> Q. The Soliman agreement in 2021 doubled the length of the non-compete, didn't it?
>
> A. Correct.
>
> Q. He understood that he would get a significant equity stake at some point in Dare, didn't he, and you knew that's what he understood?
>
> A. No, I did not.
>
> Q. He had consistently talked about being made a partner?

> A. I don't agree.
>
> Q. You don't agree that he had?
>
> A. I don't agree that he had consistently spoken about being a partner, no.
>
> Q. He had mentioned being a partner from time to time and you were aware of that?
>
> A. Partnership was never a point of discussion.
>
> Mr Rahman was asked "The reason that he said partner was because that's the way it was referred to by him, isn't it?" to which Mr Rahman answered: "That is the way Stephen referred to it, yes".

The cross-examination continued:

> "Q. And you know he referred to it as the partnership?
>
> A. If he referred to it to me, then I will be telling him it's not a partnership, it's an equity allocation or growth shares.
>
> Q. All right, I'll ask Mr Ooi why he didn't say that. But I am suggesting you didn't ever say that to him and he was led to believe it was partnership?
>
> A. I don't agree".

38. The implication of Mr Rahman's evidence was that the term "partnership" was something that may have been used by D1, but was not something that he had referred to. This evidence was contradicted, however, by a document disclosed on day 9 of the trial, after Mr Rahman had given evidence. That document made clear that Mr Rahman had himself referred to the proposed arrangement as a "partnership". The disclosure was of a WhatsApp message from Mr Rahman to senior traders dated 14 January 2021, in which he stated:

> "you'll shortly be receiving an email from Steve Burden with your amended contracts as discussed in our catch up last year. Shouldn't be anything contentious or surprising, the only changes being the notice period and the option to draw from the bonus. Any questions let me know. *Once this is done, we can move forward to structuring the partnership deals*".

(emphasis added).

39. The WhatsApp message disclosed on day 9 does not substantiate the allegation that a "promise" was made that if D1 signed the new contract of employment he would be made a partner. Nevertheless, it does demonstrate a close relationship between the two matters and certainly explains why D1 felt let down by Mr Rahman when he saw what was ultimately offered to him in the summer of 2023, making him less wedded to Dare

and more amenable to Onyx's generous offer. D2 was not positive about the Growth Share Plan, but did sign up to it in October 2023.

The Defendants' resignations

40. I shall set out in some detail the circumstances surrounding and subsequent to the Defendants' resignations as these are key to the various issues that the Court needs to resolve.

(a) D1's resignation

41. On 20 November 2023, D1 resigned, giving one year's notice as he was required to do under the contract of employment. Prior to his resignation, D1 had been offered a position with Onyx and had negotiated a contract of employment and indemnity agreement.

42. D1 had been in discussion about working for Onyx since 19 September 2023. On that date, D1 was in Singapore attending a conference on behalf of Dare's Direct Sales team. When he was there, D1 had a conversation with a head-hunter: Ms Sandhu. Between that date and 20 November 2023, D1 discussed the possibility of joining Onyx with Omar Kayaam (Co-Founder of Onyx), Mr Beckwith (Chief People Officer), Luke McDermott (a senior trader) and Greg Newman (another Co-Founder and Onyx's Chief Executive Officer). Onyx competes with Dare, and its founders had previously worked with Mr Rahman earlier on in their careers. There was a degree of rivalry between the two businesses.

43. In cross-examination, D1 stated that he had made it very clear to Ms Sandhu and others that he would not be discussing any of Dare's information with Onyx. I accept that D1 did not share information about Dare with Onyx at this time. Similarly, following his resignation, although it is clear that D1 discussed and shared with Onyx his exchanges with Mr Rahman, there is no evidence that he disclosed any of Dare's confidential information to Onyx.

44. On 19 November 2023, D1 was sent an offer letter from Onyx. It was explained that the notice period would be 3 months on either side, and that the post-termination restraints would be for 6 months. The contract of employment contained a very generous remuneration package, with a large sign-on bonus and a substantial earn-out bonus. D1 was also provided with an indemnity from Onyx. The indemnity agreement would cover any costs or award incurred by D1 in respect of a claim brought by his former employer in relation to a breach of his employment contract. This would not apply to any claim where the conduct or behaviour of D1 had not been expressly approved or authorised by Onyx in writing. The indemnity was conditional on D1 commencing employment with Onyx on 1 January 2025, unless Onyx did not set up trading operations in Dubai, but D1 was ready, willing and able to commence employment there on that date.

45. The indemnity was subsequently renegotiated on 29 December 2023, amending the commencement date to 1 January 2026. This was required by D1 as a result of the position taken by Mr Rahman that he wanted D1 to work during his notice period. In cross-examination, D1 accepted that the amendment provided him with an element of relief. He stated that: "It relieved the stress of the financial exposure".

46. When D1 met with Mr Rahman on 20 November 2023 to inform him of his resignation, he was tearful and emotional. He explained to Mr Rahman that he needed some personal time and a change. This was reflected in the message that Mr Rahman sent to Mr Ooi shortly after D1 had resigned. Mr Ooi asked what D1 had said about his reason for resigning, and Mr Rahman replied: "Personal reasons, health reasons, needs a change… He was in tears". Mr Rahman said to Mr Ooi that he had asked D1 if he was going to Onyx; D1 said that he could not say, but Mr Rahman would not be surprised if he was. Mr Ooi replied: "would make sense to go there and take over propane in dubai". Mr Ooi also said that "Interesting that he was in tears, sounds kinda genuine". Mr Ooi told Mr Rahman to get the solicitors ready to enforce the non-compete in Dubai. Mr Ooi expressed surprise that D1 was "so emotional about it", to which Mr Rahman said "I think he just genuinely likes us". This perception of D1 was, in my judgment, a correct assessment of D1's views towards Dare, and towards Mr Rahman and Mr Ooi as individuals.

47. Mr Rahman and Mr Ooi discussed how to deal with D1's departure. There was no suggestion that D1 would be back working on the Propane and Naphtha desks. Mr Rahman said that they had 3 staff members who had "enough knowledge to know what to do". Mr Rahman expressed the view that "We are gonna be fine. Probably gonna be hard work . . . but we'll figure it out". In a further exchange on 6 December 2023, Mr Rahman stated that "Floor is fine . . . We are gonna turn this into something good".

48. Following their meeting on 20 November 2023, D1 sent an email to Mr Rahman, thanking him for "being so gracious and understanding" in their meeting, and thanking him "for the last five years at Dare. It has been an absolute pleasure being part of the team". He attached a letter of resignation.

49. D1's resignation letter stated as follows:

> "I refer to our meeting at 10:30 this morning when I informed you I had received an offer of employment. For the avoidance of doubt, I confirm that I have also provided the offeror with a copy of paragraph 13 of my contract of employment, in accordance with the requirements of paragraph 1 3(h) of the contract. I told you in the same meeting that I had decided to accept the offer.
>
> I really appreciate the gracious way you responded to my news. In particular, I am grateful for your understanding that I have made my decision for a mixture of reasons after really careful thought and I cannot be persuaded to change my mind.
>
> This letter is my formal written notice to terminate my employment. Under paragraph 6(a) of my employment contract I am required to give the company 12 months' written notice to terminate, therefore my last day of employment will be 20 November 2024.
>
> As you know, apart from doing the requested handover this morning before going home, I have not spoken to any colleagues about my decision other than you and Jono (who, with your permission, I called after I left the office), nor have I said

> anything to any brokers. As you requested, if anyone contacts me in the next couple of days to ask about my situation, I will simply say that I am taking some time off.
>
> I do want to agree as soon as possible what Dare would like me to say in response to the inevitable questions about my resignation. As I said in our meeting, I am keen that my decision is not seen as reflecting badly on Dare.
>
> I look forward to hearing from you regarding next steps.
>
> Like you, I sincerely hope that we will remain friends and thank you once again for the past five years at Dare".

The reference to "handover" was to a "risk handover" that Mr Rahman asked D1 to do as an immediate thing. The reference to remaining "friends" was, in my judgment, a genuine reflection of how D1 felt towards Mr Rahman.

50. Mr Rahman responded to the resignation letter on 22 November 2023. He explained that he was

> "very sorry that you have taken the decision to resign, but I am grateful to you for taking the time to inform me in person. I appreciate that the meeting was emotional for you and this was not a decision you have reached lightly.
>
> You have been a highly valued and important employee during your time with Dare, and that continues to be the case as you move into your notice period. I note that you have said that you cannot be persuaded to change your mind about your decision to leave Dare, and I will respect that and not ask you to stay, however, there is a lot of interesting work that you can do over the next 12 months, whilst you are serving your notice period.
>
> Please do take the rest of this week off, but we would like you to come into the office on Monday (27 November 2023), so that we can discuss what the next 12 months will look like and what work you can do that that will be beneficial to both you, and Dare".

The letter went on to remind D1 of his contractual obligations to Dare, and that he remained subject to all of his "fiduciary duties as a senior employee of Dare".

51. Mr Rahman met with Mr Murley to discuss D1's resignation. Mr Murley gave Mr Rahman an update as to the capabilities of the various members of the "Light Ends Team" (the description of those working on the Propane and Naphtha desk), and gave some advice as to how they should be spoken to by Mr Rahman. Mr Murley suggested that the matter should be

> "frame[d] as a "1 year intense preparation before going to war". Need them to fully believe they can dominate the LE market

> before Stephen gets back and crowd him out (punish him even?)".

It was clear from this remark that Mr Murley did not anticipate that D1 would be returning to his trading job on the Propane and Naphtha desk during the notice period. It also reflects the rivalry between Dare and Onyx. Mr Rahman responded to say that he would speak to the members of the team one-to-one "because I feel that this impacts them all slightly differently." Mr Rahman told Mr Murley that he was "genuinely excited" about the way forward with the team.

52. D1 met with Mr Rahman on 27 November 2023. In advance of that meeting, Mr Rahman had written to D1 to say "just to be clear, you are still a Dare employee and owe all the same duties - including attendance at work". At the meeting, Mr Rahman requested D1 to attend the office as normal the following day. D1 did not commit to doing this and indicated that he had medical appointments booked over the course of the coming week. Mr Rahman said he could take time off to attend any health-related appointments.

53. At their meeting, Mr Rahman explained the tasks that he wished D1 to perform during the initial stages of the notice period and set them out in writing later that evening in an email:

> "The initial tasks that I would like you to carry out, are:
>
> Propane Desk tasks
>
> 1. Prepare full write-ups of all the Propane strategies that Dare has been pursuing. This should include a full summary of all the strategies you use on the Propane desk, as well as the thinking and reasoning behind each strategy.
>
> 2. Prepare a breakdown of the [redacted] statistical analysis method and the reasoning behind that.
>
> 3. Prepare a summary of the Propane brokers you work with, including who they are, the interests they manage, their behaviour and anything that it would be helpful to know from an inter-personal perspective.
>
> [Other sector] Desk tasks
>
> 4. Research marketing strategies for the [exchange] for the following product sectors: [6 sectors identified]
>
> 5. The marketing strategies should include:
>
> 1. Inter-dealer broker and category 1/2/3 broker analysis and recommendations for coverage and interaction.
>
> 2. Direct trading opportunities.
>
> 3. Broker screen analysis.

4. Daily volume by hour (busy periods etc analysis).

5. Volatility of each product and any correlations.

6. Hedging strategies / large ticket hedging strategies.

7. [exchange] select bid / offer vs broker market analysis.

8. Settlement methodology.

9. Main sources of data - what should be used i.e. Bloomberg, broker screens, tray port etc.

10. [confidential] methodology including historical ticker analysis.

11. Any possibilities for inter product arbitrage.

12. Any opportunities for financial vs physical arbitrage.

13. Cross exchange arbitrage opportunities.

14. [redacted trading strategies].

15. Analysis of market participants.

16. Fundamental analysis of main price drivers.

17. Proprietary trade analysis with regards to high and low levels on all traded structures within each product.

18. Any seasonality / [redacted] price structure analysis.

19. Tail risks of trading each product.

20. Recommendation for book structure including inter product spreads.

3. As discussed, I suggest that we sit down each four-month period to discuss and agree your tasks for the next four-month period. Some other tasks that you could do later in your notice period could be leading the Sales Desk strategy and potentially trading on another desk."

It can be seen that there was no intention for D1 to return to work on the Propane and Naphtha desk, although there might be the possibility that D1 would trade on another desk later in the notice period. The reference to "the Sales Desk strategy" was to a matter that had been discussed at their meeting. According to the script prepared for the meeting, Mr Rahman told D1 that "A further opportunity I see is leading up the sales desk strategy — I see you being able to turn this side of Dare around and it will also allow you to continue to work with counterparties in the market. I see this as a big opportunity".

54. D1 described these tasks as "mundane" and said that he did not have the skill sets or experience to perform them. The tasks may have been somewhat dull for D1 to perform, especially when compared to trading on the markets. Nevertheless, I find that D1 had the skill sets and/or experience to perform them. D1 was well educated (he had gained degrees in Architecture and Mathematics) and he described his approach to the markets as being "analytical". Much of what D1 was being tasked to do required him to think analytically about different markets.

55. In his email of 27 November 2023, Mr Rahman also made reference to the fact that D1 had not taken his work phone home with him. This was subsequently sent to his home by Dare. Mr Rahman concluded the email by saying:

> "Good to see you this afternoon - and sorry to hear that you haven't been feeling well. Hopefully you'll feel a bit better today as we met just after you had flown back from Berlin".

56. D1 responded to this email a couple of hours later, stating as follows:

> "As I said at the end of our meeting this afternoon, I do need to take a bit of time out for the sake of my [redacted]. I have told you more than once recently that I am totally exhausted. If there was any doubt about that, my emotional reaction when I met with you last Monday to let you know I had received an offer was a genuine symptom of my level of exhaustion and stress. My taking a weekend break in Berlin was intended to help me relax and unwind a bit. I think your comment about that is unwarranted and if I am honest I feel under even more pressure now.
>
> As I told you this afternoon, I do have some medical appointments booked this week and apart from these I do also need to take a few days away from the office to try to feel better. You have always said that health comes first so I trust you will understand. I will keep you updated but it is my intention to take the rest of this week as sick leave. I will be grateful if you will let HR know so that the absence is properly recorded".

57. On 3 December 2023, Mr Murley emailed Mr Ooi, providing him with a debrief of what had taken place in the past two weeks when Mr Ooi had been away on holiday. Under the heading "Team psychology", Mr Murley wrote:

> "I doubt I'm saying anything ground breaking here, but despite external appearances, most of the ELT are feeling vulnerable and, for want of a better work, pretty terrified right now. The majority of them share one particular trait: the pressure they put on themselves. This outweighs anything which the company has put on them, and I have had to mandate holiday for the majority of them at one time or another as they visibly approach breaking point. As an aside, Whoop data proving invaluable here, and already I have intervened to address issues with individuals.

> The pressure they feel to perform pushes them into unhealthy behaviours, neglecting self-care, and believing they are accountable for far more than reality dictates. They also have a belief that admitting vulnerability is a weakness which will delay their progression. On the last point, I have managed to break through this barrier with them all, however I don't believe they fully admit their weaknesses to anyone else outside of myself and Holly, so one to always be aware of.
>
> This naturally permeates through the junior ranks to an extent. However, with the new structure, I cannot understate the significance of the opportunity to make changes to the culture and materially improve performance.
>
> With the level and amount of talent in the team, we can now focus on ensuring every trader is doing appropriate hours and has several opportunities to reset during the week. Essentially, I want them to diverge from the belief that the best way to progress is to pull a 14-hour day without a break, 5 days a week. Optimising how they work will improve performance. The corollary to this is that in order to have these benefits, they will need to show the appropriate discipline and rigour in their roles. For the desk to be seen to have traders taking time off in the day or working shifts covering lates to allow others to leave early, they have to show that when at desk, they maintain the highest of standards".

The reference to Holly was to Holly Bosson. She was a counsellor who had been brought in to work with staff at Dare. It is clear from the evidence that staff at Dare, particularly traders, had experienced ill health from working excessive hours.

58. D1 had experienced periods of ill health himself as a result of working too hard for Dare. In an email dated 8 February 2021, D1 referred to Dare's holiday allowance, and said that "I think this needs to be addressed so people are able to/forced to take time off for mental health. I, for example, have taken very little time off in the last 2 years I've been at the firm and I'm exhausted!" There were also other occasions where D1 conveyed to Mr Rahman that he was suffering from working too hard. On 18 January 2023, for instance, D1 conveyed that he was suffering from "exhaustion", and Mr Rahman told him "to get some rest".

59. D1 did not return to work after his meeting with Mr Rahman on 27 November 2023. From 5 December 2023, his absences were covered by letters from his treating physicians. On 5 December 2023, the consultant treating D1's chronic condition (who I shall refer to as E) wrote "To whom it may concern" that "This patient has been known to me for several years. He has a chronic condition which is now significantly active and impacting on his health. I have advised him to avoid working on medical grounds for four weeks as from week commencing 4 December".

60. One month later, on 1 January 2024, D1 emailed Mr Rahman to say: "Unfortunately my symptoms haven't improved and my doctor has instructed me to take a further 4 weeks off. Please find the email from my doctor below. I will of course update you if there is any progress". The email from E, referred to by D1, was dated 29 December

2023. It stated: "Based on ongoing medical reasons, I have asked you to avoid working for a further four weeks as from and including 2 January". A formal note, on E's headed notepaper, was sent to Mr Rahman on 3 January 2024. This stated that:

> "Based on ongoing medical reasons I have asked you to avoid working for a further four weeks as from and including 2 January".

61. Following receipt of D1's email, Mr Rahman replied to say:

> "I am sorry to hear that you continue to be unwell.
>
> The letters you have provided from your doctor do not set out the actual reason for your absence — your doctor has only said that you have a chronic condition and that you are off for ongoing medical reasons. In line with Dare's sick leave policy, please could you provide a letter from your doctor which sets out details of the reason for your absence and when he expects that you will be fit to return?
>
> I am conscious that you have been working for Dare for almost five years and in that time you have only had 5 days off sick (and these were all over a year ago, in 2022), and now you have eight weeks' sick leave from the commencement of your notice and it is not clear what the reason for this is. I'm mindful that long-term sick leave is something that should be avoided, if possible, and therefore I am keen to see if there are any adjustments that Dare could make to enable you to start working again. Would it be possible (if you haven't already) to speak with your doctor about whether there would be any adjustments that Dare could make that would enable you to return to work (such as a phased return to work, reduced hours etc.) and provide a letter from him on this? If not, then we can arrange an Occupational Health referral for you."

The reference to 5 days of sickness absence was based on what was recorded on Dare's internal system. That was not accurate or totally reflective of D1's sickness absences, however, as some of these absences had been agreed by Mr Rahman directly and had not been recorded.

62. D1 responded by email sent on 5 January 2024. This stated that:

> "The letter I sent you on the 5th December does explain that I have a chronic condition and I have been seeing [E] for several years. You will also have seen that he is a [medical specialty]. . . . I will provide you with an update in due course when I have it and feel better. However, not for the first time, you have made insinuations to question whether or not I am ill. I think this is particularly unreasonable, not only because I have already made clear that it is neither warranted or appreciated, but because you appear to also be questioning the advice of a specialist doctor

> that has been seeing me for years. In any event, please appreciate that I am finding such repeated comments to be stressful to deal with in circumstances where I am already unwell, so I do hope that they will not continue to be repeated".

63. Mr Rahman responded by email on 8 January 2024 to say:

> "I, of course, had reviewed your doctor's letter of 5 December 2023 and I appreciate what it says — namely, that you have a chronic condition. Unfortunately, it says nothing further and you will appreciate that this isn't detailed enough for me to understand why you are off sick — and, also, whether you'd be able to do some work if Dare made adjustments to accommodate you.
>
> I am not questioning the advice of a specialist doctor — I just want to understand how this works with respect to ability to work. Would it be possible to speak to your doctor on this?
>
> I can ask HR to schedule an Occupational Health referral which may be simpler?"

64. In my judgment, Mr Rahman's correspondence with respect to this matter was totally reasonable. D1 had not had significant periods of sickness absence during his employment at Dare (even if the 5 days recorded on the system was not accurate). Mr Rahman was not aware of D1's "chronic condition". The tone of the messages was not hostile. Although it was inquisitive, that was appropriate given the paucity of information that D1 and his specialist were providing to Dare. Mr Rahman was justifiably seeking to understand if there were adjustments that could be made to the working arrangements so that D1 could return to work.

65. On 11 January 2024, D1 emailed a response. He stated that:

> "The condition I have is a [specific] chronic condition with symptoms that flare-up and are exacerbated as a result of being under stress.
>
> You will recall that in the weeks leading up to me handing in my resignation and at the time of resigning I explained that I was feeling mentally exhausted. My doctor has since asked me to take time off work to avoid my condition worsening. Accordingly, I am on sick leave.
>
> You will appreciate that it is, in itself, stressful to have to go back and forth on this issue when I have been advised to take time off.
>
> Thank you for your offer, but I am already seeing a consultant and specialist who is the appropriate person to be assisting me and so I do not need to see anyone else for this condition".

66. On 17 January 2024, D1 emailed Mr Rahman. D1 described the various tasks that he had been asked to perform during his notice period. D1 said that he understood that he was "currently on Garden Leave as defined by cl. 7(a) of my contract of employment", and asked for confirmation that he would be entitled to join any business that he liked after 20 November 2024. The contractual description of "Garden Leave" was not the same as the colloquial understanding of the term "garden leave", which is the situation when no work is performed by an employee during all of part of the notice period. It is clear that D1 was well aware that he had not been placed on "garden leave" as that term is colloquially used. On 2 April 2024, in an email to his tax advisor with whom he was engaging with respect to his plans to leave the United Kingdom, D1 stated that "I am still employed technically and will be until 20th November 2024 although I have not been in the office nor worked since I resigned on 20th November 2023. I am on sick leave while I am on my Notice period (*I have not been put on garden leave***)**. I have been in contact with my lawyers and my boss to discuss my sick leave but I have not done my usual job in the office nor online" (emphasis added).

67. On 26 January 2024, Mr Rahman responded to D1's email of 17 January 2024. He informed D1 that "my main concern is your health, and you being well enough to return to work. Please focus on getting better and taking all possible steps to improve your health so that you can start working again — even, as I said, with adjustments. That's why I asked if ok to go to OH — as that's the sort of thing they look at". Mr Rahman asked D1 to attend an OH (that is, Occupational Health) appointment as he was concerned about "the level of medical advice I have received to date". He told D1 that he was "excited about the work we can do together during your notice period and I'm keen to get started".

68. Mr Rahman then addressed legal matters. He explained that

> "You are not on garden leave. You have been on sick leave since 28 November 2023, and you continue to be on sick leave. You have not been placed on any form of leave by Dare".

Mr Rahman disputed D1's interpretation of the contract of employment stating that:

> "You appear to be suggesting that any direction to perform "specified services" during your employment automatically places you on garden leave. This is not correct — and I'm surprised you're making it, particularly whilst on extended sick leave.
>
> It is a ridiculous suggestion - you are still an employee of Dare, and you have a duty to follow reasonable instructions. Unsurprisingly, your contract requires you to perform all the necessary duties associated with your position, as well as "any other duties" assigned to you by Dare (clause 3(a)). The same clause says that you understand and agree that your duties and responsibilities may be changed from time to time, reasonably consistent with your skills, experience, and competencies.
>
> It is entirely normal, as an employee approaches the end of their employment, for them to be asked to do slightly different tasks

> (especially tasks relating to continuity, succession, and transition). But this does not mean that you are on garden leave.
>
> In any event, as you went on sick leave immediately following our meeting on 27 November 2023, you have not actually carried out any such services. Therefore, even on your own suggestion, you could not be on garden leave".

Mr Rahman asked D1 to confirm that he was not on "Garden Leave". He also asked D1 to confirm that he was bound by the post-termination restraints.

69. D1 responded to Mr Rahman on 30 January 2024, and provided him with detail of his health condition. He explained that he had seen a different consultant who had advised him to stay off work for 3 months, in the first instance, whilst he underwent treatment. D1 had met with a consultant (who I shall refer to as F) for consideration of a different medical condition on 22 January 2024. F wrote a letter 'To whom it may concern' on that date to say that D1 was unlikely to be fit for work for the next three months while he engages in the necessary treatment. F's letter said that it might be helpful for D1 to get away from his current situation which would include getting away from London.

70. The reference in F's letter to D1 needing to get away had been prompted by D1. Following the consultation with F, D1 contacted F's secretary to say that "One thing I forgot to ask is if the doctor approves of me travelling during my sick leave and if so, if she could write me a letter clarifying this so that I do not have any issues in the future with my current employer. Please could you ask her for me?". On the basis of this exchange, and other matters, Mr Goulding KC, representing Dare contended that F acted as an "advocate" for D1, insinuating that F's statements as to D1's condition were not reflective of the real situation. I disagree. F was not merely acting as an "advocate" for D1. Whilst D1 prompted F to add this recommendation to the letter of 22 January 2024, it was entirely consistent with F's overall opinion as to D1's condition.

71. Later on 30 January 2024, Mr Rahman responded to D1 thanking him for providing the letter from his consultant, and told him to take all possible steps to improve his health. Mr Rahman continued:

> "It is of course important that you respond to my email of 26 January 2024 so that I can be comfortable that you understand the obligations that you owe to Dare. Hopefully you have chance to absorb this over the next few days and I look forward to hearing from you once you have - obviously I am happy to chat instead if that is easier for you. I will follow up with you on that next week if I don't hear from you."

72. On 6 February 2024, Mr Rahman wrote to D1 to say:

> "I hope you're feeling okay.
>
> I just wanted to follow up to see if you'd had a chance to consider my email of 26 January? If not, could you let me know when you might be able to respond?

73. On 9 February 2024, D1 responded to say:

> "Thank you for your email. I have not forgotten about your previous email and I will try to get back to you regarding this in the future but for now I really want to focus on my health and I do not know how long this will take".

74. On 13 February 2024, Mr Rahman responded to say:

> "Thanks for your email and sorry to hear you are still unwell. Please do continue to rest up and follow the advice of your doctor.
>
> As you are not currently well enough to respond to my email, I do think that it would be helpful for you to see Occupational Health so that they can advise whether there are any adjustments that could be made to support a return to work — I am conscious that none of the medical advice you have provided so far has dealt with this and it is important. Occupational Health will be best placed to advise on this, so please can I ask you to sign and return the consent form attached to my email of 18 January 2024? As we have previously discussed, there are a lot of exciting things for you to work on during your notice period and I am looking forward to picking up with you in this regard when you are feeling a bit better.
>
> For the avoidance of doubt, I believe I have already made myself clear but I just want to reiterate — you are not on garden leave (you are on sick leave) and your non-compete restriction will apply for 12 months following the termination of your employment (i.e. until 20 December 2025).
>
> Look after yourself and look forward to catching up in a few weeks."

75. On 22 February 2024, Mr Rahman wrote to say:

> "Hi Stephen
>
> I just wanted to check in to see how you are doing? I hope the time off work is helping and that you will be able to think about a return to work when your sick note expires in April.
>
> Obviously, your health is our priority. Given you have been signed off work for so long (over five months), I want you to attend an Occupational Health appointment. I have asked you to do this before but I haven't heard back from you. This is an appropriate and reasonable request for me to make. As such, please can you sign and return the consent form that I have previously sent to you. Please could you send this back to me by Wednesday 28 February 2024.

> I know before you went off sick that we briefly talked about some possible amended duties for your notice period — you went off sick immediately after this conversation and haven't returned since. I am conscious that your doctor has said that your anxiety is precipitated from your current work situation and given the timing of your sickness absence (immediately following our conversation about potentially amending your duties), I thought it might be helpful for me to re-iterate that the conversation about your notice period was exploratory only, and I am happy for you to continue trading as normal on the Propane desk when you come back to work if that is preferable — of course, if you do not want to do this, I am open to considering letting you carry out other work which is commensurate with your role and seniority (for example, trading on another desk). Obviously, I will still need you to carry out handover-related tasks and train up juniors to take over from you. I really hope this helps to relieve any anxiety flowing from our conversation.
>
> There is a really good opportunity for impact in the Propane market at the moment. If you were well enough to come back and trade on that desk, I would be willing to agree that you could receive a bonus in the usual way, notwithstanding that you are not entitled to a bonus because you are under notice. Of course, I would need certainty from you that you understood and would abide by your restrictive covenants before agreeing to this. Happy to chat about this.
>
> Finally, I note that you left the "Tech-oil" work WhatsApp group yesterday afternoon. I know you were using your personal number for that group, so I will add your work number now as I am keen to make sure you stay in the loop generally. It would be good if you can check it every now and again.
>
> As a reminder, while you are out you should still comply with all of Dare's policies, which includes the protection of our confidential information and retaining information on work devices that is relevant to the business."

76. The email of 22 February 2024 was the first time following D1's resignation that Mr Rahman had mentioned the possibility of D1 returning to trade on the Propane market during his notice period. There was a proper rationale for this suggestion. Mr Rahman's evidence was that he had learned from market contacts on 14 February 2024 that Luke McDermott was no longer trading for Onyx. I accept this evidence as it was referred to by Mr Rahman in a normal business exchange with Mr Murley in which he stated "as an fyi the propane trader from Onyx is out of the market as of yesterday, so we're really the only market maker on note involved currently". As a result, Mr Rahman considered that Dare had an opportunity to make a lot of money in the Propane market, and he believed that D1 could help Dare take advantage of the situation.

77. Mr Rahman followed this up on 29 February 2024:

> "I hope you are feeling okay and your health is improving.
>
> I just wanted to follow up on my email below, as I haven't received a response from you. Please could you sign and return a copy of the Occupational Health consent form? As per my email below, given your long-term absence, I think it is appropriate and reasonable to obtain some advice from Occupational Health so that I can get a better understanding of your illness and prognosis.
>
> Of course, to the extent you want to discuss anything else in my email below, just let me know and I would be happy to discuss.
>
> Please could you acknowledge receipt of this email?"

78. D1 responded on 4 March 2024,

> "I am writing in response to your emails.
>
> As you know, I'm still signed off work on sick leave. Following my doctors' advice, I am taking some time away from London to try and recuperate. . . .
>
> I would like to confirm that I am not checking work emails or work group WhatsApps and I have not done so since being on sick leave."

79. Mr Rahman replied on 6 March 2024:

> "Thanks for your email
>
> I totally get you're on sick leave — but hope you appreciate that I've had scant medical information as to why and, more importantly, if there is anything we can do to facilitate a return to work, even on a phased / part time basis.
>
> Could you please therefore sign the Occupational Health consent form and return it to me this week. I consider this a reasonable instruction, especially in light of the comments you have made below.
>
> I will then arrange for an Occupational Health appointment to take place when you are back from your trip. Please could you let me know what date you will be back?
>
> In respect of work emails and WhatsApp, obviously I am not expecting you to be keeping up to date with these on a regular basis, but I do want to make sure you are keeping in the loop generally so that you are in the know when you return. As such, I would like you to check these every now and again to make sure you know what is going on generally."

80. On 26 March 2024, Mr Rahman wrote to D1 to say:

> "I hope you enjoyed your trip and that you have had time to rest and recuperate.
>
> I'm conscious I never heard back from you in response to my email below, please could you:
>
> • Let me know if you are back from your trip now and if not, confirm when you will be back.
>
> • Sign and return a copy of the Occupational Health consent form I sent to you previously.
>
> • Acknowledge receipt of this email."

81. D1 wrote back on 28 March 2024, informing Mr Rahman that he was back from his trip, but still needed a complete break from work. D1 also enclosed a letter from his consultant F dated 27 March 2024, in which she stated that she had reviewed things with D1, and "He continues to be unwell, . . . and cannot recover as communication from work continues whilst he is on sick leave and making symptoms worse. Whilst on sick leave he needs to have no contact from the office about business matters. These contacts are causing prolongation of symptoms and lengthening his sick leave".

82. On 30 April 2024, D1 sent Mr Rahman a letter from F explaining that he would not be fit for work for a further 3 months, and that she found it "difficult to see that from a health perspective that he would ever be able to work for this company again". D1 stated that he would update Mr Rahman further in July when that note had expired. He requested Mr Rahman to "respect the medical advice that I have received and let me recover in peace without further contact from work".

83. As can be seen from the correspondence, on repeated occasions D1 had refused to attend an Occupational Health referral as requested by Mr Rahman. This changed on 11 June 2024 when his agreement to attend an appointment with Occupational Health was conveyed to Dare by his solicitors, Farrer & Co., in their response to a letter of claim that had been sent by Dare's solicitors on 14 May 2024. D1's solicitors stated that "The repeated demands . . . to see Occupational Health appear nothing more than harassment. Notwithstanding this, [D1] will agree to see Occupational Health".

84. During the period following his resignation, D1 travelled considerably. He went to Berlin, Budapest, Mexico, Seoul, Japan, and Bali. D1 also messaged Mr Law on a number of occasions, and they went out for a "night on the town" on at least a couple of occasions. On 4 February 2024, D1 messaged Mr Law to say "How about a drink tomorrow night before we bugger off and get healthy!". D1 returned home in the early hours of 6 February 2024, having had what he described as an "Awesome night". After a further night out on 3 April 2024, D1 messaged Mr Law to say "Dead dead dead . .. But bloody good fun . . . I was in bed by 4 [am] and I'm a mess". In cross-examination, D1 was asked how this fit with him being too sick to work: he said that the two matters were unrelated, "If anything, meeting a good friend and having a night out takes my mind off things". I accept this evidence. It was consistent with F's diagnosis of D1's condition.

85. D1 also had many communications with Mr Beckwith during the period from the date of his resignation until his termination from Dare on July 2024. Unlike the WhatsApp messages between Mr Beckwith and D2 which involved detailed exchanges about D2's interactions with Dare, the messages between D1 and Mr Beckwith are not particularly revealing. What is clear, however, is that they had many substantial WhatsApp audio calls[3], and some of these took place around the time of key communications between D1 and Mr Rahman at Dare. For instance, on 21 February 2024, the day that D1 removed himself from the Dare WhatsApp group for the Propane and Naphtha desk, they had a WhatsApp call which lasted just under 37 minutes. D1 said in evidence that he could not recall talking to Mr Beckwith about leaving WhatsApp groups. I do not accept D1's evidence and find that they did have such a conversation. The timing of the call and the departure from the WhatsApp group was not a mere coincidence.

86. D1 made brief notes to himself about some of the various calls. These notes were not particularly revealing to the Court as much of the content had been redacted for the purposes of legal professional privilege. That is presumably because D1's lawyers were also in attendance on some of the calls. I find that many of the calls with Mr Beckwith involved discussions of strategy and how D1 should deal with and communicate with Dare. That was clearly what took place with D2, and I see no reason why the same did not apply with D1. Onyx had a vested interest in getting D1 to join them as soon as possible.

87. D1 also had several lengthy communications with Mr Kayaam between his resignation and termination dates. On 20 November 2023, Mr Kayaam asked D1 if he was free for a catch up, to which D1 responded "Now?". They then had a conversation, as a few hours later, D1 messaged Mr Kayaam to say: "Resignation letter sent. Thanks Omar for all your help. Exciting journey ahead!". Mr Kayaam subsequently messaged to say: "Let me know when gardening leave is confirmed and we will get the get our team firing away on Dubai licenses and what needs to be done". I find that the communications between D1 and Mr Kayaam were not simply for social purposes or general updates. They were proximate to key communications with Mr Rahman and undoubtedly involved discussion of those and advice as to what D1 should say or how he should react[4].

88. There was no evidence of communications between D1 and D2 during this period, and no evidence that D1 ever revealed to D2 whom he was going to work for.

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[3] Among the many other calls between D1 and Mr Beckwith were the following: 11 January 2024 (16 minutes+), 15 January 2024 (15 minutes+); 19 January 2024 (18 minutes+); 22 January 2024 (45 minutes+); 24 January 2024 (one call for just under 15 minutes, and another for 9 minutes+); 26 January 2024 (26 minutes+); 1 February 2024 (32 minutes+); 6 February 2024 (8 minutes+); 8 February 2024 (5 minutes+); 13 February 2024 (26 minutes+); 23 February 2024 (6 minutes+); 29 February 2024 (18 minutes+); 8 May 2024 (one call for 18 minutes, and then another call for 23 minutes+); 11 May 2024 (11 minutes).

[4] Other calls between D1 and Mr Kayaam were as follows: on 24 January 2024, D1 and Mr Kayaam had a WhatsApp call for more than 9 minutes; a call for more than 19 minutes on 25 January 2024; a call for more than 18 minutes on 1 February 2024; a call for more than 28 minutes on 20 February 2024; a call for more than 14 minutes on 28 February 2024; a call for more than 17 minutes on 28 March 2024; a call for more than 1 hour and 11 minutes on 3 April 2024. They also met up on 17 April 2024.

(a) D2's resignation

89. On 14 February 2024, D2 resigned from Dare, also giving the required one year's notice. Prior to his resignation, D2 had been offered a position with Onyx and had negotiated a very remunerative contractual package and indemnity agreement.

90. D2 had been in discussion with Onyx since the summer of 2023, when he had informal conversations with a crude oil trader at Onyx. On 20 December 2023, D2 met up with Mr Kayaam. On 2 January 2024, Mr Kayaam and D2 had a lengthy WhatsApp exchange about the remuneration package that Onyx would offer D2. This must have been based on information about the profit and loss ("the pnl") of the Crude Oil desk that D2 had sent through to Onyx at some earlier point, as it was mentioned in the messages between them. Thus, Mr Kayaam stated that:

> "greg and i have run through the numbers, on rough projections of what your pnl has been roughly for last 3 years, and come up with a fair proposal for what we would offer as a sign on".

"greg" was a reference to Mr Newman, Onyx's Chief Executive Officer.

91. They also discussed the fact that D1 was moving to Onyx, as this was also reflected in the message sent by Mr Kayaam:

> "I wouldn't speak to Stephen [that is: D1] about anything or mention anything as it'll make things messy but we will make sure before you were to resign you and your lawyers are happy with everything and also that, the next steps of legal cover are organised".

92. D2 and Mr Kayaam had a call lasting just over 47 minutes on 3 January 2024. They then had a WhatsApp exchange in which D2 referred to the percentage rebate of Dare's clearing and exchange fees that were reflected in his "pnl". I will not set out the detail of this message, or some of the other similar messages, in this open judgment as it contains Dare's confidential information which D2 was sharing with Dare. I will set out the detailed correspondence in the confidential annexe. I do not find that this sharing of information was malicious or intended to harm Dare. Nevertheless, as I will explain, it was still a breach of the duty of fidelity that D2 owed to Dare.

93. D2 had a further WhatsApp exchange with Mr Kayaam on 4 January 2024. Mr Kayaam asked D2 about the breakdown of his work for Dare "in terms of dated and dubai [that is, Crude products] what % would u say u do on screen compared to broked", and D2 provided a response. Mr Kayaam's reply was: "we currently don't have such aggressive deals, on the crude programme, but we will be pushing to get it soon, and additional market share will def mean we get it when or before u start. we have [redacted] on dubai etc".

94. On 8 January 2024, D2 sent himself various documents, including the "pnl" document for his desk. This set out the calculation of gross and net profit, and included among other things precise information about the Crude Desk's Total Revenue, the total brokerage fees, the ICE fees (that is, the fees that Dare paid for its trades on the Intercontinental Exchange, an electronic platform used for the trading of, among other

things, energy related products), rebates for ICE fees, the "Admin Charge", and the Desk Bonus Pool. In a WhatsApp exchange on 17 January 2024, D2 said to Mr Kayaam:

> "I just wanted to be clear what would be the annual desk trading fixed cost?

He told Mr Kayaam what he was currently "paying" Dare as his fixed cost: that is, the sum that was taken off his revenues for the purpose of calculating his bonus.

95. On 31 January 2024, D2 had a WhatsApp exchange with Mr Beckwith. The conversation included the following:

> "D2: "Hi, thanks for the update. I was hoping to ask a question regarding the strategy should we get to the point I hand in my notice. Essentially I was looking to know if you would expect me to need to work after that point? More for my personal logistics will need to book a trip to Dubai potentially over the half term break. Appreciate you might not have the answers yet."
>
> Mr Beckwith: "We are keen for you to resign asap. Obviously want you to be happy (ie sign) the offer docs".
>
> D2: "More to say once I have resigned if they ask me to work my notice do you think I wouldn't need to under the current plan".
>
> Mr Beckwith: "We need a session to discuss strategy so that you are happy with next steps".
>
> D2: "Agreed. When do you think would be the right time to go through that?".
>
> Mr Beckwith: "Next week".
>
> D2: "Ok great. Will hold off booking any trips till we go through that. Thanks and look forward to catching up soon."

96. Whilst these exchanges were taking place between D2 and Onyx, D2 was discussing with Mr Rahman "a new crude business line" for Dare. D2 had agreed to create a "business plan for a new crude business line detailing the roles and skill gaps we need to fill". As far as Mr Rahman was concerned, D2 was still committed to working for Dare.

97. On 6 February 2024, D2 had a WhatsApp exchange with Mr Beckwith in which Mr Beckwith asked whether D2 could meet that week with Mr Kayaam to "go through [a] few things". It was explained that, in addition, "Omar wants to check in with you for support considering next big step for you to tell Ayman." They met the following day, and D2 had a further meeting with Mr Beckwith on 12 February 2024.

98. On 13 February 2024, D2 received his offer letter from Onyx. Later that day, D2 met with Mr Rahman to inform him that he was resigning from Dare. D2 told Mr Rahman

that he was leaving to pursue an opportunity in Dubai: he did not tell him that it was with Onyx. D2 explained that his wife was extremely upset and had never forgiven Mr Rahman for what had happened over Dubai. This sentiment was reflected in the email that D2 sent to Mr Rahman the following day confirming the decision to resign from Dare.

99. Before meeting with Mr Rahman to inform him of his resignation, D2 had a WhatsApp call with Mr Beckwith for 8 minutes or so. This had been preceded by a series of WhatsApp messages, including one in which D2 asked Mr Beckwith to "remind me of any key points for the meeting with Ayman". After D2's meeting with Mr Rahman, D2 messaged Mr Beckwith to say that: "Brokers already asking questions. Better to just not reply I guess as still too early?". In reply, Mr Beckwith said "Maybe leave replies to the brokers tomorrow". D2 then informed Mr Beckwith about his holiday that had been approved for a few days, and asked whether he could "go abroad with the family". He also mentioned that brokers were asking him where he was on "bids/offers" and he asked whether he could "just say please speak to the junior?" Mr Beckwith replied by saying that D2 could go anywhere he wanted to while on booked leave, and that his junior had "to handle trading questions- and he should defer to Ayman if he gets stuck". This exchange was typical of the communications between D2 and Mr Beckwith during the notice period. D2 sought advice and guidance from Mr Beckwith about how he should conduct himself and how he should deal with correspondence from Mr Rahman.

100. After D2 had informed Mr Rahman of his resignation, he also messaged Mr Kayaam to say that he was "extremely excited to join Onyx and looking forward to contributing for many more years to come. Thank you for the opportunity". Mr Kayaam asked D2 if he would be travelling. He responded "Honestly not planned anything yet but definitely will have to do something serious. Don't think I'm going to have this opportunity again for a very long time". Later that evening, D2 and Mr Khayam had a WhatsApp call.

101. Also that evening, D2 messaged Mr Beckwith to say that he had just received something from Mr Rahman. Mr Beckwith messaged back to say

> "It is up to you ie how you feel about going back in. Personally I would just to get closure. Or you could reply and say that you are out tonight and will call him in the morning .. whichever way, I will guide you."

D2 responded with

> "Honestly I would rather not want to go in at this point I kind of have mentally closed that chapter off. And given that I said how upset I was about things I think it could be fair to say that I am not keen to come back. Not sure what you think. I also think he will be better prepared this time and won't be to any advantage".

Mr Beckwith replied, saying

> "Yep, just text him and say you are out with your family because they are relieved you have resigned. Say that you will call him in the morning."

102. D2 told Mr Beckwith that he had messaged Mr Rahman, to which Mr Beckwith responded: "if he gets heavy saying you must come in - then I will cover that in your resignation letter." In reply, D2 asked: "Will I actually need to call him? Is there any benefit to us at this stage? I feel I covered it all and just Incase we can use the letter to cover it off?" Mr Beckwith answered, saying "Very unlikely to have a call and the letter will create a disconnect effect".

103. Mr Rahman responded to D2's message, and this was forwarded to Mr Beckwith. Mr Beckwith described Mr Rahman's response as "Slippery. And predictable. All games." D2 told Mr Beckwith that he was not going to respond to Mr Rahman's message, "Unless you think I should". Mr Beckwith said: "Don't respond". This pattern of messaging was repeated over the next month or so. D2 would share with Mr Beckwith the correspondence that he received from Mr Rahman, and then Mr Beckwith would provide D2 with wording for a reply. This was reflected in their exchange the following day.

104. In the morning of 14 February 2024, Mr Beckwith messaged D2, telling him that a letter was coming from his personal email and asking for D2's personal email. Mr Beckwith asked D2 to "cut and paste into your personal email and send" it to Mr Rahman, copying in his personal email. D2 told Mr Beckwith that he was happy with the letter that had been drafted. D2 informed Mr Beckwith that he had received an email from Mr Rahman; in response, Mr Beckwith said "Games. Send the email and it will change everything . . . Your stance will be that relationship is broken". Mr Beckwith told D2 to ignore Mr Rahman's earlier email. Mr Beckwith also said that D2 should "Expect Ayman to wriggle out of Dubai not materialising. His lawyer will use excuses in their response. All part of the game. The key point from your side will be that having made your decision after considerable pain there is no point going back in when the relationship is broken." Mr Beckwith informed D2 that "you will get a snotty letter tomorrow from Dare reminding you of your duties etc.... All just idle threats." Mr Beckwith informed D2 that "the fun and games will begin. As you know, [Mr Law] just disengaged from the nonsense. But whatever nonsense comes, we will deal with it." D2 replied: "Sounds like a good approach".

105. The resignation letter that Mr Beckwith had penned for D2 and was sent to Mr Rahman contained the following:

> "As I explained yesterday, I was expecting to transfer my employment and relocate to Dubai last year with my wife and family as planned and agreed with you. My wife and I have continued to be filled with disappointment because this relocation never transpired. [I] cannot emphasise enough how important the move to Dubai was to me and my wife. Unfortunately, I have been unable to get over the immense disappointment caused by the way in which the Dubai relocation was handled.
>
> From my perspective, I do not see how it is possible to salvage my relationship with the company given what happened last year. The relocation to Dubai represented a major event in my life, and when it did not materialise, the impact and disappointment was inordinate.

> Having made the decision to resign I can now focus on pursuing other career opportunities in Dubai."

106. D2 asked Mr Beckwith what he should say to brokers. Mr Beckwith said that "Personally i would wait for a response from ayman to your letter but by the end of the day yes to messages from brokers saying you are leaving but be cautious… Who you respond to ie close relationships first". D2 asked what he should do about his internet provider as this was paid for by Dare. Mr Beckwith replied that "If you are using your provider extensively for personal [use], then maybe switch. But honestly don't worry too much".

107. Later that evening, D2 passed on the response that he had received from Mr Rahman. In this response, Mr Rahman expressed surprise at D2's resignation, noting that they had been chatting "over the last couple of weeks regarding future plans and strategy during which you appeared fully engaged in our go forward plans." Mr Rahman also stated that:

> "I get that you were disappointed that the move to Dubai didn't ultimately materialise, but you must realise that Dare invested significant funds to make Dubai a possibility for you and others. We did this because you asked me to — not because I wanted a move to Dubai. And given this, we obviously sought contractual assurances from those considering the move — which you ultimately did not accept.
>
> This all happened some time ago and we've since been focused on the success at Dare which you've been invested in — indeed you signed up to be a Growth shareholder in Dare after this issue which demonstrated your long term commitment to Dare. We were also recently discussing your future and aspirations within Dare. The below email does not sound like you and does not ring true."

108. Mr Rahman reminded D2 of his 12 month notice period and said that, for at least the next six months, D2 was to continue trading on the Crude desk in his current role, which required him to be in the office as normal. He also said he wanted D2 "to focus on training up at least one Senior Associate / Associate Trader on the Crude desk, so that they can take over the desk when you eventually leave". Mr Rahman suggested that during the summer they would consider what would happen in the remainder of the notice period. Mr Rahman noted that D2 had not been in the office that day and said that he did not know why. He asked D2 to be in the office the following day. With respect to his new employment, Mr Rahman asked D2 to confirm if he had applied for or been offered any employment, engagement or consultancy with any other company. If he had, he wanted confirmation that D2 had provided them with a copy of his post-termination restraints. Mr Rahman informed D2 that he continued to owe fiduciary obligations to Dare as well as other contractual obligations. D2 was asked to confirm that he did not have any Dare documents on any personal devices and that he had not shared any Dare information with any third parties. Mr Rahman also drew D2's attention to the terms of the post-termination restrictions. He stated that these prevented D2 from joining any company that is competitive to Dare, anywhere in the world, for 12 months: until 14 February 2026. D2 was asked to confirm that he understood this

restriction and would abide by it. Mr Rahman concluded the letter stating that he looked forward "to chatting all this through and moving forward constructively — exciting times ahead and you're still very much part of Dare".

109. After D2 had told Mr Rahman on 13 February 2024 that he was resigning from Dare, Mr Rahman contacted Mr Ooi to give him the news. Mr Ooi asked what reasons D2 had given for leaving, and Mr Rahman said "Dubai falling through. Created a lot of issues for him at home. And alluded to other firms offering softer worded contracts". Mr Ooi replied to say: "Guess going with Stephen and Tom out to dubai, probably onyx I guess". He added, "Can't believe this dubai shit has created so much beef".

110. Mr Ooi asked Mr Rahman what he wanted to do about the Crude Oil desk. They discussed putting two traders, Erman Afzali or Amir Abbou, into D2's seat as a "stopgap". Mr Ooi realised that Mr Abbou was signed off sick, so asked Mr Rahman whether there was "anyone else that would understand how to derisk that book initially?" Mr Rahman replied, "Only maybe Erman - but we're gonna ask Ash [that is, D2] to work his notice . . . Ok I think as a initial favour we should ask ash to derisk his book as much as possible at the front". Other personnel were mentioned as assisting with the desk: Max Glen-Doepel, a Graduate Training Analyst, and Comrooze Zandiyeh.

111. Mr Rahman also contacted Mr Murley to inform him that D2 had resigned. This was described by Mr Rahman as "an additional spanner/opportunity". Mr Rahman also explained that the immediate plan was to move Mr Afzali to the desk, and probably to move Mr Zandiyeh there once Mr Abbou was back. Mr Murley said that "I think if we offered [Mr Abbou] Crude he'd jump at it".

112. It is clear from the contemporaneous correspondence that immediate steps were taken by Dare to try to safeguard the operations of the Crude Oil desk. Whilst it was not known if D2 would return to work, the initial intention of Mr Rahman was that D2 would be asked to trade by derisking his book. It was not the case, as was suggested to Mr Rahman in cross-examination, that there was never an intention of having D2 back in a trading role. I find that Mr Rahman was not merely "pretending" when he requested D2 to carry on trading during his notice period.

113. Mr Rahman and Mr Ooi paid close attention to the Crude Oil desk, and were provided with regular reports of the trades that were being done. Advice was given by Mr Rahman to the traders. On 19 February 2024, for instance, in a Teams Chat for the Crude Oil Desk, Mr Rahman advised that they should "think about what strategies you think the market makers (particularly Onyx) are running around CFDs into the platts window and see if you can start dipping your toes". In addition, Mr Rahman said that "We should get you all of Ash's historic trade activity, particularly his biggest pnl days (particularly live pnl) and analyse our market share on those days too... The aim being to figure out the trading strategy from looking at the trade history" and indicated that Mr Ooi would be able to assist with this. According to a comment made by Mr Ooi in a Teams Chat sent on 15 March 2024, he was spending "maybe 1/3 of time" focussing on the Crude desk.

114. A similar message was sent by Mr Rahman to Mr Afzali on 22 February 2024, in which he stated:

> "Keep a close eye on your market share. Compare it to what Ash was active in as a starting point. Look at which products his activity was concentrated in.
>
> If you haven't already- you need to also closely analyse his trading activity yourself over the last few years. See what trade cycles he's done via the trade feed, look at his biggest pnl days, try to figure out if it's live pnl or overnight or what products. Yes it's a bit of work to unpick this, but the value in accelerating your trading is massive. If you need help with formatting or access to information work with Jono who can assign recourse to help you.
>
> Let's also get you a daily report showing how much brokerage we spent, and comparing it to what we used to do when Ash was around. Ultimately the aim is to get back there and then beat those activity levels whilst making good pnl. I've cc'd Ugo & Chris to assist.
>
> None of this will happen overnight, but it's good to know where we want the desk to get to.
>
> Really think hard as a team why our competitors are doing the trades they do. Having established traders in the market is actually one of the best ways to learn, establish views on the market, and slowly build your own spin on it to take your trading to the next level. Imitation is easier than innovation.
>
> First step is to figure out how other are making money and copy it. After that we innovate.
>
> Good job on doing some [redacted] business, next time I want an even higher % of the total traded".

It was suggested by Niran de Silva KC, acting on behalf of D2, that these exchanges indicated that D2 did not use confidential information when trading on the Crude Oil desk; that D2's trading patterns and decisions were part of his general skill and knowledge which could be replicated by others merely by analysing past performance. I agree with the general proposition that D2 did use his general skill and knowledge in making trading decisions, and that analysis of his trading patterns could assist others in making trading decisions of their own. That does not mean, however, that D2 did not have access to or use Dare's confidential information when making any of his trading decisions, as I shall explain further below.

115. On 14 February 2024, there was an email exchange between a recruitment consultant and a Dare employee about a request from Mr Rahman to headhunt a gas and power trader. The base salary of the individual concerned would be between "120-125k but open depending on the candidate". Further details of the specification were provided on 16 February 2024: bonus of a particular percentage range. The employee would report to Mr Rahman and Mr Ooi. They need to understand how a curve works, like a market maker. It was stated that Mr Rahman was looking for someone who understands markets properly, but may not have "risk ownership in their current role (maybe as their

senior is in charge)". In terms of output, there was reference to the size of the "pnl" that they wished to be at within one year and by year 2/3.

116. In his oral evidence, Mr Rahman said that the person who was recruited was not a replacement for D2, but was a proprietary trader. The role that they were advertising for, he said, was not for liquidity provision which was the core of the work that D2 had been doing for Dare. The person who was actually recruited, Mr Aadil Khan, was given the title of Portfolio Manager- Fundamental Trading. Mr Rahman said that this was a new desk for Dare. Mr Khan's starting date was 19 June 2024. I do not reach a conclusion as to whether or not Mr Khan was a replacement for D2 as this is not necessary for my decision on liability.

117. As for the impact of D2's departure, it was believed by Mr Ooi and Mr Rahman that, with the right staffing, the Crude Oil Desk could be more profitable without D2. This was reflected in a WhatsApp exchange on 19 February 2024, in which Mr Ooi said to Mr Rahman: "I reckon if we put a good trader on crude we'd make a lot more than [D2], and it's more like a 2 maybe even 3 trader + grad desk imo". Nevertheless, in an email dated 26 February 2024 (see below at paragraph 142), Mr Rahman stated that the desk was down by a particular amount since D2 had stopped working. In a Teams chat on 27 March 2024, Mr Cammell informed Mr Ooi that Mr Rahman had mentioned that

> "we should record how much pnl we have lost since Ash left to yesterday on crude (around [redacted amount] he thinks)
>
> This loss has all come from derisking losses, please could you share on exactly what positions while it's still fresh in your mind. Ayman mentioned a lot of this is from . . . losses, and . . . spreads, and . . . [redacted] which AH left on the portfolio.
>
> Ayman mentioned we should be able to evidence the position and the price changes from AH's leaving date to yesterday to give a clear sense on how much this stuff cost Dare."

Mr Ooi looked into the matter and produced a document on 3 April 2024. He explained that "its a [redacted] loss on CFDs, [redacted] on BFOE, and [redacted] on DFLs".

118. Returning to the chronology of the exchanges between Mr Rahman and D2 and the involvement of Mr Beckwith after D2's resignation, D2 messaged Mr Beckwith on 15 February 2024 to tell him that he had a home computer, a laptop, and a work mobile belonging to Dare. He asked Mr Beckwith if he should still be checking his work phone. They subsequently had an audio call for just under 30 minutes. In a further WhatsApp exchange after their call, D2 asked whether he could meet up with a couple of brokers who had made contact with him, and Mr Beckwith said not to. Mr Beckwith also told D2 that he would send him a letter first thing, adding "Just want our lawyers to check". D2 responded: "No problem whatever is best. Thanks. Starting to already feel very angry about how long this non-compete is for seems very unfair. I can't believe I was pressured into signing it. Anyway appreciate all the effort thus far."

119. On 16 February 2024, D2 messaged Mr Beckwith to ask him about getting visas for Dubai. D2 said that "we would ideally like to start my daughter in September at school there. Would it be possible to get visas in time for June/July to secure rentals etc and

schooling? Completely appreciate if not but would be useful to understand timeframe so we can plan". Later that day, Mr Beckwith messaged D2 to tell him that he had sent him an email response to Mr Rahman which he should "copy and paste". D2 asked Mr Beckwith about mentioning the work phone and home computer and Mr Beckwith said that they would do this in a following email. D2 also said that he would like to discuss with Mr Beckwith or Mr Khayam about "what happens now".

120. The email that was sent to Mr Rahman was as follows.

> "Your comments about me not moving to Dubai are bewildering and attempt to diminish the significance of the matter. While the matter in question happened last year, I remain deeply disappointed with the way Dare handled the whole situation (especially the outrageously unfair and draconian contract that you expected me to sign to move to Dubai). You are also ignoring the fact that my wife and I had set everything in place to move our family to Dubai (including arranging schools). I hoped that my wife and I would get over the disappointment of feeling let down, but this has not been possible. My wife and I had many arguments about the whole situation for months. It is not helpful or healthy for me and my wife to continue feeling this level of apathy towards my job. This is why I must resign. You are mistaken about me and how I feel about the situation.
>
> To the extent that I have received an offer of employment I confirm that I have adhered to my contractual obligations pursuant to clause 13".

121. Mr Rahman replied a few hours later, saying that he did not think that the email correspondence was "constructive". He requested D2 to come into the office on Monday morning (19 February 2024), as he thought it would be "more productive and helpful "for them to meet "in person". Mr Rahman reminded D2 that he was "a very senior employee of Dare and you have been remunerated accordingly. You have a 12-month notice period and as per my last email, there is a lot of exciting work to do during that time".

122. D2 shared that reply with Mr Beckwith. Mr Beckwith's response to Mr Rahman's email was "Hilarious! Temper tantrum". D2 asked if there was anything to reply to, adding "Seems like he's just wasting time". D2 went on to say that "It's crazy because when Stephen left (that is: D1) *he said to all the seniors individually he was going to basically constructively dismiss him* to make him work in another role to ensure he spent 2 years out of the market and now he's trying to do it to me" (emphasis added). Mr Beckwith responded by saying that "Well, that is a lousy strategy if he wants to do that with you or stephen. Think we are dealing with some clowns their end. Embarrassing and emotional". D2 said that he would wait to hear from Mr Beckwith as to what or whether to respond. Mr Beckwith replied: "Yep, will figure it out. He thinks he can manipulate you. That email to you was a rant. He is cracking very quickly".

123. I find that, following D1's resignation, Mr Rahman did say to D2 that he was going to make D1 work in another role to ensure that he spent 2 years out of the market, and said something about how he would be treating D1 which D2 interpreted as amounting to

D1's constructive dismissal. Not only was this mentioned by D2 in this exchange with Mr Beckwith, but it was consistent with what D2 said to Mr Law in their conversation at the *Oka* restaurant on 8 May 2024, a conversation which D2 did not know was being taped or would be subject to scrutiny at trial. At *Oka*, D2 told Mr Law: "what did it for me actually, what really pushed me over the edge was when Stephen resigned, and he was like, he took us to a side and basically said "I'm going to fuck ..trying to [inaudible] him [inaudible] for 2 years". Like that was the final straw for me, this guy is literally just...".

124. On 18 February 2024, Mr Beckwith contacted D2 in the morning and asked if he was free for a call. They spoke in the late afternoon for just under 45 minutes. After the call, Mr Beckwith messaged to say "Doubt you will need to go into the office. Let's play be ear. Hopefully, he will send a strong message to you demanding that you take a new role. If he does, then good news for you in terms of removing yourself from any further discussion".

125. In his email to Mr Rahman sent at 8:18pm, D2 informed him that he was away with his family, but would be back on Tuesday. He continued with:

> "I am not sure what to make of your last email. At first glance, it reads as unnecessarily patronising. Nonetheless, I will come into the office on Tuesday to meet you. Please let me what time you would like to meet."

126. In the morning of 19 February 2024, D2 had a WhatsApp exchange with Mr Beckwith. D2 asked whether he should message Dare's IT guy for them to collect their stuff or should wait. Mr Beckwith said "just wait . . . all games". D2 received a message from Mr Rahman and forwarded it to Mr Beckwith. D2 commented: "More of the same tbh". The message from Mr Rahman (sent at 10:58am) contained the following:

> "Thanks for your email — my email wasn't intended to be patronising — I am trying to move things along in a constructive manner and ensure that we continue to have an effective working relationship during your notice period.
>
> Let's catch up at 10:45am tomorrow morning in my office. It is up to you whether you come in before that meeting or not, but after our meeting I will be expecting you to continue with your role. That means getting back to your desk and getting on with things. Obviously, we will want you to have one eye on training people up for after you go."

127. On reading the message from Mr Rahman sent at 10:58 am, Mr Beckwith said "The guy is delusional". D2 said "Keen to get this done to be honest. Thanks for the help". Mr Beckwith replied: "He obviously thinks he can dominate you and order you back to work. Strange guy". D2's response was "It's ridiculous". D2 questioned: "How could I go back to earn sub standard living not doing my job." Mr Beckwith responded with: "It is strange that he has taken the weakest position possible in terms of a strategy. Peculiar. Good for us and you though". They subsequently had an audio call for 22 minutes. After the call, Mr Beckwith sent D2 an email, which D2 said he would "copy

and paste". D2 commented that the response drafted by Mr Beckwith "summarises things well. Thanks. Let's just hope it draws this to a conclusion."

128. D2's email was sent at 7:10 pm. It read:

> "I have just returned from leave and seen your email.
>
> It is beyond belief that you would expect me to sit on the desk tomorrow and resume trading as though nothing has happened. It feels like you are dismissing my reasons for leaving with ridicule. In any case, expecting me to trade after resigning is a situation offering no possibility of a favourable outcome. Whether my desk incurs losses or generates strong PnL, it will not benefit me.
>
> As demonstrated in the last few days, the desk can run without me. Many of the brokers in the market know that I am leaving Dare (presumably someone from Dare has already told them).
>
> I am not comfortable coming into the office to discuss this with you. From my perspective, it now seems that the intention is to make an example of me in front of the other employees because I am leaving Dare (albeit extremely disgruntled)."

129. Mr Rahman responded to this email at 21:09. He said:

> "That is not the intention - the intention is absolutely to get the most out of your notice period. I presumed your preference would be doing the same role. Happy to discuss that. We can't afford to lose your expertise. As you know this is extremely damaging to Dare and I expect you to honour your notice period.
>
> Please come in tomorrow and we can chat it through - always better in person. Also happy to meet outside in a coffee shop if that's easier for you?"

130. D2 forwarded the response from Mr Rahman to Mr Beckwith. Mr Beckwith's immediate reaction was that Mr Rahman "is going to cut you a deal to leave". D2 replied to say that "Ok I'm still maybe less optimistic. Just have cautious scepticism. Look forward to speaking tomorrow morning. Will await our chat before I reply with a time to go in etc". Mr Beckwith replied with "I am so sceptical, and will always over analyse but there is a predictable position he is playing. Speak in the morning".

131. D2 had a call with Mr Beckwith the following morning, 20 February 2024, for nearly 52 minutes. Later that day, D2 forwarded an email that Mr Rahman had sent to him, commenting "Makes me feel more confident it wouldn't have been a constructive meeting". Mr Rahman's response (sent to D2 at 5:21 pm) stated that:

> "You didn't turn up for our meeting today or send me anything to tell me you would not be attending. It is not acceptable to ignore my emails or refuse to meet with me. As mentioned

> below, I do expect you to work your notice period and to continue to engage with me.
>
> Please come in to meet with me tomorrow at 10:30. As per my email below, if you would prefer to meet outside the office before coming in, then let me know and we can do this.
>
> Please acknowledge receipt of this email and confirm that you will attend the meeting tomorrow".

132. D2 forwarded this email to Mr Beckwith, who responded with some text for D2 to put in an email to Mr Rahman:

> "I have already explained my position and reasons for resigning. These email interactions are becoming increasingly hostile and indicate that a meeting in person could become challenging, if not argumentative. I will take legal advice and will respond accordingly".

D2 sent this email to Mr Rahman at 6.23pm.

133. Mr Beckwith commented on Mr Rahman's message of 5:21pm: "It is like you are a naughty child.. to him.. incredible cheek to write to you in the way he does"; to which D2 responded: "I feel like I'm back at school being told off". Mr Beckwith told D2 that: "these guys are not respecting you.. Enough is enough". D2 asked Mr Beckwith: "What do you think is the next step". Mr Beckwith replied: "Hopefully he will lose his mind and send an absolutely horrible message". D2 responded: "I think we chose the right path to be honest the way this guy is speaking makes me think it would have been a wasted meeting which I would have minded but just a waste of energy and time." Mr Beckwith replied: "What he should do ie properly and correctly, is apologise and start again. Doubt he will, which plays into your hands. It is called poke the bear on purpose. Ego vs logic. Logic prevails!". D2 remarked that "That one was definitely a heated email from him. Anyway thanks for the help. Will keep you posted".

134. Late in the evening of 21 February 2024, D2 informed Mr Beckwith that he was seeing "a daily journal sent to my email of all the trades Erman is doing who was the associate trader I trained. It looks like he is managing fine in terms of de-risking the book. Can I use any of these emails to help us? Guess not". D2 also notified Mr Beckwith that he had received a further email from Mr Rahman and he forwarded it on. Mr Beckwith said that they would discuss it the following morning, and commented that "He kept emailing Stephen. Similar pattern of behaviour". Mr Beckwith stated that Mr Rahman "is stuck repeating the same nonsense.. quite pathetic really. No substance.. will deal with it." D2 commented: "This to me seems ludicrous".

135. The email that Mr Rahman had to D2 sent was as follows:

> "I am simply asking you to work your notice period —this is an entirely normal and standard request for an employer to make.

> I note that you are taking legal advice. Please do this and respond as soon as possible, but in any event, by no later than Wednesday 28 February 2024.
>
> In the meantime, I repeat my point that you are a senior employee, you have a contractual notice period and I want you to work it — there is loads to do and you being out is really hurting us financially.
>
> As a reminder, while you are out you should still comply with all of Dare's policies, which includes the protection of our confidential information and retaining information on work devices that is relevant to the business. Please can you respond to my question (in my email of 14 February 2024) and confirm that you do not have any Dare documents on any personal devices, and that you have not shared any Dare documents with any third parties?".

136. On 22 February 2024, Mr Beckwith and D2 messaged about material to put in a response to Mr Rahman's latest email. During the course of their messaging, D2 asked: "If they have 5 staff on my desk of multiple levels of seniority. How is it I'm not allowed to trade? It's just my earnings that seem to be taking a hit in terms of not being able to earn a bonus etc. surely a court would see that? Curious to hear from your perspective". Mr Beckwith responded: "He is implying in his emails that he wants you to work. But that could mean trading or some bullshit job. He isn't being clear". D2 replied: "No I meant start working for onyx now . . . Seems grossly unfair that in theory I can't earn my normally living whilst they can trade as normal just curious to hear the legal perspective". This reference to "legal perspective" indicates that D2 thought that Mr Beckwith was some kind of lawyer, or at least had knowledge of legal matters.

137. Mr Beckwith sent D2 an email to respond to Mr Rahman's latest message to him. Before sending it on to Mr Rahman, D2 asked Mr Beckwith: "Should I leave the WhatsApp groups now? On my personal phone?". Mr Beckwith said that that is what he would do. D2 said that he would do that before sending the email to Mr Rahman. D2 explained to Mr Beckwith what property of Dare he retained. They then had a call for over 11 minutes. They also spoke again the following morning for just over 8 minutes.

138. Mr Rahman emailed D2 on 23 February 2024 at 11:12 am. This was before D2 had sent on the email that Mr Beckwith was drafting for him. In his email, Mr Rahman stated:

> "I have noticed that you left the 'Tech-oil" work WhatsApp group last night. As you know, you are still employed and you are not on any form of leave, therefore it is important that you remain on the WhatsApp group so you can stay up to date. I am adding your work mobile number to the group this morning.
>
> Please respond and confirm that you will keep your work mobile on and that you will regularly check your emails and the WhatsApp group."

139. D2 forwarded this email to Mr Beckwith. They discussed some revised wording for D2 to send back. D2 commented on the draft that Mr Beckwith sent over, suggesting some changes to the wording: "So can we reword the first paragraph? Perhaps to say will no longer access from this point on? Or better am no longer using". D2 sent the revised draft back to Mr Beckwith and asked him if it was "OK". D2 commented: "But you saw he's going to re add me to a WhatsApp group", to which Mr Beckwith replied: "Pointless. The guy is an idiot". D2 responded: "lol". They had further discussion about the wording of the email and what Mr Rahman had said in his email. D2 said: "The only thing is the comment about dare not being financially hit he could say I would have earnt them more if I was there". Mr Beckwith said that Mr Rahman was saying that D2 had "lost them money. Which is an insult and unfair", to which D2 replied: "Agreed".

140. D2 sent his email to Mr Rahman on 23 February 2024, at 12:15 pm. It stated the following:

> "This email is to confirm that I am no longer using company-issued devices and equipment in my possession. This includes a work iPhone, a work desktop pc with accessories, a Bloomberg b-unit, a work pass, and a work laptop with accessories. I have left all WhatsApp groups and I do not have access to company emails on my personal devices or by any other means. All electronic items that are the property of Dare are powered down and are available for collection.
>
> Except for my own personal employment-related documentation from Dare, I do not have any other confidential and proprietary printed documents belonging to Dare in my possession. I understand my implied duty of confidentiality in addition to those duties that are expressly stated in my employment contract. I take these duties extremely seriously. I understand that Dare must protect its commercially sensitive information. I trust that Dare will reciprocate in terms of protecting information about me.
>
> You have asked me to "work" my notice period. Please explain what you mean by this. I have resigned from my position aggrieved with Dare. On one hand your last email infers that you are concerned about confidentiality given that I have resigned, but on the other hand you expect me to continue to trade the markets (or perform some other work in the office). More to the point, you are expecting me to attend work as though everything is very satisfactory and pleasant between us. I would also like to add that several brokers are already aware that I have resigned, which would make it extremely difficult for me to "carry on" as normal. The desk has operated effectively without me since I have resigned. Your comment about me being away from the desk hurting Dare financially is ridiculous.

> In any case, your instructions about me returning to the office regard me more as chattel than as a person who has been badly let down by Dare.
>
> You still do not recognise or wish to acknowledge the disappointment caused when my relocation to Dubai failed to materialise. While you can shrug off the Dubai situation as something that is no longer relevant, I (and my family) have been unable to forgive Dare for the way I was treated and let down".

141. Mr Rahman responded to D2 on 26 February 2024 at 18:28:

> "I'm a little taken aback by your emails. I appreciate that you were disappointed that the Dubai move didn't materialise. That was some time ago, back in early July 2023. You have worked as normal since then up until your resignation and indeed at the beginning of February 2024 you were happily discussing your future with Dare with me, and were keen to develop a new crude business line (I trust you remember our meeting of 1 February 2024 in this regard). So I don't really know where this is all coming from.
>
> I thought it would be sensible to remind you of your contractual obligations, which you agreed to. I hope we can then move forward with you returning to your role given what I've previously said - we are losing a lot of money without you in seat".

142. Mr Rahman then discussed the "Notice Period" and explained that D2 had not been put on Garden Leave. He continued:

> "I have asked you to continue working your notice period. You are not on any form of authorised leave. As such, you are under a contractual obligation to continue attending the office and carrying out your duties as normal. In your case, this means being in the office five days per week and trading as usual on the Crude desk. It doesn't matter if brokers are aware that you have resigned - employees resign from their employment every day and this won't impact your ability to carry out your role. I am not asking you to do anything unusual here. This is an entirely standard and normal request.
>
> I want to be clear about something, and I think it is important to be upfront. Your ongoing refusal to come to work and carry out your contractual obligations is a breach of contract. It is causing significant damage to Dare, and I understand from my lawyers that you are personally on the hook for that loss because it flows from your breach.
>
> Your trading desk (Crude) brought in an average profit of [*figure redacted*] — you were the head of this desk and responsible for

> the majority of the profits. Dare is no longer able to bring in such a profit on the Crude desk. The desk is down circa. [particular amount] since you stopped working. As such, Dare are suffering actual losses as well as loss of profits - and even this is not the full extent of the loss, which will continue and will compound over time.
>
> Obviously, I have no interest in holding you liable for this loss. What I want is to get you back to work so we are all profiting. I am therefore asking you again to come in, so that we can talk and so that you can carry on working. I would even consider compensating you through some form of bonus arrangement - (notwithstanding that you are not contractually entitled to a bonus) - which shows you how much we are losing / will lose without you".

143. Mr Rahman asked D2 to meet him at the office the following day: 27 February 2024. He also discussed D2's contractual obligations, saying that:

> "Given the tone of your emails and the fact that you are currently absent without leave, I am very concerned about your compliance with the ongoing contractual obligations that you owe to Dare".

Mr Rahman asked D2 to confirm that his employment would not end until 14 February 2025, that he understood that he had a 12-month non-compete period which runs from the end of his employment, and that he would not be able to start employment with a company that competes with Dare (in the United Kingdom, Dubai or anywhere else) until 14 February 2026. D2 was asked to confirm that he would comply with this restriction, along with other restrictive covenants. D2 was also asked if he had been offered or accepted a role with another company, and was told that he was contractually required to provide this confirmation. Mr Rahman also referred to Dare's confidential information, and said that:

> "my concern was that I did not want you to have any such information on your personal devices (which you should not have anyway). I have no issues with you accessing Dare's confidential information through your work devices and you will need to do this to carry out your role anyway.
>
> Let's move forward constructively".

144. D2 and Mr Beckwith discussed Mr Rahman's response in a series of WhatsApp messages. D2 said that the response

> "Looks pretty sinister this time... Talking about me being personally liable for losses they . . . Supposedly have accrued since I've been off. For your guide I left the book in good shape and think it's absurd the amount they are saying. Also I have no idea what trades they are putting on and have heard they are trading actively".

145. Mr Beckwith commented: "That's so desperate their side. It is baseless. Pure intimidation which will only make their position so weak. Interestingly, would you know what the position is or book has done since you resigned? Obviously without asking anyone at Dare that is. From the brokers say?". D2 replied: "One of my brokers told me they are trading actively". He also said that "I saw in one of the last emails a dramatic change to my position. It showed the whole position." Mr Beckwith asked "As in loss?", to which D2 responded: "No the position. I think it was down around [redacted amount] since I left. But that was last week And they have traded very actively so no idea how we could attribute that to me or their trades." Mr Beckwith remarked: "This is desperate their side. And you can equally claim for the loss of income.. it is just a stupid argument their end."

146. The conversation continued:

> "D2: I think he's super deceitful and this email has made me very very upset. I had some very good positions on which I know would have done well as well. So no idea how they claim to have lost that much. In any case the book was up close to [redacted amount] for the new year when I left.
>
> Mr Beckwith: It is hard mate, you see some people for what they really are. Horrible. I see this time and time again. Good people just shake hands and wish you the best. Dont take it personally. It is all just noise.
>
> D2: I don't like the fact this guy is threatening me. It's disgraceful after how much I personally have made this guy over the years. I'm very shocked and dissapointed. Honestly I hope we can put him in his place at this stage and be done with this back and forth. In any case please let me know how you wish to proceed.
>
> Mr Beckwith: The odd thing about it is that if he met you he wouldn't say anything of this. Well, he has taken the bait and what we needed ie to draw a line underneath it. He is being unreasonable and harassing you. Leave it with me. It is upsetting and will naturally make anyone feel super pissed off. But look beyond the strife and his anger. We will take care of it.
>
> D2: Thanks. I assume I won't be going to meet this crazy guy tomorrow.
>
> Mr Beckwith: Not if you're being threatened with losses.
>
> D2: Thanks I will await to hear from you with regard to next steps. Hope this all counts to speed the ending of this crazy saga.
>
> Mr Beckwith: Indeed. It is all a matter of him trying to intimidate.. Nasty man but weak. Money doesn't buy you brains. Plenty of rich idiots on this planet.
>
> Will deal with Patrick".

Patrick was a solicitor working for Reynolds Porter Chamberlain, the firm that Onyx had instructed.

147. On 27 February 2024, D2 had a conversation with Mr Beckwith in the morning that lasted more than 22 minutes. In the early evening, D2 received another email from Mr Rahman. He forwarded this to Mr Beckwith. Mr Beckwith said that Mr Rahman was "Pressuring you... you would have thought he had a business to run". He said that Joanna (a solicitor at Fox Williams, the firm that D2 had instructed) and Patrick were "on the case. All this hassling you will be thrown back at him with a harassment case." Mr Beckwith agreed that D2 should send the email to the solicitors. Mr Rahman's email stated the following:

> "You haven't responded to my email below and you didn't show up for the meeting today. You are still a senior employee of Dare and it is not acceptable for you to refuse to engage with me, or to attend a meeting with me. Please can you come into the office tomorrow so that we can discuss this? Please come in at 12:30p.m..
>
> Please could you also respond to the questions set out in my email below? Your failure to respond to my email or attend a meeting with me is increasing my concern about the obligations you owe to Dare and we are continuing to suffer loss as a result of your refusal to come to work".

148. The following day, 28 February 2024, at 11:00 am Mr Beckwith crafted a message for D2 to send back to Mr Rahman. This stated the following:

> "I am unable to attend the meeting at 12:30 today that you would like me to attend.
>
> The accusations you are making and the way you are addressing my resignation is causing me to feel extremely anxious and uncomfortable. Your emails carry the strong indication that a meeting with you would become confrontational and argumentative.
>
> I have forwarded your emails to my legal advisor".

This was described by Mr Beckwith to D2 as a "holding email ie so that you could not be criticised for not attending". They spoke later that afternoon for over 41 minutes. After their call, D2 received another email from Mr Rahman and forwarded it to Mr Beckwith.

149. Later that day, at 02:50 pm, D2 sent a WhatsApp message to his father saying that:

> "I've left my company and they are trying to make me feel very uncomfortable. It's stressing me out and I don't really want to be there at the moment. Need a couple weeks off. It's just grief. I can deal with it but it's horrible day to day for me and the family".

D2's father replied:

> "Ok I m trying to get hold of him".

150. D2's father was a pharmacist. The person who D2's father was trying to get hold of was his own General Practitioner, Dr Keane. In his evidence to the Court, D2 stated that he wanted to speak to a GP about how he was feeling; and that as he knew that the waiting times for his own General Practice were long, he asked his father to obtain an appointment for him with Dr Keane on an urgent basis.

151. At 15:48 on 28 February 2024, in response to D2's email sent that morning, Mr Rahman wrote that:

> "I am not sure where this is coming from.
>
> You are still an employee of Dare and therefore I would expect you to be available during normal working hours, however, if 12:30pm today doesn't work for you, please could you let me know some times that would work for you either tomorrow or Friday? I will then work around your availability.
>
> I have absolutely no intention for the meeting to be confrontational. I simply want to get back to work - and I don't understand why you are refusing to come to work. I am obviously concerned about: (i) the contractual obligations that you owe to Dare; and (ii) the ongoing and significant loss that Dare is suffering as a result of your refusal to come to work.
>
> Please could you respond to the questions in my email below regarding your contractual obligations? These are straightforward and simple questions which should not be onerous to respond to".

152. On 29 February 2024, D2 had a series of exchanges with Mr Beckwith via WhatsApp. Early in the morning, D2 stated that "My wife is concerned this may go on some permanent medical record and that it might impact the wellness test for Dubai visa. I don't suppose you would know if this could impact either of those?". Mr Beckwith said he would check, but did not think that was a problem. A short time later, D2 told Mr Beckwith that he was going to see the doctor, and wanted to be clear that "I'm going to try and ask for around 2 to 3 weeks of leave and I assume I won't need to be going back there in the future". Mr Beckwith responded:

> "Just need to lay on that you are not an anxious person but you are going through a very hostile situation with your employer who is threatening you with insane and fabricated financial losses".

153. An hour later, D2 sent the sick note to Mr Beckwith and told him that he was signed off until 18 March 2024, to which Mr Beckwith responded "Nice". Mr Beckwith also explained that this would not affect the Dubai situation, and that a fit note from a GP did not constitute "a diagnosis". D2 submitted his fit note to Dare via an "app" on his

phone. The note, signed by Dr Keane, stated that D2's case had been assessed on 29 February 2024; that D2 was not fit for work because of "Stress at work"; and that this would be the case until 18 March 2024.

154. Also on 29 February 2024, Fox Williams wrote to Dare as follows:

> "We are instructed to act for our client, Ashley Hikmet. We have seen the email correspondence that Mr Ayman Rahman has recently exchanged with our client in relation to and following his resignation from his employment with Dare International Limited ("Dare").
>
> Our client is currently not well enough to attend work, due to the stress and anxiety caused by both events during his employment with Dare and concerns about his position following his resignation. He has seen a doctor and has been signed off work until 18 March 2024 due to stress at work. We enclose his fit note.
>
> It is important that Dare understands the severe detrimental impact that events during our client's employment have had on him, which has ultimately led to his resignation and to the stress and anxiety caused by the fact of his resignation.
>
> As stated in our client's resignation email, our client remains deeply disappointed and affected by the manner in which Dare handled the proposed relocation to Dubai last year. The proposed relocation was an extremely important and major event in our client's life, affecting his family too. Dare's actions both in seeking to require our client to sign a wholly unreasonable contract in respect of the move, and pulling out of the move at short notice, deeply undermined the trust and confidence that our client had in Dare as his employer. The fact that three out of the seven senior traders who were due to move to Dubai have now resigned shows that our client's feelings were shared by his colleagues who have now resigned. Dare's failure to adequately recognise the impact on our client resulting from these events has only served to undermine his trust and confidence in Dare further and ultimately led to the conclusion that he could no longer remain in Dare's employment. He did not take this step lightly - his observations about how departing colleagues were treated meant he felt fearful of raising his concerns in the aftermath of the Dubai situation and fearful of the reaction when he gave notice.
>
> Our client's fears are well-founded, given the way in which he has observed Mr Rahman treat other staff (including those who have recently resigned) in the past. For example, when one of our client's colleagues resigned around two months prior to our client's resignation, Mr Rahman called senior members of staff into a meeting to express that he intended to create an alternative

> role for the colleague to keep him working for Dare as long as possible. Our client found this to be both vindictive and verging on threatening behaviour from Mr Rahman, essentially warning other senior staff not to leave Dare otherwise they would face the same treatment.
>
> Since our client's resignation on 14 February 2024, he has become very anxious and fearful of attending the office and continuing with his job. Whilst the written correspondence between the two appears measured and reasonable, the reality is that Mr Rahman is known to be extremely challenging towards anyone who resigns, as referred to above. Our client's role as Head of Crude Oil Trader is by its very nature a high-risk function which entails taking volatile positions on a daily basis. Our client does not feel comfortable undertaking such high-risk decisions when he does not have trust and confidence that he has Dare's and Mr Rahman's full backing and support. He has witnessed Mr Rahman's outbursts to senior traders who aren't performing or in some way cross him. They are humiliating, create a culture of fear and they undermine and damage reputations. Given the high-risk function our client undertakes, he does not feel comfortable continuing to perform his role in this hostile and unpredictable environment.
>
> The incessant correspondence our client has recently received from Mr Rahman by both email and WhatsApp, including to his personal phone, has increased our client's anxiety. As have the threats of legal action. Our client is fearful that if he returns to work, he will find himself in a confrontational situation with Mr Rahman. At this time, that would be very detrimental to his health. Our client received a further email from Mr Rahman yesterday afternoon referencing the "ongoing and significant loss" that Dare is suffering because of his absence. Our client considers that this allegation is entirely unfounded; our client left his trading positions in a good state and Dare is clearly able to continue trading without our client. Therefore, no such financial losses can be attributed to his absence.
>
> In light of the above, our client needs time off work to focus on recovering his health. When he is able to do so, he should be in a position to engage with the handover of his role as outlined by Mr Rahman. We will keep you updated in this regard but in the meantime, please ensure that you correspond with us going forward in relation to this matter and refrain from contacting our client directly whilst he is not well enough to work".

155. On 1 March 2024, D2 messaged Mr Beckwith in the morning, saying that a few brokers were reaching out for private lunch or dinners, and he wondered if he could do that if it was for "social reasons". Mr Beckwith replied that:

> "It is a bit risky given your letter that went from Joanna [a solicitor instructed by D2 at Fox Williams] to Dare and plus the sick note.
>
> I am more relaxed when it is a case of meeting up over the weekend as close friends on a social basis, but meeting up during the week formally is probably best to avoid (especially if the brokers start gossiping that they met up with you).
>
> But there will be a time to meet them soon, just got to be careful with it now. So, meet brokers who you would regard as your really good mates out of work, and the others you can meet when the dust settles a bit".

156. In further messages, D2 asked what Mr Beckwith was "expecting next from Dare? Seems like they are just gonna keep spinning the same counter into eternity". Mr Beckwith replied: "Expect them to have their lawyers write a response. This will get into spat between the lawyers. All normal and to be expected. But ultimately then reaches a point very where the relationship is agreed by both as untenable. But the lawyers know that from the start - it is all posturing.. It looks like nothing is happening but in reality big strides are made and then boom - it is all over." D2 responded: "Got it. Will we at any point look to raise damages against them? Or more like in the back pocket In case they do something first? Sounds like I will potentially be out for less time than Stephen in that case? Or too early to say". Mr Beckwith's response was "My goal is always to see if we can get you a pay off from Dare because you are identifying so many injustices and problems.. but i don't want to unduly promise as these things are often quite fiery in the beginning. We just need to play it like chess".

157. Later that day, D2 asked Mr Beckwith if he had seen the response from Dare's lawyers. This was a reference to a four page letter from Dare's solicitors. The letter stated that it was responding to the Fox Williams' letter of 29 February 2024. The solicitors say that "Our client is sorry to hear that [D2] has been signed off work"; they refer to D2's remuneration package and say that "The size of that figure is reflective of the value of your client to Dare's business". Issue was taken with assertions made by Fox Williams, but it was stressed that Dare "wishes to be constructive. Your client remains an employee of our client, he is highly valued and highly regarded, and the business wishes to make it as easy as possible for him to return to work. Tendentious correspondence is likely only to inflame matters where the parties (and their legal representatives) should be looking to calm them." Dare's solicitors rejected that there was any basis of a claim that Mr Rahman has behaved improperly towards D2. I note, in this regard, that D2 did not treat Mr Rahman's behaviour towards him as justifying his immediate resignation. Nor has any claim, or counter-claim, for "harassment" been brought by D2 against Dare.

158. The letter continued:

> "As regards matters since your client's resignation, your position is hard to understand. A reasonable person reviewing the correspondence between the parties would inevitably conclude that (i) our client has been patient and courteous to your client at all times, (ii) far from being "incessant", the correspondence

> from our client has been notably measured and restrained, (iii) your client has no possible basis for asserting that he is "anxious and fearful" of attending the office, in circumstances where Mr Rahman has been consistent and clear that he values Mr Hikmet and wants him to return to work. Indeed, on 26 February 2024 our client mooted the notion of an ad hoc bonus arrangement to that end — something which is not mentioned in your letter, but which plainly shows how valued your client is".

The letter went on to say that Dare

> "*is* suffering loss as a result of your client being absent. Your client surely understands this. He is the head of the Crude trading desk in a fast-moving market. As at Monday 26 February 2024, it is estimated that his desk was down [particular amount] as a result of his absence. Of course, our client was perfectly entitled to mention such losses in circumstances where your client has never previously (before yesterday) indicated that he was not well enough to work. It is worth reiterating that your client has Mr Rahman's trust and confidence. He has his backing and support. He is an excellent performer in his role as Head of Crude Oil Trader and his work is valued and respected. Our client hopes that, when he is fit to do so, he attends work and carry out his duties. That is no more than his duties require. There is nothing unreasonable in it".

159. The letter requested that D2 confirm that his employment will not end until 14 February 2025; that D2 is subject to the non-compete period until 14 February 2026; that D2 understands the other post-termination restraints and will comply with them; and asked D2 to confirm if he had been offered or accepted a role with another company. The letter also requested D2 to attend an Occupational Health referral on the basis that "the medical note provided with your letter does not disclose enough information to plan for your client's swift and successful re-integration into the business once he is fit to work". The letter also referred to the resignation of three of the Senior Traders: "Naturally our client is concerned about the timing and nature of these resignations".

160. In a message to D2, Mr Beckwith described the solicitor's letter as "More of the same garbage just sent by lawyers. It's funny it talks about suspicion of timing of 3 departures. Nothing suspicious we were all upset about Dubai". Mr Beckwith's response was: "Honestly mate, pathetic." D2 responded: "Agreed. Looking forward to next step".

161. There was further correspondence between the parties' solicitors. On 15 March 2024, Dare's solicitors noted that D2's sick note was expiring on 18 March 2024. They stated if D2 did not return to work and provide a further sick note, Dare would wish to proceed with an immediate Occupational Health referral, contending that it was not for D2 to decide whether that was "necessary" or not. D2 asked Mr Beckwith later that day whether he had seen "the latest crazy email from their lawyers? Curious to hear your thoughts given this medical note coming to an end etc." Mr Beckwith read the email and described it to D2 as "Pathetic". Later in the communications, D2 said "They love to make threats".

162. On 18 March 2024, Dr Keane signed a further fit note for D2. This stated that he had assessed D2's case on that date, and advised that D2 was not fit for work until 25 March 2024 due to "Stress at work with related insomnia". D2 told the Court that he did not meet with Dr Keane for this assessment, and had only met Dr Keane for the first fit note. The information about D2's condition had been conveyed to Dr Keane by D2's father. On 22 April 2024, Dr Keane produced a further fit note for the period until 20 May 2024. This stated that D2 was not fit for work due to "Stress at work with related insomnia". A further fit note was issued by Dr Keane on 21 May 2024, saying that D2 would be unfit for work until 1 July 2024 due to "Stress at work". The final fit note for D2 was issued on 2 July 2024, this covered the period until 5 August 2024, based on "Stress at work".

163. During the period following his resignation, D2 had a number of meetings with personnel from Onyx. On 14 March 2024, D2 had a WhatsApp exchange with Mr Kayaam. Mr Kayaam asked about meeting up for lunch or dinner, and D2 said to him that: "A bit more settled now that the chatter between me and Ayman has taken a breather. Taken up some golf lessons as well!". D2 then said:

> "Not sure how much forward planning if any you want me to be involved in but could be quite constructive to have a few meetings in advance of landing if that's possible. Good for pricing sheet set up etc. otherwise looking forward to a general catch up . . . ".

Mr Kayaam replied to say that they would do that in around June or July, to which D2 said:

> "Great keen to hit the ground running when the timing is right".

164. On 15 March 2024, Mr Beckwith asked D2 if he could meet up with him the following week: "Need you to meet henry and nathan plus others . . . Got a lot going on progress wise with Dubai". That was a reference to Henry Monahan (Onyx's Director of Trading Operations) and Nathan Tynan (Onyx's Director of Compliance). D2 met up with them on 20 March 2024.

165. Following their meeting, D2 messaged Mr Beckwith to say:

> "Thanks for arranging today. Was really productive to get that initial band-aid ripped off re comparing differences. There is a decent amount of work to be done but will roll the sleeves up and work hard over the next few months to get this ironed out within the framework of what we can do etc. speak soon".

Mr Beckwith responded:

> "Glad you could make it today. Now that you have met Henry and Nathan today, we can have you chatting with them to get everything ready for you.
>
> If you can get out to see the Dubai office, that would be great".

D2 also messaged Mr Kayaam after the meeting to say:

> "Really great to catch up with the team. Think there is some work to be done over the next few months, but seems like the team have a good energy to cooperate and get this over the line. Looking forward to a golf round at some point (with a lot more practicing on my side prior!)".

166. On 25 March 2024, Mr Beckwith asked D2 if he could pass his number to Mr Monahan, who wanted to call him and introduce D2 to the Onyx employee who runs "Eagle": the trading software used by Onyx. D2 replied that "Sounds great I have some work I would like to do on Eagle so that would be really helpful". On 26 March 2024, D2 had a call lasting more than17 minutes with Mr Kayaam. They had a further call for nearly 14 minutes on 18 April 2024. On 21 April 2024, in a WhatsApp exchange, D2 discussed office buildings in Dubai, telling Mr Kayaam that he had "Found out GFI are in a building called the Al fattan currency house said it's pretty decent and not the most expensive. If you had a budget in mind I would be happy to help the team".

167. The previous week, D2 had visited the office that Onyx had rented in Dubai. On 15 April 2024, D2 messaged Mr Beckwith to say "Seems capable for 2 people but probably will run out of room pretty quickly if more than 2 with desk setups. Managed to see a few mates out here and got a good feel for the place".

168. D2 met with Mr Beckwith, Mr Tynan and George Lucas (Onyx's head of Legal) again on 5 July 2024. Following their meeting, in a WhatsApp exchange, Mr Beckwith said that "Nathan and George were pumped after their meeting with you.. lots going on and all about pushing forward now".

169. On 8 May 2024, D2 met Mr Law at the *Oka* restaurant. Before this meeting, they had corresponded on a number of occasions. On 24 February 2024, Mr Law messaged D2 to say: "Hey mate, heard you left as well?! Hope all good with you!". D2 replied: "Hey man sorry not had a chance to message you. Can't really say much cause of all the legal. Just to say I have resigned and my family are moving to Dubai probably this year maybe beginning of next". I have no doubt that this was a genuine response from D2: that he had not communicated with Mr Law previously about his resignation. D2 did not expect that his WhatsApp messages would be the subject of scrutiny by a Court, and had no reason to plant evidence for a future case or distort the truth. During the course of the message exchange, Mr Law said to D2 that "I'm also hoping to move to Dubai btw", to which D2 responded "Feels like everyone is headed there if not already there". Mr Law asked to meet up, and D2 responded: "Would be great let me figure out what and when I can do stuff. Appreciate should be fine as it would be non work related. Just have to run everything by legal team these days".

170. On 6 March 2024, D2 had a 32 minute call with Mr Law. During that call, they clearly discussed the circumstances following Mr Law's resignation as in a WhatsApp exchange with Mr Beckwith on 15 March 2024, D2 said "Tom called me the other day. Said they tried this occupational thing on him said it was probably Ayman's mate".

171. The conversation between D2 and Mr Law at the *Oka* restaurant was secretly recorded by a private investigator working on behalf of Dare. During the course of their conversation, Mr Law told D2 that he had spoken to Mr Kayaam at Onyx, but had told

him "Don't talk to me until June". D2 already knew this, as he said that "He mentioned that he spoke to you". D2 asked if they had had a good conversation and Mr Law said that "it was decent". D2 described Onyx as being "very ambitious, the good thing about them is that they're just business, they don't really get emotional . . . they're really going for it, like as in they're really going for it. I think they're going to take on like quite a few people". Mr Law responded with: "I mean this, this, is their chance, Ayman's just handed them the fucking win, hasn't he?", to which D2 replied "Yeah, he's shot himself in the foot". With respect to Onyx, D2 said "you go there, it's not like you're starting from scratch and building the technology all over again, like you can literally trade like from day one with the resources". D2 told Mr Law that "the actual structure" of Onyx's Dubai office "is still being settled at the moment but . . . they're really fucking incentivising". Mr Law said that everyone knew that D2 was going to Onyx. He added "Some people think I'm going to Onyx as well".

172. They talked about what was going on with Mr Rahman. Both said that they had not heard from him for 4 weeks or so. D2 said that he had heard that ten people had left. Mr Law asked D2 if he had spoken to D1. D2 said "I don't want to, obviously he's moving there . . . I've literally not spoken to him since he's resigned. When he resigned, I actually thought he was ill, you know they make out like something's happened… I wanted to message him to say but I didn't, so I've literally not messaged, called, nothing". Mr Law replied with: "It's better, they can't accuse you of anything", to which D2 said "Yeah exactly. It's literally the truth. But in my last email Ayman said, he was like, the timing is suspicious that you guys have all left, basically trying to insinuate we left together." Mr Law responded by saying "I'd reply to him yeah, that's because you, everyone's finally had enough of you being [inaudible]". D2 replied: "We all left for the same reason. You fucked up Dubai mate".

173. They talked about other people who worked at Dare. Mr Law said that "the next ones on the list is probably like Rupesh or Vinni to be honest", to which D2 said "They don't want to go Dubai". D2 also referred to "Amrit and Cam", saying that "I think they're quite vulnerable because I mean they're not earning [redacted] right? So, if someone's offering them a better [redacted] , sign on and Cameron was keen to go to Dubai as well". Mr Law responded: "It's so hard to get them away, because I spoke to Cam, and he's like what's the point? I'm finally earning good money, if I leave here then I'm sure Ayman is going to sit back down on fuel."

174. Later in the conversation, D2 said to Mr Law: "You know, Omar's, like, said, asked me if any of these juniors are good, [pay well] so [inaudible] have a strong view [inaudible] said to be honest [inaudible] a lot of them are like freeloaders [inaudible] one or two years [inaudible]". In cross-examination, D2 was asked about this:

> "Q. "... Omar's ... asked me if any of these juniors are good ..."
> That is correct, is it?
>
> A. Yes, he would have asked that, yes.
>
> Q. And you then gave him your view on the juniors at Dare, correct?
>
> A. I believe I said some –– I basically gave some negative feedback, yes."

175. They also talked about the losses that Mr Rahman had claimed D2 had caused Dare. D2 said that Mr Rahman was "trying to intimidate". D2 said to Mr Law: "what did it for me actually, what really pushed me over the edge was when Stephen resigned, and he was like, he took us to a side and basically said "I'm going to fuck ..trying to [inaudible] him [inaudible] for 2 years". Like that was the final straw for me, this guy is literally just..."

176. D2 asked Mr Law whether Mr Kayaam had asked him about "strategy and stuff". Mr Law's response was:

> "[inaudible] to be honest I was actually like [inaudible]".

D2 responded:

> "[inaudible] help you out a little bit because basically he [inaudible] MOC stuff. So like I think [inaudible] MOC stuff because they don't like [inaudible] MOC [inaudible] I don't know if that [inaudible] usually do [inaudible]".

MOC was a reference to "Market on Close" trading: that is, buying or selling a security at the closing price of the trading day. Mr Law responded:

> "Yeah it's good to know, I appreciate that. The last thing you want is to go somewhere start doing it and have a problem. It's almost not worth it [inaudible]".

D2 then said:

> "And they must have got scared when they saw what happened to Dare, with the US regulations stuff",

to which Mr Law said:

> "He's probably thinking it's not worth it, he's probably right".

177. They then discussed a meeting before a dinner at the restaurant *Sushi Samba*, which had taken place on 26 September 2023. D2 said that Mr Rahman "was like "if I wanted to, you guys are basically useless to me, I could do fuel cover"". Mr Law said do you know who was most "pissed off about that?", to which D2 said "Stephen?", and Mr Law said: "No, Cam, because he goes, just before that, he goes "so Cam and Amrit have made [redacted] , so one could assume that me and Jono would make at least that". D2 said to that: "Yeah that was... uncalled for". I find that this characterisation of the meeting on 26 September 2023 was broadly correct. Neither Mr Law, nor D2, thought that their conversation was being recorded and they had no reason to mischaracterise what had taken place.

178. Mr Law asked D2 what sort of percentage had Mr Kayaam offered, to which D2 said "Total % is 40 basically . . . it's between taking 40 or 30 and like up to 10, but it's not really clear if it'll actually be 10 in reality". Mr Law asked if that was "10 of the office", and D2 said: "Yeah but I'm not sure that is actually how it'll play out, it'll be less, quite a bit less, put it that way. The good thing is, he sounds, like, pretty flexible as in like. . . . the whole thing is I would say is he's the kind of guy who basically really cares like to

make you happy, when you want somebody, you're like, but again, don't mention this to anyone". Mr Law agreed that he would not mention it to anyone, and said "I don't know who I'd tell anyway". D2 replied: "No, but if you came to negotiate with Omar and you're like "well I think I should get this"", and Mr Law replied: "Nah, that's a good way to start off on the wrong foot".

179. They then talked about different personnel at Onyx.

> "D2: But I haven't really spoken much to Greg at all, like Greg I think he is very busy.
>
> Mr Law: I don't think he knows much, he didn't even show up when I went to meet Omar and HR.
>
> D2: Oh okay. John? He's a nice guy.
>
> Mr Law: Yeah, he is a nice guy. I liked them, they seemed like fairly straightforward chaps".
>
> D2 said that Mr Beckwith was "really solid, he helped me a lot when I was leaving . . . Basically equivalent of Consigliere of the company . . . He'll do anything to get stuff over the line you know". Mr Law said that when he had spoken to Mr Beckwith, he had said that D2 would be starting in September. D2 said "I think he's probably more aggressive than Omar", to which Mr Law said "He said to me 6 months, and I was like "I wish"".

180. Mr Law and D2 then discussed claims for damages and injunction to stop them working. Mr Law said he was happy with one year, to which D2 said "I'd be happy to do like 6-8 months . .. If I get it over and done with quicker, then [inaudible] I can start with the rest of my life". There was no discussion about sickness, or that D2 was feeling stressed.

181. A month later, following receipt of a pre-action letter from Dare's solicitors, D2's solicitors responded on 11 June 2024, stating that:

> "[O]ur client has been signed off work until 1 July 2024 due to the stress and anxiety cause by events during his employment with Dare and concerns about his position following his resignation, exacerbated by the threats of legal action by your client. His previous sick leave at Dare therefore has no relevance to his current absence.
>
> With respect to your request for our client attend an Occupation Health referral, our client is willing to attend an appointment. To be clear, you first requested that our client attend Occupational Health in your letter of 1 March 2024 and repeated this request on 15 March 2024, at which stage our client had only been signed off for 2 and 4 weeks respectively. Such requests were plainly premature. We noted, in our letter dated 2 April 2024, that your request (at that stage) appeared to be another intimidation tactic

> as we would be very surprised if your client customarily referred individuals to Occupational Health after such a short period of time. We received no response from you on this until your letter (sent six weeks later on 14 May 2024). As our client now has been signed off work for further period of time the position is clearly different, and our client is willing to attend an Occupational Health appointment".

Mr Rahman did not take D2 up on this offer. He told the Court that it was "too late".

182. Also during the notice period, D2 had a number of holidays, even though he was officially on sick leave. From 29 March 2024 to 6 April 2024, D2 went on a skiing holiday to Whistler, in Canada, which he described to a friend as "amazing". Between 10 and 16 April 2024, D2 visited Dubai with his family. In a WhatsApp exchange with Mr Law on 11 April 2024, D2 said it was "amazing. Good buzz here." In a WhatsApp message with Luke Oldershaw on 12 April 2024, he said "this place is insane". In a WhatsApp message to Joshua Conners (a broker) on 13 April 2024, D2 wrote that "It's amazing here in Dubai mate. Different life. Trust me you will never look back. I think I will stay here a long time." Whilst in Dubai, D2 met up with Jeremy Abihssira.

183. On 19 June 2024, in a WhatsApp exchange with someone called Seyd Anane, D2 was asked about how he was enjoying his garden leave. He said: "It's been good but also can't help feeling guilt of not working lol it's very wierd. I also have so much fomo away from the market. Crazy how long these non competes are these days."

184. During his notice period, D2 met with a number of brokers. In the course of his oral evidence, D2 explained that he had close relationships with a number of brokers that had been built up over the years. Some of them were social friends of his. He and his wife were friendly socially with one of the brokers, Mr Abihssira, and his wife. On 15 February 2024, D2 informed Mr Abihssira that he had resigned. He also informed traders, including Joshua Conners and Marco Courtney, of his resignation that same day. He had a call with Mr Conners shortly after informing him of his resignation, and exchanged further messages (some of which involved details about trades that had taken place in the Crude market) and had further calls with him throughout the notice period. On 16 February 2024, D2 had an audio call lasting more than 11 minutes with Mr Abihssira. Following that call, Mr Abihssira messaged to say: "Mate really happy for you! You made the right choice!". D2 replied with "Very excited". There is no doubt that D2 informed Mr Abihssira of the identity of his new employer. On 20 February 2024, Mr Abihssira messaged D2 to ask if would be in London the following week. He confirmed that he would be and that they could probably meet up, if just the two of them. D2 commented: "Look forward to it if you're coming!". Mr Abihssira was based in Dubai.

185. On 15 February 2024, D2 contacted Luke Oldershaw (a broker) to tell him that he had resigned. Mr Oldershaw had recently resigned from his employment. D2 said that "Crazy we all gonna be off at the same time lol". Mr Oldershaw asked how long D2's "gardening leave" would be. D2 said "Decent chunk of time… All down to legal now". They met up in Dubai when D2 was visiting there with his family in April. On 4 June 2024, Mr Oldershaw asked D2 how "non work life" was, and D2 replied "Hey mate all good… Just came back from espana". Mr Oldershaw was in Bali at the time of these messages and D2 asked him how it was. He sent D2 a picture of a helicopter ride that

he had taken that day with his cab driver. D2 said "Save some money mate". Mr Oldershaw replied: "Nah it grows on trees don't you know", to which D2 said "Literally this is like gap year on steroids cause we all have money. I think I'm gonna be bankrupt by the time I actually start work". Mr Oldershaw said "might as well make most of it", to which D2 said "I know". The reference to the "gap year on steroids" was to Mr Oldershaw's time off, and not D2's.

186. On 16 February 2024, D2 reached out to a counterparty with whom D2 had done business to inform him of his resignation. D2 told him that it had been pleasure "to do some work with you and hopefully will be able to reach out again in due course to catch up. Got a long notice period ahead". D2 messaged that "Very wierd feeling to be out with no positions to think about", followed by a laughing emoji.

187. On 21 February 2024, D2 messaged Mr Beckwith to say that: "Have a few traders who are looking to meet up with me discreetly flying in next week. Is it ok if it's very discreet?" Mr Beckwith responded: "I wouldn't have an issue, just need to be happy they are good guys who wont gossip if you follow me". D2 responded that "Think it would be good to set things up for sure. Will do so discreetly". In his oral evidence, D2 suggested that the reference to "traders" was an error, he meant to say "brokers" and that he was referring to brokers flying in to London to attend a conference. I do not accept this explanation. D2 clearly knew the difference between brokers and traders, and there was no reason why "traders" (that is, counterparties) would not attend the conference. D2 told the Court that he had met up with a number of broker friends after resigning: Carlo Peccioli, Marco Courtney, Jeremy Abihssira, Luke Oldershaw, Anthony Georgiou, Will Brentnall, Marlon Lindsey, Jeremy Chamberlain and Joshua Conners.

Termination of employment

188. On 11 July 2024, Dare terminated the Defendants' employment. They were paid their basic salary in lieu of the unexpired period of notice. On the same day, proceedings were issued against the Defendants and urgent injunctive relief was sought. As already explained, on 18 July 2024, Anthony Metzer KC accepted undertakings from the Defendants and gave directions to a speedy trial.

189. Following D1's resignation, around 15 other members of staff have also resigned, many of whom have also claimed to be too sick to work during their notice period.

Legal Principles: (i) The Post-Termination restraints

190. There was no real dispute between the parties with respect to the key applicable legal principles for enforcing post-termination restraints. Those principles are as follows:

(i) *the Court must decide what each restriction means when properly construed*: (a) if a clause is valid in all ordinary circumstances which can have been contemplated by the parties, it is equally valid, notwithstanding that it might cover circumstances which are so "extravagant", "fantastical", "unlikely or improbable" that they must have been entirely outside the contemplation of the parties; and

(b) the validity principle means that parties to a contract will have intended it to be valid. If there are two alternative realistic constructions, the parties are deemed to have

meant to enter into a valid agreement, not an invalid one. The validity principle is only engaged where the covenant is genuinely ambiguous and where the rival constructions are both realistic. It does not apply where the Court reaches the conclusion that one construction is clearly preferable to the other: see *Tillman v Egon Zehnder Ltd* [2020] AC 154 at [42].

(ii) *the Court must then consider whether Dare has shown on the evidence that it has legitimate business interests in relation to the employees' employment*;

- Generally, employers have legitimate interests in protecting (a) confidential information and know-how, (b) trade connections, and (c) a stable, trained workforce in a highly competitive business.

- In relation to confidential information, the employer needs to establish that at the time the contract was entered into the nature of the proposed employment was such as would expose the employee to information of the kind capable of protection beyond the term of the contract: see *Thomas v Farr Plc* [2007] ICR 932 at [41].

- An employee who has obtained confidential information of value to the employer, or who has built up his knowledge by taking advantage of knowledge, such as working techniques or practices, which is not generally known or available, can be restrained after the employment has ended from exploiting the information or knowledge to his own advantage and to the detriment of the employer: *Credico Marketing Ltd v Lambert* [2022] EWCA Civ 864 at [38]. This includes when an employee cannot remember the minute details of a process but "would [be] likely to remember in general terms what the problem was and what was the solution, what experiments were made and whether the results were positive or negative and so on" and where the employee would be likely, when the need arose, "to dredge up from the recesses of his memory" the particular secret which, while he was employed, he had found appropriate to deal with the requirement: *Commercial Plastics Ltd v Vincent* [1965] 1 QB 623 at 642F-G.

- Information which can be protected includes that which is used in a trade or business and which, if disclosed to a competitor, would be liable to cause "real (or significant) harm" to the employer: *Lansing Linde Ltd v Kerr* [1991] 1 WLR. 251 at [260].

- Protection cannot be legitimately claimed in respect of the skill, experience, know-how and general knowledge acquired through performing the contract (even though it may assist a competitor).

(iii) *once the existence of legitimate protectable interests has been established, the Court must be satisfied that each restriction is no wider than reasonably necessary for the protection of those interests*.

Reasonable necessity is to be assessed from the perspective of reasonable persons in the position of the parties as at the date of the contract, having regard to the contractual provisions as a whole and the factual matrix to which it was expected to apply. The Court can take into account what the parties (objectively) intended or contemplated at

the time: that may include the intention or contemplation that the employee might be promoted, or attain further qualification and experience. Subsequent events may be taken into account insofar as they shed light on what was in the parties' reasonable contemplation at the time of the contract: (See e.g. *QBE Management Services Ltd v Dymoke* [2012] IRLR 458 at [210]; and *TFS v Morgan* [2005] IRLR 246 at [36]-[38]).

(iv) *Non-compete covenants may be the most appropriate, or even the only, way to protect legitimate business interests in certain circumstances. Other less restrictive covenants may be inadequate to protect those interests, or may be difficult to police*.

In *Littlewoods Organisation Ltd. v Harris* [1977] 1 WLR 1472 Lord Denning MR stated at 1479A–E that:

> "It is thus established that an employer can stipulate for protection against having his confidential information passed on to a rival in trade. But experience has shown that it is not satisfactory to have simply a covenant against disclosing confidential information. The reason is because it is so difficult to draw the line between information which is confidential and information which is not: and it is very difficult to prove a breach when the information is of such a character that a servant can carry it away in his head. The difficulties are such that the only practicable solution is to take a covenant from the servant by which he is not to go to work for a rival in trade".

(v) *Non-poaching of employee covenants have been held to be objectionable as a matter of principle on the basis that such a restraint interferes with the job mobility of third parties to the contract*: see *Monster Vision (UK) Ltd v McKie* [2011] EWHC 3772 (QB) at [11], [39] and [62]; see also *White Digital Media Ltd v Weaver* [2013] EWHC 1681 (QB) at [31]-[35] and [42].

(vi) *The duration of any post-termination restraint will, to some extent, be arbitrary*: see, e.g. *Beckett Investment Management Group Ltd v Hall* [2007] ICR 1539 at [29].

The Court will only deem a post-termination restraint to be excessively long if a "much less far-reaching" restraint would have afforded adequate protection. The exercise is not a marginal one, "otherwise Courts would be faced with a paralysing debate in every case about whether a covenant with x days shaved off would still provide adequate protection": see *QBE Management Services Ltd* at [215]; and *Stenhouse (Australia) Ltd v Phillips* [1974] AC 391 at 402.

(vii) *Where part of a covenant is unreasonable, the Court may sever the unreasonable part and enforce the remainder, provided that no words need to be added or modified, and that the removal of the unreasonable part does not generate any major change in the overall effect of the post-termination restraints*: see *Egon Zehnder* at [84]-[86].

(viii) *Even if the covenant is held to be reasonable, the Court will then finally decide whether, as a matter of discretion, the injunctive relief sought should in all the circumstances be granted*.

It does not follow that simply because a covenant is held to be enforceable, the inevitable remedy is a final injunction. Injunctions are discretionary remedies: see *D v P* [2016] ICR 688 at [70]-[75].

(ix) *when a post-termination restraint is enforceable, the starting point is that the ordinary remedy is an injunction: Dyson Technology Ltd v Pellerey* [2016] ICR 355 at [21].

In *Insurance Co v Lloyd's Syndicate* [1995] 1 Lloyd's Rep 272, at 276-7, Colman J referred to "exceptional cases where the granting of an injunction would be so prejudicial to a defendant and cause him such hardship that it would be unconscionable for the plaintiff to be given injunctive relief if he could not prove damage". In *Pellerey,* Sir Colin Rimer stated at [21] that the categories of circumstances in which injunctive relief would not follow were "never closed". In *Sunrise Brokers LLP v Rodgers* [2015] ICR 272 it was held at [49] that even if the covenant was valid, the Court is entitled to refuse relief on the basis that subsequent events have made it unreasonable to enforce it.

Legal Principles: (ii) Springboard injunctions

191. The springboard doctrine originated in cases concerning misuse of confidential information: see *Terrapin Ltd v Builders' Supply Co (Hayes) Ltd* [1960] RPC 128 at 130. The doctrine has subsequently been found to apply to a variety of unlawful conduct by a departing employee: see eg. *UBS Wealth Management (UK) Ltd v Vestra Wealth LLP* [2008] IRLR 965, where Openshaw J observed at [4] that:

> "In my judgment, springboard relief is not confined to cases where former employees threaten to abuse confidential information acquired during the currency of their employment. It is available to prevent any future or further serious economic loss to a previous employer caused by former staff members taking an unfair advantage, an 'unfair start', of any serious breaches of their contract of employment (or if they are acting in concert with others, of any breach by any of those others). That unfair advantage must still exist at the time that the injunction is sought, and it must be shown that it would continue unless restrained. I accept that injunctions are to protect against and to prevent future and further losses and must not be used merely to punish past breaches of contract".

192. The relevant legal principles were set out by Haddon-Cave J in *QBE Management Services Ltd* at [239]–[247] (as approved by the Court of Appeal in Forse v Secarma Ltd [2019] IRLR 587 at [22] and [35]). They are in summary:

> (a) Where a person has obtained a 'head start' as a result of unlawful acts, the Court can grant an injunction which restrains the wrongdoer, so as to deprive him of the fruits of his unlawful acts.

> (b) The purpose of a springboard order is to prevent the defendants from taking unfair advantage of the springboard which they have unlawfully obtained.
>
> (c) Springboard relief can be granted in relation to breaches of contractual and fiduciary duties, and flows from a wider principle that the court may grant an injunction to deprive a wrongdoer of the unlawful advantage derived from his wrongdoing.
>
> (d) Springboard relief must be sought and obtained at a time when any unlawful advantage is still being enjoyed by the wrongdoer. It should have the aim of restoring the parties to the competitive position they each set out to occupy, and would have occupied, but for the defendant's misconduct.
>
> (e) What is fair and just in any particular circumstances will be measured by (i) the effect of the unlawful acts upon the claimant; and (ii) the extent to which the defendant has gained an illegitimate competitive advantage.
>
> (f) The burden is on the claimant to spell out the precise nature and period of the competitive advantage".

193. In *QBE Management Services Ltd*, Haddon-Cave J stated at [284] that in determining the length of the springboard:

> "The court must assess the actual advantage gained by wrongdoers as a result of their unlawful activities and grant appropriate relief. Springboard injunctive relief is for unlawfully 'stealing a march' on competitors. The essential question is therefore: how much of a march have the defendants in this case, in fact, stolen on the claimant as a result of their wrongdoing? This depends on both the length and tensile strength of the 'springboard' itself and gauging the relative advantage gained by its use".

194. At [285], Haddon-Cave set out a number of principles to apply:

> "(1) First, the appropriate measure for the length of a springboard injunction is the length of time that it would have taken the wrongdoer to achieve lawfully what he in fact achieved unlawfully, relative to the victim.
>
> (2) Second, it must be emphasised that the exercise is a relative one and any advantage must be measured as such. Wrongful activities may have both a positive and negative effect, i.e. benefiting the wrongdoer whilst simultaneously harming the victim. Thus, for instance, the unlawful poaching of key staff is likely to advantage the wrongdoing party whilst

> disadvantaging the victim who has lost key staff and may have to recover lost market ground.
>
> (3) Third, it is relevant to look at the period of time over which the unlawful activities have in fact taken place. The relationship of this period with the length of any springboard relief is, however, kinetic not linear.
>
> (4) Fourth, there may be many different factors at play during the period of unlawful activity materially affecting the advantage gained which may, or may not, obtain in similar assumed circumstances of purely lawful activity. These factors might include, for instance, (i) the advantage of soliciting junior employees whilst still being employed and in positions of power, compared with the trying to recruit as an ex-employee, (ii) the advantage of stealth and secrecy, so that management are unaware and do not take defensive measures, and (iii) conversely, the advantage sometimes of being able to work speedily and not having to be covert.
>
> (5) Fifth, the nature and length of the 'springboard' relief should be fair and just in all the circumstances."

195. The general principles relating to the duty of fidelity are well established. They were helpfully summarised by Haddon-Cave J in *QBE Management Services Ltd* at [169]:

> (1) It is indisputable that an employee owes his employer a contractual duty of 'fidelity', but how far it extends will depend on the facts of each case (per Lord Green MR in *Hivac v Park Royal* [1946] Ch 169 at 174).
>
> (2) The more senior the staff the greater the degree of loyalty, fidelity and diligence required (per Openshaw J in *UBS Wealth Management (UK) Ltd v Vestra Wealth LLP* [2008] EWHC 1974 (QB), [2008] IRLR 965 at para graph 10).
>
> (3) The first task of the court is to identify the nature of the employee's obligations of fidelity and then to decide whether the employee's activities are in breach (per Moses LJ in *Helmet Integrated Systems v Tunnard* [2006] EWCA Civ 1735, [2007] IRLR 126 at paragraph 32).
>
> (4) The mere fact that activities are described by an employee as 'preparatory' to competition does not mean that they are legitimate (per Moses LJ in *Helmet Integrated Systems v Tunnard* [2007] IRLR 126, at paragraph 28).
>
> (5) It is a breach of the duty of fidelity for an employee to recruit or solicit another employee to act in competition (see *British Midland Tool v Midland International Tooling Ltd* [2003] EWHC 466 (Ch), [2003] 2 BCLC 523).

> (6) Attempts by senior employees to solicit more junior staff constitutes particularly serious misconduct (*Sybron Corp v Rochem Ltd* [1983] IRLR 253).
>
> (7) It is a breach of the duty of fidelity for an employee to misuse confidential information belonging to his employer (see *Faccenda Chicken Ltd v Fowler* [1986] IRLR 69).
>
> (8) The court should ask whether the activities in which the employee is engaged affect his ability to serve his employer faithfully and honestly and to the best of his abilities (see *Shepherds Investments Ltd v Walters* [2006] EWHC 836 (Ch), [2007] IRLR 110 at paragraph 131)."

Submissions

196. The parties provided written submissions at the outset of the case and produced very detailed written closing submissions after all of the evidence had been heard. These were then supplemented by oral argument which took one day. I shall set out the key points made by the parties here and then discuss them further when I carry out my analysis of the legal arguments as applied to the facts that I have found.

Post-termination restraints

197. Mr Paul Goulding KC, who appeared on behalf of Dare with Jamie Susskind, Christian Davies and Aliya Al-Yassin, submitted that the post-termination restraints were enforceable as against the Defendants. The justification for the Non-Compete Covenant was twofold. First, it was needed to protect Dare's confidential information. Second, it would be impossible to police the other post-termination restraints as Dare would have no way of knowing whether ex-employees were using its confidential information, or soliciting its trade connections, or tapping up its staff. It would just suffer harm. Dare submits that the length of the covenants is reasonable as a period of at least one year is required to protect the business' confidential information, which has a shelf-life of more than one year, and it would take at least one year for Dare to rebuild its connections with traders, brokers and counterparties, and to secure the stability of its workforce.

198. With respect to the covenant restraining the solicitation of contacts, Mr Goulding KC submitted that relationships with brokers, in particular, are of significant value. Those relationships have been cultivated by Senior Traders for Dare's benefit over many years. The Defendants made themselves popular with brokers, forming strong personal relationships with them. The non-solicitation covenants were needed to ensure that the Defendants did not exploit their personal knowledge of and influence over the brokers.

199. With respect to the non-dealing covenants, Mr Goulding KC submitted that they were appropriate in the highly specialist market in which the parties operate. The Defendants' eventual return to the market was likely to be loudly publicised with the effect that they are likely to be approached by Dare's trade connections with whom they have strong relationships**,** without the Defendants needing to solicit them.

200. With respect to the non-poaching covenants, Mr Goulding KC submitted that Dare's employees were prime targets for poaching. The Defendants were responsible for managing and training individuals on their desks, and had influence over them.

201. With respect to remedy, Dare sought to enforce the post-termination restraints until they expire on 11 July 2025 (one year after the Defendants' termination from employment). Mr Goulding KC submitted that there were no exceptional circumstances that could deprive Dare of its contractual entitlement and a final injunction. Neither Defendant had been put on "Garden Leave", and neither Defendant had been too sick to work.

202. Mr Solomon KC, who appeared on behalf of D1 along with Matthew Sheridan, submitted that Dare had no legitimate business interests to protect by way of the post-termination restraints. D1 denied that, at the time the contract of employment was entered into in 2021, it was objectively intended or contemplated by the parties that D1 would have access to confidential information which would be memorable and sufficiently valuable to a competitor to justify restrictions lasting for a period of as long as 12 months after he ceased working for Dare. Mr Solomon KC submitted that Dare was attempting to dress up as 'confidential information' strategies and techniques developed by D1 during the course of his employment, and which formed part of his general knowledge, skill and experience which he was entitled to take away with him. Other alleged confidential information was acquired by D1 on a 'one-off' basis long after he signed his contract of employment, and is not evidence of what was contemplated by the parties at the time he signed years earlier. In any event, the value of the alleged confidential information which the Non-Compete Covenant was intended to protect was negligible and/or equivalent information could be easily formulated or obtained from third parties.

203. With respect to trade connections, D1 disputed that, at the time that the contract of employment was entered into, it was objectively intended or contemplated by the parties that he would gain personal knowledge or influence over intermediaries or counterparties which would continue for a period of 12 months after he ceased working for Dare. Relationships with brokers were accepted to be of limited value, but did not require 12 months protection after D1's departure from employment.

204. As for the stability of the workforce, D1 disputed that, at the time that he entered into the contract of employment with Dare, it was objectively intended or contemplated by the parties that he would gain influence over Dare's staff which would continue for a period of 12 months after he ceased working for Dare.

205. Mr Solomon KC also submitted that some of the wording of the post-termination restraints rendered them unenforceable. With respect to the non-competition covenant, it was submitted that:

    i) the words "or about to be in competition with" were too uncertain to be enforceable;

    ii) the scope of the Non-Compete Covenant was too broad: (i) restricting D1 from being employed in a competing business irrespective of whether his employment is in a role which would threaten Dare's alleged legitimate business interests; and/or (ii) it restricts him from being employed in any business which competes with the business of Dare in relation to which he had access to "Field

Materials" at any time during his employment (even if he ceased to have access to such confidential information long before the termination of his employment).

206. With respect to the non-solicitation of contacts and non-dealing covenants, Mr Solomon KC submitted that:

i) the scope and duration of those covenants was too broad because they restrict D1 from soliciting/dealing with persons who were Restricted Contacts or Prospective Restricted Contacts during the 12 months prior to him ceasing to work for Dare in relation to whom he had access to Field Materials at any time during his employment (regardless of whether he had any dealings with them during the 12 months prior to the termination of his employment). Some of the Field Materials would cease to be valuable to a competitor and/or be memorable by the end of 12 months after D1 ceased working for Dare;

ii) the duration of the non-solicitation and non-dealing covenants was too long because Dare would not need as long as 12 months since D1 ceased working for it to shore-up its relationships with its Restricted Contacts or Prospective Restricted Contacts; and

iii) further, it would in practice be impossible to work elsewhere in competition with the activities with which D1 was involved at Dare without dealing with the same intermediaries (ie. brokers and exchanges) and executing trades with the same trading counterparties (ie. other traders of securities). It follows that the effect of the non-solicitation and non-dealing covenants would, in practice, be the same as a covenant against competition;

207. As for the non-poaching covenant, Mr Solomon KC submitted that:

i) the words "is likely to be able to assist or benefit a business in, or proposing to be in, competition with" are too uncertain to be enforceable;

ii) the scope of the non-poaching covenant was too broad insofar as it restrains the employment of former colleagues. Such restraints are objectionable as a matter of principle; and

iii) the scope and duration of the non-poaching covenant was too broad: (i) it restricts D1 from employing or otherwise engaging Dare employees irrespective of their role or seniority; (ii) it restricts D1 from employing or otherwise engaging Dare employees whom he managed at any time during his employment. By the end of 12 months after ceasing to work for Dare, D1 would have no influence over employees whom he ceased to manage several years in the past; (iii) it restricts him from employing or otherwise engaging Dare employees who are in possession of Field Materials: (a) even if such confidential information related to a part of Dare's business with which D1 was not involved and would be very unlikely to compete with after leaving Dare; and (b) even if the Field Materials were created long before D1 ceased working for Dare; and (iv) it restricts him from employing or otherwise engaging Dare employees with whom D1 merely had "material dealings" during the 12 months prior to him ceasing to work for Dare even if he did not work closely with them. Merely

having material dealings with a colleague would not give D1 influence over them for a period of as long as 12 months after ceasing to work for Dare.

208. In any event, Mr Solomon KC submitted that even if the covenants were enforceable, the Court should exercise its discretion to refuse a final injunction for the following reasons:

i) by reason of D1's absence from work during his notice period because of sickness and, subsequently, his interim undertakings to the Court, by the time the Court gives judgment after trial Dare will in effect already have had the benefit of the 12 months' protection afforded by the covenants;

ii) alternatively, D1 was put on "Garden Leave" shortly after his resignation and, pursuant to the terms of the contract of employment, the duration of the covenants falls to be reduced by the period spent on Garden Leave. The result (again) is that by the time the Court gives judgment after trial Dare will in effect already have had the benefit of the 12 months' protection afforded by the Covenants.

209. Mr de Silva KC, who appeared on behalf of D2 with Sophia Berry, submitted that the post-termination restraints were not enforceable against D2. First, it was not objectively intended or contemplated at the time that D2 entered into the contract of employment that such confidential information as he would have access to would have a shelf-life or be sufficiently memorable and valuable to justify a 12-month covenant. What was contemplated was that D2 would use his general skill and knowledge rather than confidential information, to trade crude oil derivative products. The information relied upon by Dare was either publicly available or not (and not intended to be) shared with D2. Other information (such as trading positions) did not have a shelf-life of 12 months or else was too difficult to memorise for D2 to be able to take it away. D2 did not, for example, have access to Dare's 'Tradr' software system, which was used to view the Crude desk's positions and their profit/loss and did not write the programming code within it (and he would not in any event have been able to memorise this).

210. Secondly, it was not objectively intended or contemplated at the time of entering the contract of employment that D2 would have knowledge of or influence over connections such as exchanges or counterparties to trades (who are often anonymous). While it was anticipated that D2 would have a close relationship with the brokers used by Dare, there was no legitimate interest to protect in such relationships, as it is the traders who are the clients of the brokers and brokers are subject to regulatory obligations (for example in relation to conflicts of interest) which preclude them from favouring Dare over their other clients (or vice versa). In any event, these connections did not justify keeping D2 out of the market for a year.

211. Thirdly, it was not objectively intended that D2 would have influence over other staff. He was not on the management team. He had a limited role in recruitment, e.g. conducting interviews, but was not responsible for this. Again, workforce stability did not justify 12-month covenants here.

212. As for the specific wording of the covenants, it was submitted by D2 that these were unreasonably wide:

a) the non-competition covenant would prohibit D2 from being engaged in a competing business in any role, including a non-trading role where Dare's legitimate business interests would not be threatened;

b) the non-solicitation covenants were framed as prohibiting D2 from canvassing or soliciting the *"investment business"* of, or introduced by, Restricted Contacts and Prospective Restricted Contacts which includes for example brokers. However, brokers do not provide or introduce *"investment business"* (or any business) to trading firms such as Dare; and

c) the non-poaching covenant prohibited D2 from employing an employee of Dare even where the employee has approached D2 without having been solicited.

213. In any event, Mr de Silva KC submitted that even if the covenants were enforceable the Court should exercise its discretion to refuse relief given that D2 had been out of the market since 14 February 2024.

Breach of contract and springboard relief

214. Mr Goulding KC referred to a number of express contractual duties owed by the Defendants, and submitted that these were breached by D1 and/or D2:

i) the Defendants were obliged to work from their offices during their normal working hours (being Monday to Friday between the hours of 8am and 6pm), and any additional hours as may be necessary, and perform all necessary duties associated with their position, as well as any other duties assigned by Dare from time to time;

ii) the Defendants were obliged to devote their full working time, attention and energies to the faithful and diligent performance of their duties;

iii) the Defendants were obliged to use their best efforts to promote and protect the interests of Dare;

iv) the Defendants were obliged to comply with all reasonable and lawful directions given by Dare;

v) the Defendants were obliged to comply with all policies and procedures issued by Dare;

vi) the Defendants were obliged to keep Dare fully informed of their conduct, the business, finances and affairs of Dare, and any wrongdoing committed by themselves or any other employee of Dare;

vii) the Defendants were prohibited from disclosing or otherwise misusing Dare's confidential and proprietary information;

viii) the Defendants were prohibited from being directly or indirectly engaged or concerned with any similar or competing business during the course of the employment relationship.

215. With respect to D1, Mr Goulding KC submitted that he could have worked some of the time during the notice period, and even if he was unable to work during any part of the notice period by reason of ill-health this was D1's fault.

216. Mr Goulding KC submitted that Dare questions the real motivation for D1 going off sick, although it was now accepted that he did suffer from the chronic condition. Mr Goulding KC argued that D1 had no intention of working his notice period, irrespective of the state of his health: this was evidenced by the terms of the initial indemnity that he signed with Onyx which was premised on him needing to be placed on garden leave for substantially all of his notice period; D1's plans for Dubai tax residency which could save him a significant amount in taxes, and which necessitated him leaving the United Kingdom by 5th April 2024, spending 90 days or less and doing no more than 39 days' work in the United Kingdom in the 2024-25 tax year; as well as his desire to have a "gap year" between jobs. Mr Goulding KC pointed to D1's activity during his notice period which was inconsistent with someone who could not work at all because of ill health.

217. Mr Solomon KC disputed Dare's contentions, submitting that D1 was genuinely unable to work for any part of the notice period, as was borne out by the medical evidence.

218. With respect to D2, Mr Goulding KC submitted that, first, he failed to work his notice period when he had no genuine sickness. Second, during his notice period, D2 undertook extensive work on behalf of Onyx (visiting their premises in Dubai and offering to find permanent premises, working on their energy trading and risk management system and their pricing sheets), and shared confidential information with them (confidential statistics concerning Dare's trading activity, confidential information about Dare's terms of business with a key trade connection, Dare's remuneration structures, and the performance and management of the Crude desk at Dare). Third, D2 solicited employees, including Mr Law. Fourth, D2 solicited brokers and counterparties.

219. D2 disputes this. Mr de Silva KC contended that illness was the genuine reason for D2 being off sick. His illness was also closely related to his anxiety in having to deal with Mr Rahman. D2 denied that he sought to solicit Mr Law to join Onyx. To the contrary, he tried to dissuade him from doing so. D2 also sought to dissuade Onyx from recruiting Dare's staff. Mr de Silva KC also argued that D2 did not work for Onyx during his notice period, nor did he disclose confidential information to them.

220. Mr Goulding KC submitted that in addition to damages for breach of contract, Dare was entitled to springboard relief as against the Defendants. It was contended that the springboard advantage obtained by the Defendants was overwhelming, and that Dare should be entitled to relief as against them both. Dare was deprived of their services for the duration of their notice periods. This not only caused a freefall in trading revenues but meant there was no handover: there was no help with third party relationships; no plan for recruiting and training replacements; and no plan for managing their extremely complex strategies and positions. Further, Dare has not been able to expand into planned markets as a result of it having to reallocate resources to deal with the failure of the Defendants to work their notice periods. Yet further, the Defendants had destabilised Dare's business.

221. Mr Goulding KC submitted that the Defendants and Onyx should not be permitted to exploit the disarray on Dare's Propane and Naphtha, and Crude desks by establishing a dominant position in those markets at Dare's expense; or to exploit D2's solicitation of Dare's brokers and other trade connections; or to exploit the confidential information passed by D2 to Onyx. Mr Goulding KC argued that the Defendants and Onyx had stolen a march on Dare, and the competitive advantage could not be adequately compensated in damages. Dare was asking for no more than to be put in the position that it would have been in had the Defendants respected their obligations: their employment would not have been brought to an early end, and they would not have been able to commence work for Onyx until 20 November 2025 with respect to D1, and 14 February 2026 with respect to D2 at the earliest. The Court was invited to grant an injunction until those dates as this reflected the length of time that it would have taken for the wrongdoers to achieve lawfully what they have in fact achieved unlawfully.

222. With respect to D1, Mr Goulding KC submitted that if he had not acted unlawfully he would have agreed to perform the tasks that Mr Rahman asked him to do, providing a full hand-over and training up of other traders on the Propane and Naphtha desks; managing a smooth transition in broker and other trade relationships; and that he may also have traded on another desk, or come back to trading on the Propane and Naphtha desks. With respect to D2, Mr Goulding KC submitted that he would have continued working on the Crude Oil desk, training up juniors on the job and completing a proper handover, including handing over relationships with brokers and other connections. As a result, Mr Rahman and Mr Ooi would have remained focused on their usual tasks and would not have needed to step back into active trading, and would not have been sidetracked by the litigation that has ensued.

223. Mr Goulding KC also pointed to the mass resignations that resulted from the Defendants' wrongdoings, arguing that it was highly implausible that the wave of resignations was a coincidence or unrelated to the fact that the Defendants left the business and claimed to be sick.

224. Mr Goulding KC pointed to the advantages that have been obtained by Onyx: as a result of the Defendants' wrongdoing (i) both Defendants will be able to join them sooner than otherwise would have been the case; (ii) the Defendants will be able to start work for Onyx in a context in which Dare is much weakened; (iii) with respect to D2, he and Onyx will be able to benefit from his specific wrongdoing in the significant preparatory work designed to allow him to hit the ground running when he arrives in Dubai.

225. The Defendants deny that any springboard advantage was obtained by them, and they submit that no relief should be granted against them. They contend that it was fanciful to suggest that the workforce was destabilised by their departure. On D2's particular case, Mr de Silva KC points specifically to the recruitment of an experienced crude oil trader as D2's replacement from June 2024.

226. With respect to relief, Mr Goulding KC contends that the post-termination restraints should be enforced against the Defendants in the ordinary way. There is no "exceptional" reason not to. The Court, in the exercise of its discretion as to whether to grant an injunction should not take into account the fact that the Defendants did not work their notice periods. The post-termination restraints should be enforced for 12 months from the date of termination. To decide otherwise would, it was submitted, risk

setting a dangerous precedent. It would encourage a practice whereby employees would assert that they were too sick to work, thereby not only avoiding working their notice periods but then also claiming that the Court should not enforce their restrictive covenants. This would constitute a "cheat's charter".

Fiduciary Duties

227. Mr Goulding KC submitted that the Defendants were fiduciaries and owed Dare fiduciary duties. Reliance was placed on the dictum of Elias J in *Nottingham University v Fishel* [2000] ICR 1462 at 1493E-F:

> '… in determining whether a fiduciary relationship arises in the context of an employment relationship, it is necessary to identify with care the particular duties undertaken by the employee, and to ask whether in all the circumstances he has placed himself in a position where he must act solely in the interest of his employer. It is only once those duties have been identified that it is possible to determine whether any fiduciary duty has been breached".".

228. Reference was also made to *Otkritie International Investment Management Limited v Urumov* [2014] EWHC 191 (Comm) at [72] were Eder J stated that:

> "In the employment context, the courts typically look to the employee's contractual obligations and the circumstances of his employment, for example seniority, managerial responsibility, decision making autonomy, independence and the vulnerability of the employer, which may justify holding the employee bound by a duty of loyalty to the employer".

229. Mr Goulding KC also submitted that senior employees responsible for managing important client relationships will often owe fiduciary duties to their employer (see e.g. *Richard Baker Harrison Ltd v Brooks* [2021] EWHC 2562 (QB), at [98]-[101]). Similarly, where an employee is entrusted with company property (including confidential information) and relied upon to deal with it for the company's benefit, he will owe fiduciary duties in that regard: see *Zenith Logistics v Keates* [2022] EWHC 1496 (Comm) at [184].

230. Mr Goulding KC submitted that, in light of these principles, the Defendants were classic fiduciary employees. They were entrusted with Dare's capital. They were entrusted with managing Dare's important third-party relationships. They were entrusted with company property (including Dare's confidential information) and permitted to exploit it for Dare's benefit.

231. As a consequence, Mr Goulding KC submitted that the Defendants owed fiduciary duties (i) to act in good faith, exclusively in the best interests of Dare and not in their own; (ii) not to place themselves in a position where their duties to Dare conflicted with their own personal interests; and to disclose: (a) any competitive threat to Dare of which they were aware; and (b) their own wrongdoing and that of others.

232. Both of the Defendants denied that they were fiduciaries. They were not statutory directors and did not hold senior management positions. With respect to D1, Mr Solomon KC submitted that any such duty is, in any event, attenuated where the employee is not actively working.

Discussion

(i) The post-termination restraints

233. I shall first consider the proper construction of the covenants. I shall then consider whether they are, in principle, enforceable. I shall then set out my reasoning as to whether, and if so to what extent, they should be enforced against the Defendants. The latter analysis will involve consideration of the Garden Leave provision in the contract of employment and whether it was activated in the case of either Defendant.

(a) Are the covenants enforceable (subject to the length of the restraints)?

234. I shall look firstly at the non-competition covenant, as this is the covenant that was most hotly contested by the parties. The first step is to construe the covenant against the background of the contract.

235. The legitimate business interests that are explicitly relied upon by Dare for the post-termination restraints, are (i) Dare's "Field Materials"; (ii) relationships with "Restricted Contacts" and "Prospective Restricted Clients" (which is plainly a typographical error, as the definition section refers to "Prospective Restricted Contact"); and (iii) valued employee and consultant relationships. "Field Materials" has an extensive definition. "Restricted Contacts" is defined as "any person acting in the capacity of a broker, market maker or other intermediary or trading counterparty" to Dare.

236. As a matter of principle, each of these matters could be legitimate business interests that Dare was entitled to protect by appropriate post-termination restraints.

237. The Defendants took issue with various aspects of the non-competition covenant. First, it was said that the term "business" at paragraph 13(c) must refer to "business entity", rather than a type of business. They contended that an individual cannot be "employed by any business", in a functional sense, but only by a "business entity". Further, the clause refers to shareholding as an exception to the rule, and this can only be a shareholding in a "business entity". If the Defendants' construction is correct, then it was contended that the covenant was too wide as it would seek to prohibit the employee from having any involvement in a business entity which competed with a business entity of Dare "with which [the employee] was materially involved at any time during the [relevant period] or in relation to which he had access to Field Material", even if he was to be engaged in a part of a new business entity which was not in competition with the area of Dare's business where he had worked. There could be no legitimate business interest for Dare to protect as the confidential information, or trading connections, or employee knowledge, that the employee had would not be relevant to, or used by, the new position with the competitor.

238. I agree that on the Defendants' preferred construction the covenant would not be enforceable. I disagree, however, with their preferred construction. I consider that the

term "business" is to be construed functionally rather than formally. That is, it refers to the type of business that the employee was engaged in – e.g. Propane and Naphtha for D1, and Crude Oil for D2 – and not the more generic liquidity provision in the global energy markets. That is a realistic construction of the contract, and according to the validity principle (as referred to in *Egon Zender*), that is the construction which the Court should prefer as the parties are deemed to have meant to enter into a valid agreement, not an invalid one. This is a realistic construction because it fits with the way in which the term "business" is referred to elsewhere in the post-termination restraints. Thus, clauses 13(c)(ii) and (iii) of the contract of employment refer to "investment business" of a person; the reference there is to the functional kind of business which is "investment", rather than a business entity which is an "investment business".

239. Second, the Defendants contend that the phrase "or about to be in competition" is too vague to be enforceable. The Defendants submit that they would not know whether they could start work with a particular employer as they might not know if the future employer was "about to be in competition" with the business of Dare, or how that phrase is to be evaluated. I disagree. The ordinary meaning of "about to be" is that something is imminent; it will apply to a business that is on the cusp of competing with Dare. Thus, it would apply to an entity that was setting up, say, a Crude Oil trading desk as soon as an employee arrived, but was not presently trading in Crude Oil. In any event, even if the phrase was too vague as to be enforceable, it could easily be severed from the remainder of the covenant without changing the overall meaning or tenor of the non-competition restraint.

240. Third, the Defendants argue that the non-competition covenant was plainly too wide because it applies to a competitor of the business of Dare "in relation to which [the employee]… had access to Field Material" at any time during his employment with Dare. Thus, if the employee had access to confidential information belonging to Dare at the outset of his employment and the shelf-life of that information had expired early on in his employment, he would be prohibited from working for the competitor even if he wanted to work there several years later. I disagree with this contention. The proper construction of the contract is that the relevant access to information applies to the employee's material involvement in the Dare business, which applies to the phrase "at any time during the Relevant Period", which is itself defined as "12 months prior to the Termination Date". That is a realistic reading of the clause: that the temporal qualification for material involvement in the business also qualifies the access to "Field Materials". Accordingly, the non-competition covenant applies to a competitor of the business of Dare in relation to which the employee had access to Field Materials at any time during the 12 months prior to the Termination Date. I will deal further below with whether this is reasonable.

241. Fourth, the Defendants contend that the non-competition covenant does not define the capacity in which the former employee is prohibited from working for a competitor of Dare. The Defendants submit that the covenant therefore seeks to prohibit them from working as, say, a cleaner or administrative assistant for Onyx. It seems to me that this is an "extravagant", "fantastical", "unlikely or improbable" scenario (per *Boydell* at [23], and so should be rejected as a possible construction of the restraint.

242. A further issue of construction that the parties disagreed about was clause 13(d). This provides that "The periods for which the restrictions in paragraphs 13(c) apply shall be

reduced by any time Employee spends on Garden Leave immediately prior to the termination of his employment". The effect of this clause is to reduce the period of the various post-termination restraints (including the non-competition covenant) when the Defendant has been placed on "Garden Leave". The Defendants contend that, under this clause, Dare could put an employee on "Garden Leave" for the bulk of the notice period, and then so long as the employee is allowed to perform their normal job duties just before the end of employment, none of the earlier period when the employee did not work, or did not perform "specified services", would be reduced from the term of the post-termination covenant.

243. Mr Goulding KC contended that this was not the proper way to read the clause. He argued that the Defendants' interpretation was a scenario dreamed up by lawyers that was "extravagant", "fantastical", "unlikely or improbable" (per *Boydell* at [23]. In any event, Mr Goulding KC argued that the matter went to the question of enforcement and not to the enforceability of the covenant, acknowledging in this regard that a Court would not enforce a further 12 month period where an employee had already spent much of the previous 12 months on "Garden Leave".

244. I agree with the Defendants' interpretation of this clause. The adverb "immediately" qualifies the subsequent words "prior to the termination of his employment", and must have some meaning. The ordinary meaning would be to refer to the period towards the end of the notice period, just, or shortly, before the termination of employment date. I note, in this regard, that clause 13(d) refers to "termination of his employment" and not to "Termination Date" which is a phrase which is specifically defined in the contract of employment. There does not appear to be any reason why the two phrases should mean anything different. Mr Goulding KC suggested in oral argument that the phrase "termination of his employment" might refer to the giving of notice. That would not make sense, however, as an employee is highly unlikely to be put on "Garden Leave" before notice of termination has been issued whether by the employer or employee and, more importantly, the "Garden Leave" provisions only kick in after notice of termination has been given.

245. The effect of this interpretation is that, on its face, Dare would have been able to place the Defendants on "Garden Leave" for some, or even the bulk, of the notice period (clause 7(a) entitles Dare to place the employee on "Garden Leave" "until a specified date or the termination of" employment), and so long as the Defendants were required to work normally thereafter up until their final day of employment, the post-termination restraints would not be reduced by the time spent on "Garden Leave". In other words, the earlier period of being on "Garden Leave" would not count towards any contractual reduction in the period of the post-termination restraints.

246. Nevertheless, I do not consider, that the presence of clause 13(d), even with this construction, renders the post-termination restraint unenforceable. There is no requirement to have a set off clause for garden leave in a contract of employment. Furthermore, at the time when the contract of employment was entered into it could not be contemplated that this clause would be used by Dare in any particular, let alone in a cynical, way. Rather than rendering the post-termination restraint unenforceable, the way in which the clause was used in fact would be relevant to the Court's exercise of discretion as to enforcement.

247. Dealing further with the legitimate business interests that Dare was entitled, as a matter of principle, to protect, it is notable that the contracts entered into by the Defendants were designed for employment as Senior Traders: that is, as the person who would be responsible for a particular trading desk. This is a role where the Senior Trader would have a great deal of autonomy, with the responsibility for trading with Dare's capital, would set the trading strategy (or would play a significant role in the setting of the strategy), and as head of the relevant desk would have responsibility for guiding, providing on-the-job training and generally overseeing other staff, including more junior traders.

248. When the Senior Trader contracts were entered into, it was inevitable that the post-holder would have access to some of Dare's confidential information. That information would include the "pnl" of the particular desk, including the overall administration cost for that desk, for which the Senior Trader was responsible: this was information that was factored into the bonus calculation for the Senior Trader. I consider that this information would be confidential to Dare: it would not be known outside of Dare, was treated by Dare as confidential, and would be of some use to a competitor, and to the detriment of Dare, if the information was provided to a competitor as it could assist them in (i) understanding how much they might need to spend to build up a desk that was comparable to Dare; and (ii) understanding what returns could be achieved on a particular desk.

249. At the outset of the contract, it was contemplated that the Defendants, as Senior Traders, would have access to Dare's confidential trading strategies, including pricing ratios or formulae for the products that they traded. The Defendants, as Senior Traders, would also be contemplated to have access to methodologies and ways of working that Dare had developed and which assisted the business in its day-to-day trading activities. The Defendants would not necessarily know, let alone understand, the coding that lay behind Dare's methodologies, but they would know what functionality was available to them and how it could be used to their advantage as traders. In this regard, I note that on 18 November 2022, Jamie Hendry (Dare's Director of Trading Development) sent an email to traders at Dare, in which he stated that:

> "In an effort to spread around the knowledge of the features we have implemented for other desks and those we have the capability to do we have put together this list. Any of the features and possibilities listed may add value to your desk in ways you may not have considered or have considered no feasible".

Mr Rahman responded to Mr Hendry's email to say:

> "I absolutely LOVE this.
>
> So much value here!".

250. It is correct that Senior Traders would not necessarily know or remember all of the detail about the different arrangements or formulae or ratios, but they would be exposed to the information on so many occasions that it would be likely that key details would be remembered or subject to recall from "the recesses of the mind" at a later date. A particular example of this would be the lay-out of pricing sheets, which would enable Senior Traders to execute more trades and/or at a faster pace; or the functionalities that

competitors do not have. I set out more detail with respect to the arguments and my findings on confidentiality in the confidential annexe.

251. The Senior Trader would be likely to have access to information about business areas that Dare was preparing to enter, and even some of the steps that had already been taken. Although the Senior Trader would initially work on one desk trading a particular set of products, they would not be expected to trade on that desk for their entire career, and might be expected to have discussions with senior management at Dare about other trading opportunities for them. It would also be contemplated that Senior Traders might be encouraged to discuss with senior management at Dare trading opportunities that they had learned about for further investigation by the company.

252. There was evidence that this had, in fact, happened during the course of D1's employment. On 17 August 2023, D1 had a WhatsApp exchange with Mr Ooi:

> "D1: I hate propane
>
> When am I getting a new market?!
>
> Mr Ooi: Looks like October 1st
>
> D1: Oh which?!
>
> Mr Ooi: You were interested in [x: a different market] right? . . .
>
> So will hopefully be [x]
>
> D1: . . . Just want to make lots please".

253. Similarly, with respect to D2. In a WhatsApp exchange with Mr Ooi on 1 February 2022, D2 stated: "just thought I would mention what I have sent to Ayman. I really like the sound of the [y] markets. I see great potential there". On 7 July 2023, there was an email exchange among senior management in which it was stated that D2 "not to be allowed to start trading [z]", which referred to a discussion that was being had at the time about setting up another market within the Crude desk.

254. It would also have been contemplated that Senior Traders would have knowledge of the positions held by their respective desks. These positions would not be known outside of Dare's business and knowledge of them could be of real use to a competitor as it could affect their strategy as to what to buy, or not to buy. It was also suggested that the knowledge of Dare's positions might enable a competitor to "squeeze" Dare, which was in my judgment not a fanciful possibility given the competitive nature of the markets.

255. I do not consider that it would have been contemplated that Senior Traders would have knowledge of the positions held by other desks, or the "pnl" of other desks. The Senior Traders' primary focus was activity on their own desk. Whilst they would have been expected to have a general understanding of what was happening elsewhere within Dare's business, this would not necessarily mean that they would have been expected to be familiar with long-term positions held by other desks. That information would not ordinarily be of any interest to the Senior Trader. Indeed, this was borne out by the evidence of what did actually happen during the course of the Senior Traders'

employment following their signing of the contracts of employment in 2021. Mr Ooi gave evidence that he had told D1 about a long-term position held by Dare in a particular market. That information was, even on Mr Ooi's case, passed on during a conversation that he had with D1. D1 denied that this conversation had taken place. I prefer D1's evidence with respect to that matter. There was no mention made of this conversation in the very detailed witness statement produced by Mr Ooi. If the conversation had occurred as he relayed it, it is very surprising that it did not appear in his witness statement. In any event, even if this conversation did take place, it seems to have been happenstance that this information came to D1's attention, and was not something that would have been predicted to occur when the contract of employment was signed.

256. Similarly with respect to strategic business information: that is, the profitability of different markets, strategies on entering new markets. I do not consider that it was contemplated that this would have been expected to be known or drawn to the attention of the Senior Traders as a general matter, as opposed to profitability or strategies with respect to markets that they traded on or may trade on going forward. As it happens, information of this kind was shown to D2 at the presentation on 26 September 2023 before the meal at the *Sushi Samba* restaurant, but this was a one-off, and the information was put on the screen for around 2 minutes and it could not reasonably have been expected that D2 was able to take the material down or recall it.

257. I do not consider that it would have been contemplated that Senior Traders would have knowledge of the bespoke remuneration arrangements made with others working at their level. These arrangements would have been confidential to the specific trader. They are usually specifically negotiated between the Senior Trader and the employer; they would be impressed with confidentiality as the employer would not want other employees to know of their precise details. As for more junior employees, I accept that the Senior Traders would not have been expected to know their bespoke renumeration packages. Nevertheless, it would have been contemplated that a Senior Trader would know, or would have access to, the overall remuneration packages for them, as this would be relevant to the costs associated with their particular desk. This overall, or total, information could be of value to a competitor and would be categorised as confidential information.

258. I do not consider that it would have been contemplated that Senior Traders would have knowledge of the specific training arrangements that junior employees would engage in prior to joining their desk. Senior Traders would not be expected to be involved in that earlier training. Once the juniors joined their desk, they would generally learn on the job, under the guidance and instruction of the Senior Trader. There was nothing confidential about this training, other than some of the subject matter that might be discussed, which would be covered under one of the other headings of confidential information.

259. I do not consider that it would have been contemplated that Senior Traders would be aware of Dare's strategic hiring decisions. As already discussed, the main focus for the Senior Traders would be their own desks and so they would be likely to be made aware of impending recruitment decisions with respect to that desk. They would not have been expected to know the same thing about other desks. This was borne out by the subsequent evidence of what did happen. From time to time the Defendants were involved in the interview process for potential hires to Dare. They would not necessarily

be informed of the general hiring strategy that Dare was adopting towards any particular area other than their own. The interviews seemed to be *ad hoc*. Nevertheless, I do accept that it would have been reasonably contemplated that the stability of Dare's workplace was a valuable interest to be protected. Dare would have been expected to invest and develop their staff, and the Senior Traders would have been expected to have some hold over them as people to learn from and look up to.

260. With respect to trading relationships, Senior Traders would have been expected to build relationships with and gain knowledge about brokers, intermediaries (that is, the exchanges on which products were traded) and trading counterparties: who they were and what they did or could offer to Dare. These were all essential trading relationships for Senior Traders, and Senior Traders would be expected to develop personal relationships with some of the key personnel as this could improve business opportunities. With respect to brokers, the relationship was primarily one of the Senior Trader being the client, with the broker making money from the trades made by Dare and so the broker would be incentivised to create good relationships with traders, but it was not a one-directional thing. Senior Traders would also be expected to obtain, from time to time, confidential information from brokers about trading opportunities: what was described in the evidence as a 'First Look'. This might not happen frequently, but they could be valuable when they did occur. In this regard, the Court was shown a WhatsApp exchange on 7 February 2023 between a broker and D2, in which the broker informed D2 that she was "looking for a bid for" a type of client, and informed D2 that she was "just showing it to you guys first".

261. With respect to intermediaries – which refers to the relevant exchanges – Dare would have bespoke pricing arrangements or at least pricing deals that were only available to a limited number of trading businesses and that fact would not be known by others in the particular market. The pricing arrangements, which may include rebates at a particular level of transactions, would be relevant to the '"pnl"' of the Senior Traders' desks and so of particular interest to them as part of their remuneration package. It would also have been contemplated that relationships between Senior Traders and relevant personnel at the exchanges may be useful in obtaining information from time to time. An example of this was provided to the Court with respect to D1. This was reflected in a WhatsApp exchange between D1 and Mr Ooi on 19 August 2021, where a particular trade had happened which Dare wanted to know more about, and D1 messaged that he had spoken to an individual at ICE to try to find out more, that she was going to try to find out what happened: "I'll get it out of her, she loves me" is what D1 said.

262. With respect to counterparties, these were specific entities that would trade directly with Dare, not via the broker. The exchange would be the place through which the trade would be recorded, but the arrangements for the trade took place one-to-one with the counterparty. Trades with counterparties were not as numerous as those via brokers, but they could still be valuable, and so relationships with counterparties would also have been expected to be of importance to Dare. The evidence before the Court included various messages and interactions with counterparties. On 28 July 2023, in a WhatsApp exchange between D2 and Mr Rahman, D2 said "Got [counterparty] set up today direct. Just did 4k of deals in 10 mins lol". Mr Rahman asked if they were good deals, to which D2 responded: "One was a massive de risk for 1x ent . . . The de risk at marks will hopefully bring our haircut down 4-6m if I had to guess".

263. Given the nature of the confidential information that Dare was entitled to protect, the multiplicity of trading relationships that the Senior Traders were likely to have developed, and the importance of having a stable workforce, I consider that, in principle, a non-competition covenant was a reasonable means of providing Dare with protection. These were legitimate interests that Dare was entitled to protect, and it would not be feasible to protect the confidential information or broker relationships by way of a confidentiality clause or some form of non-solicitation or non-dealing clause, as these forms of restraint could not adequately be policed. It could not sensibly be ascertained if the Defendants would be using confidential information if engaged by a competitor to Dare, or if the Defendants had solicited business from a broker or was dealing with them. Similarly, a non-poaching of employee covenant would be difficult to police.

(b) Are the covenants enforceable, given the duration of the restraints?

264. The key question as to enforceability is whether the duration of the non-competition covenant for 12 months is reasonable. In determining this matter, I am reminded that in *QBE Management Services Ltd*, Haddon-Cave J said at [215] that:

> "it is only if the court finds that a 'much less far-reaching' covenant would have afforded adequate protection is it likely to regard the existing restriction as unreasonable. The exercise is not a marginal one, otherwise courts would be faced with a paralysing debate in every case about whether a covenant with x days shaved off would still provide adequate protection".

265. A restraint for 12 months would be reasonable if, for instance, it was reasonably contemplated that the shelf-life of the confidential information which the Defendants were likely to have access to in the year preceding their termination date would extend for 12 months after the termination of their employment; or if Dare would need 12 months to develop new technology on systems that would take the place of confidential information that departing Senior Traders could pass on to their new employer; or if the trading relationships with brokers, intermediaries and counterparties required 12 months or more for a replacement to build up; or if the stability of the workforce required 12 months or more to be rebuilt following the Defendants' departure.

266. Although the Court has received some evidence as to what the length of post-termination restraints by some other participants in the market, there is no "uncontradicted evidence of an industry standard" to which the Court can have regard in determining reasonableness: see *Tradition Financial Services Ltd v Gamberoni* [2007] IRLR 698 at [24], discussing *Beckett Investment Management Group Ltd v Hall* [2007] ICR 1539 at [29]. The only evidence before the Court was that there had been settlement agreements with various individuals after termination that were for a 12 month period. Under cross-examination, Mr Ooi said that Dare knew from recruiters that there were several firms with 12 month (or longer) post-termination restraints. Nevertheless, there was no documentary evidence to support this and no recruiter had been called to give evidence about this.

267. I do not consider that a 12 month restraint is reasonable to protect trading relationships or the stability of the workforce. Whilst I have no doubt that it was contemplated that the Defendants would, as Senior Traders, build trading relationships with brokers,

intermediaries and counterparties, I do not consider that anywhere close to 12 months would be required for a replacement to build up an equivalent relationship. It was reasonably contemplated that others working on the relevant trading desks would already have, or be likely to have, some kind of relationship with brokers, intermediaries and counterparties at the time of the Defendants' departure from Dare's employment. Their identities and contact details are generally available from public sources. Furthermore, insofar as the brokers and intermediaries are concerned, they have a vested interest in building relationships with whoever is trading from the relevant desk. The traders are essentially the clients of both the brokers and the intermediaries. They make money from the number of trades that traders do. As for counterparties, there are not many of these as most of the trading carried out by Dare is anonymous, without knowing who the counterparty is.

268. I do not consider that a 12 month restraint is reasonable to protect the stability of the workforce. Whilst it was no doubt contemplated that the departure of a Senior Trader would have a destabilising impact on employees working on their particular desk, there was no real evidence to support the fact that it was contemplated that 12 months, or anything close to 12 months, would be required to find a replacement for the departing personnel. That replacement might be found externally, or through internal promotions.

269. I do find, however, that a 12 month restraint is reasonable to protect Dare's confidential information. It was reasonable to suppose that Dare had invested in and developed trading functionalities that would be bespoke or unique to Dare, providing Dare with a competitive edge. It would be reasonable to expect the Defendants to become familiar with some of these functionalities, and that if they relayed their knowledge of the functionality and the benefit that it afforded them in trading to a future employer, this would enable the future employer to build or develop the same or similar functionality, thereby blunting or diminishing Dare's competitive advantage. It would have reasonably been expected for Dare to spend at least 12 months in developing replacement functionalities or systems. Furthermore, some of the specific information would have a shelf-life of more than 12 months.

270. I accept that much of the information about the positions held by the Senior Traders' desks would have been expected to be out of date well before the end of the 12 month period, as not all positions would be expected to be held until their maturity. As was explored in evidence, positions held by desks, including those whose maturity was a number of years into the future, change on a daily basis. Nevertheless, this would not have been expected to apply to all positions. It was reasonable to think that some positions held by Senior Traders' desks would be held for more than 12 months after their departure and that knowledge of these positions, which they would be able to carry away in their heads, would be of real benefit to a competitor if shared with them. Competitors might wish to build similar positions or to take steps in anticipation of those positions maturing.

271. Information about pricing ratios or formulae for the Defendant's desks would also have been expected to have a shelf-life of far more than 12 months. The evidence before the Court was that these ratios remained relatively stable, and were the product of considerable research by Dare. I do not consider that it was likely that the ratios would be forgotten by the Defendants, even if they had not consciously committed them to memory. They were ratios that were traded on and applied repeatedly throughout the working day, and they were likely to have been remembered by the Defendants as if

they were part of their general stock of knowledge. Even if not, they were likely to be dredged up from the recesses of their memories if they were put on a trading desk where they could be useful. Similarly with respect to the specific functionalities that the Defendants had access to and used as part of their regular trading, which provides Dare with a competitive advantage.

272. Similarly with the layout of the pricing sheet. This was not expected to change in any material way on a regular basis, and it was reasonably contemplated at the outset of the contract to last for more than 12 months. The evidence before the Court, which I accept, was that once a Senior Trader had become comfortable with a particular layout, they stuck with it so long as it was enabling them to trade successfully or effectively.

273. Similarly, with respect to information about rebates from brokers or the exchanges (intermediaries). The rebates obtained by Dare would not all have been expected to be negotiated on an annual, or shorter, basis.

274. The fact that more junior traders had shorter covenants (their restraints were for six months) but were also exposed to the same methodologies embedded in pricing sheets and risk management systems does not mean that lengthier protection was not required for the Senior Traders. The longer covenants for Senior Traders reflect the fact that they are going to be better able to (i) understand Dare's confidential information; (ii) understand the value of it; (iii) memorise it; and (iv) operationalise it for the benefit of a competitor.

275. In the circumstances, therefore, I consider that the competition covenant is enforceable.

276. The same does not apply, however, to the other post-termination restraints. I do not consider that a 12 month restraint was required to protect Dare's trading connections, whether via non-solicitation or non-dealing covenants. As explained above, these connections would have reasonably been expected to be rebuilt or refreshed in far less time. Similarly, with respect to non-poaching of employee covenant. I do not consider that it would have been reasonably contemplated that Dare would require anywhere close to 12 months to recruit and then train up relevant personnel.

277. Accordingly, I do not need to deal with any other issues relating to these restraints. Whether or not they were appropriately drafted, or protected legitimate business interests, they were unreasonably long and so not enforceable by Dare.

i) <u>Were the Defendants put on Garden Leave?</u>

278. The proper construction of the Defendants' contracts of employment is that an employee is put on "Garden Leave" where Dare requires the employee not to work at all ("not to perform any services"). The employee is also put on "Garden Leave" where Dare requires the employee "to perform only specified services". This clearly includes services which were not ordinarily performed by the employee previously. That is because clause 7(b) provides that Dare can, during any period of "Garden Leave", assign "other duties" to the employee. Other duties must mean duties "other than" what he was previously employed to carry out.

279. "Specified services" does not include the "handover" of the employee's duties or responsibilities. Those duties or responsibilities are explicitly mentioned at clause 7(c)

as assistance that the employee may be required to provide during "Garden Leave" period in any event. Where an employee is asked to perform "handover" functions, therefore, this would form part of "Garden Leave".

280. For D1, in the email message of 27 November 2023, Mr Rahman set out that he would be working during his notice period, and the initial tasks were to carry out certain actions with respect to the Propane Desk: preparing write-ups of Propane strategies that Dare had been pursuing, preparing a breakdown of a particular hedging analysis that had been used, and preparing a summary of the Propane brokers that D1 worked with, along with researching marketing strategies for certain product sectors that D1 had not engaged in. These were all duties or services that fell within the "Garden Leave" provision: they were either "handover" tasks, or were new tasks that had not been performed previously.

281. The email of 27 November 2023, referred to Mr Rahman and D1 sitting down to agree the next set of tasks for the next four month period, which included "leading the Sales Desk strategy and potentially trading on another desk". These would be "specified services" because they were not matters that D1 had previously done.

282. It is clear to the Court, therefore, that initially (that is, from 27 November 2023) Dare exercised its discretion to place D1 on "Garden Leave" within the meaning of the contract of employment. The situation changed, however, on 22 February 2024. On that date, Mr Rahman wrote to D1 and told him that he was "happy for you to continue trading as normal on the Propane desk when you come back to work", but was open to D1 carrying out other work that was commensurate with his role and seniority if he preferred. The suggestion that D1 return to carrying on trading as normal on the Propane desk was, in my judgment, genuine (see paragraphs 75-6 above). In contractual terms, it brought the "Garden Leave" period to an end as, if D1 had accepted the suggestion and returned to work, he would have been working in his usual role. In my judgment, therefore, D1 was on "Garden Leave" for three months (27 November 2023 to 22 February 2024).

283. Clause 13(d) provides that "The periods for which the restrictions in paragraphs 13(c) apply shall be reduced by any time Employee *spends on Garden Leave* immediately prior to the termination of his employment". Mr Goulding KC contended that D1 did not "spend" any time on "Garden Leave" as he was purportedly on sick leave during the period between his resignation and the termination of his employment by Dare on 10 July 2024. I disagree with this contention. Whether an employee "spends" any time on "Garden Leave" is a temporal matter; it is a question of whether the period of time in which "Garden Leave" was due to take place has actually occurred. It does not matter if the employee was sick, or purported to be sick, at that time. The sickness absence was from a period when the work that they would have performed had they attended work were services that fell within the definition of Garden Leave.

284. This period from 27 November 2023 to 22 February 2024, during which I have found D1 was put on "Garden Leave", was not "immediately prior to the termination of [D1's] employment" according to the construction of the contract that I have set out above at paragraph 244. Accordingly, under the terms of the contract of employment it is not reduced from the period of the post-termination restraints. The fact that D1 was placed on "Garden Leave" for that period and, in any event, did not work at all for Dare during the notice period – and so the benefit that Dare actually gained from his absence -may

be relevant, however, to whether the Court should refuse to enforce the post-termination restraints.

285. For D2, he was asked to carry on trading on the Crude Oil desk at least for the first 6 months of his notice period. This was not a "specified service". It was the work that he had previously performed. It is clear to the Court that D2 was not being placed on "Garden Leave"; rather he was being asked to work out his notice by carrying on his ordinary functions. D2 contended that the instruction for him to continue trading was not genuine. Whilst this may have been his perception, D2 did not put it to the test and, if Dare was bluffing, he had not called Dare's bluff. In any event, I consider that the instruction was a genuine one.

286. There was good reason, at least initially, for Dare to instruct D2 to continue trading. Although there were other individuals who had worked on the Crude Oil desk with D2 who might be able to trade, they were not as expert and experienced as D2, and they ran a greater risk of incurring losses (or not making profit) for Dare than if D2 had continued working. Those other employees had only ever traded on the Crude Oil desk under D2's supervision and guidance, and following the strategies that he had responsibility for.

287. There is contemporaneous evidence as to the steps that were taken by Dare to provide cover for D2's absence from the Crude Oil desk following his resignation. That evidence does not support the proposition that Dare would not have wished D2 to return to trading, and at the very least to derisk his positions on the desk.

288. As D2 was not put on "Garden Leave", there is no time to deduct from the post-termination restraints, if they are enforceable, pursuant to clause 13(d). The fact that D2 did not work at all for Dare during the notice period – and so the benefit that Dare actually gained from his absence - may be relevant, however, to whether the Court should refuse to enforce the post-termination restraints.

<u>Was D1 genuinely sick and unable to work?</u>

289. The general legal position is that where there is medical evidence to support an employee's sickness absence such as a doctor's sick or fit note, an employer ought not to go behind this, and neither should the Court, without contradictory medical evidence: see *Merseyrail Electrics 2002 Ltd v Taylor* (Employment Appeal Tribunal, 18 May 2007), referring also to *Teinaz v Wandsworth London Borough Council* [2002] ICR 1471.

290. In the instant case, the contemporaneous evidence from the medical practitioners who were treating D1 is that, in their opinion, he was genuinely sick and unable to work at all for Dare for all of the period following his resignation and up until the termination of his employment. In my judgment, there is no proper basis to go behind those opinions.

291. Around the time of his resignation on 20 November 2023, D1 had an exacerbation of his chronic condition. It is clear that the situation improved by late December 2023, and was in complete remission by the end of January 2024. There was no further exacerbation of this condition from then until the termination of employment in July

2024. This is reflected in the contemporaneous notes, and confirmed by the medical experts who gave evidence to the Court.

292. As for whether D1 was able to work during the notice period, the medical experts with respect to the chronic condition noted that they were not Occupational Health physicians. Their joint opinion, however, was that when D1 was having his exacerbation in November and December 2023, "he would not have been able to do any work at all". With respect to January 2024, they deferred to the position of the treating physician who had exercised his contemporaneous judgment on this issue and signed D1 off from work.

293. For the period from 1 February 2024 to 11 July 2024, the medical experts for the chronic condition agreed that D1 "would have been able to carry out some kind of work depending on the type of work and where it was carried out. He would not have been able to carry out any work that was likely to bring on stress sufficient to risk an exacerbation". They said that it was "extremely unlikely" that D1 could have returned to work without suffering an exacerbation in the period from 1 February 2024 to the end of his employment.

294. It was appropriate for the medical experts to defer to E's contemporaneous judgment on the issue as to what work D1 could have done for the period until the end of January 2024. E had met with D1 and was very familiar with his background as he had been consulted by D1 previously. Furthermore, doing work of any kind during January 2024 was, in my judgment, not realistic given D1's other medical condition.

295. The advice of the other treating physician, F, was that D1 could not work at all for Dare during the remainder of the notice period. In her letter of 23 January 2024, F stated that "it is difficult to see how you can work at the moment". The matters that she relied upon for her opinion pre-dated the assessment. They were already present when D1 had an earlier appointment towards the end of December 2023.

296. I consider that this other condition was genuine. The evidence before the Court is that D1 did manifest the various symptoms that lay behind F's diagnosis and recommendation for him not to be at work. Although it is always possible for a patient to exaggerate and embellish their symptoms, in the hope that this will persuade a physician to make a particular diagnosis, I do not consider that that was the case here.

297. D1 had an expectation, based on his past experience, that he would not need to work at all during his notice period – that is, that he would have been able to enjoy a pure garden leave period and would be able to spend his time travelling, concentrating on his health and getting fit. That expectation was dashed by Mr Rahman's instruction that D1 should continue working during his notice period, and should carry out certain tasks other than trading on the Propane and Naphtha desks. This led to or exacerbated the condition that F was asked to examine and treat D1 for.

298. In the circumstances, there was no "mistake of fact" as to whether D1 was genuinely sick and was unable to work. D1 was genuinely sick and unable to work, whatever Dare may have thought. Accordingly, there is no basis to a claim for unjust enrichment with respect to the payment of salary to D1 during his notice period.

299. I do not find that the symptoms described by D1 to F were inconsistent with his other conduct: his 'nights out on the town' with Mr Law, and his many foreign travels. D1's difficulties were associated with the circumstances of Mr Rahman's request to work his notice. That is why F was of the view that D1 could travel and seek to relax, but still be unfit for work.

300. I also do not consider that D1 pulled the wool over the eyes of F. Whilst she did not know all of the circumstances affecting D1, the key points that were conveyed to her were correct. As already explained, I also do not consider that F merely acted as an "advocate" for D1. The materials that the Court has seen reflect an experienced medical professional considering conscientiously the evidence presented to her and reaching a conclusion which is not a totally unreasonable one. F's assessment was not undermined by the evidence of the medical experts who gave evidence to the Court.

301. I do not consider that this was all a ruse; merely part of a strategy devised by Mr Beckwith. Whilst I have no doubt that there was discussion between D1 and Mr Beckwith about his medical condition at least on a general level rather than the specific detail, and I also have no doubt that Mr Beckwith advised D1 to emphasise the medical condition in his communications with Mr Rahman, D1's medical issues were genuine and he would have raised them with Mr Rahman in any event, and would have relied upon them for not returning to work for Dare.

Was D2 genuinely sick and unable to work?

302. The situation with D2 was very different. In my judgment, D2 was not genuinely sick and unable to work at all in the period following his resignation and up until the termination of his employment by Dare on 10 July 2024.

303. I have no doubt that D2 did suffer from a degree of stress and anxiety arising from his resignation from Dare and the correspondence from Mr Rahman, in particular, the intimation from Mr Rahman, and subsequently Dare's solicitors, that losses made by Dare as a result of D2's absence might give rise to a liability. Nevertheless, the evidence before the Court does not support the proposition that the stress and anxiety experienced by D2 was so severe that he was unable to work at all for Dare, including trading on the Crude desk and effecting a handover, following his resignation.

304. The only contemporaneous evidence to support D2's inability to work were the fit notes signed by Dr Keane. They cannot be relied upon as evidence of what was actually occurring to D2. Whilst it is true that the first of these fit notes was signed by Dr Keane after a face-to-face meeting with D2, the Court is bound to be sceptical about the assessment that Dr Keane made about D2's condition. First, Dr Keane was not D2's regular GP. The assessment of D2 had actually been arranged by D2's father, who apparently had a professional relationship with Dr Keane, as he was a pharmacist whose business was located near to the surgery where Dr Keane worked. Had D2 been genuinely suffering from such severe stress and anxiety that he was unable to work, it would be expected that he would obtain an appointment with and be assessed by a doctor at his usual General Practice. D2 said in evidence that he did not do this because he was aware that waiting times at his General Practice were long and he wanted an urgent appointment. I reject this evidence. There is no suggestion, for instance, that D2 even attempted to obtain an appointment with his General Practice before seeking his father's help to obtain an appointment with Dr Keane. Far more likely is that D2 thought

that Dr Keane would be more persuadable than his own GP as to the nature and extent of his condition.

305. Second, D2 had been primed by Mr Beckwith as to how to approach the consultation with the doctor, telling him "to lay on that you are not an anxious person but you are going through a very hostile situation with your employer who is threatening you with insane and fabricated financial losses". It would not be surprising if Dr Keane took at face value what D2 was saying to him.

306. In any event, even if the initial fit note did reflect D2's actual condition at that point in time, there is no explanation as to why D2 was unable to attend work in the period before he asked his father to obtain an appointment with Dr Keane, other than for the short period when he was on pre-booked annual leave which provided him with a genuine excuse for not working.

307. As for the period after the end of the first fit note, there was no further assessment by a medical practitioner to justify D2's continued absence from work. Rather surprisingly, Dr Keane was content to sign D2 off work on further occasions without seeing him, or even speaking to him, and merely on the say-so of D2's father. The absence of direct communications between D2 and Dr Keane renders these assessments unreliable. Furthermore, at this point, there was no apparent "urgency" to explain why D2 could not have obtained an appointment with a doctor at his own General Practice on these subsequent occasions so that his own, rather than his father's, doctors could assess him.

308. Moreover, if D2 was genuinely suffering from such stress that he could not work it would reasonably be expected that he would seek some form of counselling or therapy which might assist his return to work. D2 suggested in evidence that this was not something that was done within his family, and that he was not the kind of person to open up about his emotions or feelings. I acknowledge that there are individuals who are reluctant to seek formal support, but I do not accept that that is the reason why that was not done here by D2. Far more likely is that he was not as distressed and anxious as he subsequently described to the medical experts who examined him for the purposes of this litigation in September 2024, and so did not require any counselling or other treatment in any event.

309. The other contemporaneous materials do not provide any evidence to support D2's alleged condition. To the contrary. They provide evidence of an individual who was functioning well. During his absence from Dare, D2 appeared to have no difficulty communicating with a wide range of individuals, including brokers and colleagues at Dare. In their communications, D2 appeared open, relaxed and often joking. D2 was able to engage very openly with personnel from Onyx, and even took preparatory steps in anticipation of working for Onyx. D2 improved his golf; D2 attended social gatherings and travelled with his family to Canada and Dubai among other places which he clearly enjoyed.

310. On 5 March 2024, D2 had a 10 minute WhatsApp exchange with a broker called "Carlo". D2 suggests meeting up. He tells Carlo that "Mate it's tough to do anything with kids schedule . .. I feel like those instagram guys who don't have a day job . . . Finally going to the gym ... Might actually be healthy for a little bit". On 8 March 2024, for instance, he tells another broker (Anthony) at 8:42pm that he is "Just out for drinks with some school parents lol". In a WhatsApp exchange with Anthony, on 12 March

2024, they discuss meeting up one evening. D2 informs Anthony that he is "Trying golf", followed by a laughing emoji.

311. On 19 June 2024, in a WhatsApp exchange with Seyd Anane, D2 was asked about how he was enjoying his garden leave. He said: "It's been good but also can't help feeling guilt of not working lol it's very wierd. I also have so much fomo away from the market. Crazy how long these non competes are these days." No mention was made in this or any of D2's other messages that were shared with the Court of any sickness or illness.

312. There was also no reference to any stress or difficulties in D2's conversation with Mr Law at *Oka* on 8 May 2024. This was an unguarded conversation. They were both in similar positions, having resigned from Dare. If D2 was genuinely ill, it would surely have been referred to even in passing.

313. I find that sickness was a ruse used by D2 to avoid going back to work, at a time when he hoped that an agreement would be negotiated to allow him to start working for Onyx sooner than was contemplated by the contractual arrangements with Dare. D2 had, in my judgment, no intention of returning to work during his notice period. If he had any such intention, he would have taken up Mr Rahman's repeated requests to attend an occupational health appointment, which may have facilitated a return to work. Whilst it is correct that D2 did eventually agree to attend such an appointment, that was only after a letter before claim had been sent by Dare. It is likely that his agreement to attend was tactical in the face of the threat of legal proceedings.

314. I consider that the ruse was part of a strategy devised by Mr Beckwith. Mr Beckwith did not give evidence orally to the Court. There was, however, ample material before the Court as to his mindset and way of working. It is abundantly clear from the written exchanges that Mr Beckwith acted as if he was 'playing chess' with Dare. The communications from Mr Rahman, and subsequently from Dare's solicitors, were reasonable and fair, and yet Mr Beckwith treated them with total disdain. Whilst there is no specific mention of this ruse in the written exchanges that are available to the Court, there were several meetings and numerous telephone conversations with D2 in which this idea could have been discussed. It may be that Mr Beckwith had been inspired in this regard by D1's example; but the situations were entirely different. D1 had a chronic condition that was causing difficulties for him from shortly after his resignation. D2 had no underlying condition.

315. Contrary to the submission of Mr de Silva KC, it is clear from the correspondence with Mr Beckwith that D2 was not simply a passive participant in their exchanges. The correspondence demonstrates that D2 was reading and forming his own view as to what was being communicated by Mr Rahman (as for instance in D2's less "optimistic" view of how things would develop on 14 February 2024, see paragraph 130 above) and as to what was being crafted by Mr Beckwith for him to send (as, for instance, was evidenced in their discussion about what to say to Mr Rahman on 23 February 2024: see paragraph 139 above). D2 was, however, relying on Mr Beckwith for strategy and the overall way in which he needed to deal with Dare. It was suggested by Mr de Silva KC that D2 did not say anything when Mr Beckwith made quite outrageous comments. I find that the lack of response was not indicative of D2 showing passivity. Rather, I find that D2 agreed with what was being said.

316. The Court was presented with expert evidence from Dr Hillman to say that at or shortly after his resignation D2 suffered from an Adjustment Disorder, defined in ICD-11 as "A maladaptive reaction to an identifiable psychosocial stressor or multiple stressors (e.g. divorce, illness or disability, socio-economic problems, conflicts at home or work) that usually emerges within a month of the stressor". Dr Hillman considered that "avoidance" was a key symptom and that this avoidance behaviour was likely to have accounted for the lack of D2's engagement with his employer, occupational health and the lack of pursuit of treatment.

317. Dr Hillman's diagnosis was based on a review of D2's medical history (which showed no history of mental illness) and an in-person assessment. It is clear, however, that Dr Hillman was not provided with the full details of D2's situation and the circumstances surrounding the resignation and his future employment with Onyx.

318. D2 had told Dr Hillman that things at Dare were so bad that he was throwing away money – a substantial bonus - by leaving. D2 did not tell Dr Hillman about the indemnity from Onyx, and the substantial remuneration that he was being offered by Onyx which was designed in part to compensate D2 for giving up his bonus. D2 did not tell Dr Hillman that Mr Beckwith had told him what to say to Dr Keane, or that Dr Keane was not his normal doctor, or that he had obtained fit notes via his father. D2 did not tell Dr Hillman of the preparatory work that he had done for Onyx during the notice period.

319. In my judgment, had he been told the full story, Dr Hillman would have been far more sceptical of D2's presentation and would not have concluded that there was a real barrier for D2 to return to work at Dare; that D2's "avoidance" was not the result of a psychiatric condition.

320. Although D2 was not too ill to work, I do not find that the claim for unjust enrichment is made out such that D2 should give restitution of his base salary received during the course of his employment. The basis for the unjust enrichment claim, as set out in paragraph 80 of the Amended Particulars of Claim, is that the salary payments were made to D2 "under a mistake of fact, namely that [D2 was] too "sick" to work". To satisfy the test of "mistake", Dare needs to establish that, in spite of its doubts, it believed that it was more probable than not that the facts were otherwise than they in fact were: see Goff and Jones, *The Law of Unjust Enrichment* (10th ed, 2022) at paragraphs 9.24-9.25, referring to *Marine Trade SA v Pioneer Freight Futures Co Ltd BVI* [2009] EWHC 2656 (Comm). That is, Dare needs to establish that it believed that it was more probable than not that D2 was genuinely too sick to work in the period when it continued to pay his salary and employ him to 11 July 2024. In my judgment, Dare did not surmount that threshold.

321. In his evidence to the Court, Mr Rahman did not expressly state that he believed that D2 was too ill to work. To the contrary, Mr Rahman gave evidence as to the doubts that he harboured about D2's assertions of sickness. Mr Rahman stated that he was "somewhat sceptical" of D2's assertion of sickness. The assertion "came out of the blue" and "seemed very coincidental". Mr Rahman stated that he believed that it was possible for an employee to get a sick note from a doctor with relative ease, although he did not expect his Senior Traders to do so. Mr Rahman stated that he had "no firm evidence that sickness was not the real reason for [D2's] absence, but I certainly knew it was possible that the absence was for other reasons and that sickness was merely

being used as a pretext in the hope that Dare would or could never challenge it". The repeated requests for D2 to attend for an occupational health appointment also demonstrates real scepticism about him being unable to do any work.

Did D1 breach his contract/breach fiduciary duty?

322. Mr Goulding KC argued that D1 was obliged to turn up for work and perform the duties assigned to him unless he was genuinely unable to for reasons outside of his control. Reliance for this proposition is based on the unlawful deduction of wages case of *Miles v Wakefield MDC* [1987] AC 539, 552H, in which Lord Brightman stated that an employee is excused from normal duties, but is still entitled to be paid, if he is absent as a result of an "illness or otherwise unavoidable impediment". Mr Goulding KC contended that an employee is not excused from normal duties where the impediment is avoidable, that is where the inability to work is caused by something in the employee's control. That was not the case here.

323. D1's reaction to Dare's lawful instruction that he work during his notice period led to, or exacerbated, the illnesses from which D1 was suffering. Those illnesses cannot properly be regarded as self-induced. There is no suggestion that D1 wanted to be ill. Indeed, far from it. The evidence shows that he suffered considerably during the period of his illness.

324. The situation is analogous to that found in *Merseyrail Electrics 2002 Ltd* at [13]. The Employment Appeal Tribunal (per His Honour Judge Peter Clark) stated that "Even if [the employee] was feeling piqued at not getting her own way, if that led to stress which in turn caused her absence, then she was entitled to sick pay, provided there was no doubt about that causative link".

325. I find, however, that D1 was in breach of contract in refusing to attend an Occupational Health assessment. The contract of employment provided at clause 10(e) that an employee could be required to undergo a medical examination by a medical practitioner appointed by Dare "at the reasonable request" of Dare. Mr Solomon KC argued that the direction to attend an occupational health referral was not reasonable. First, D1 genuinely believed that he was too sick to do any work. Second, D1 was under the care of senior medical practitioners who considered that he was too sick to work. Third, D1 considered that an Occupational Health appointment was unnecessary and might be unhelpful to his recovery. Fourth, D1 had justifiable concerns about whether Dare (and, in particular, Mr Rahman) would keep his medical information confidential.

326. Mr Solomon KC also argued that Dare did not really want D1 to attend a medical appointment because when he did consent to doing so Dare did not engage with D1 and one month later dismissed him. Mr Rahman had said that this was "too little too late". I do not regard that explanation as meaning that the earlier requests for D1 to attend an appointment with occupational health were not genuine. The explanations provided by D1 for his sickness absence were rather minimal, and Dare had good reason to want to know more, and also to see what if any measures could be taken to facilitate a return to work. Dare's concerns about the lack of information would have no doubt increased following D2's notification that he was also not able to work his notice as a result of illness.

327. D1 did not agree to the various requests until 11 June 2024, when his solicitors conveyed his agreement to attend an Occupational Health appointment. This breach may not sound in anything other than nominal damages, but that will be a matter for a quantum hearing.

328. I do not consider that D1 breached his contract in any other way. Dare's Sickness Absence Policy – and, in particular, an obligation to complete a time-off request on Dare's system known as "HiBob" – was not contractual. The policy is not specifically incorporated into the contract of employment by reference. To the contrary, clause 20 of the contract of employment states that Dare's policies are "not contractually binding". It can also be seen that the contract of employment contains a detailed set of requirements for the employee in case of "Sick Leave". There is no indication that any of these terms were breached.

329. There is no direct evidence that D1 engaged in any unlawful competitive activity during his notice period, and it cannot be inferred from the evidence. There is no evidence that D1 performed any preparatory work for Onyx. There is no evidence that D1 sought to solicit brokers to move their business away from Dare. There is no evidence that D1 sought to solicit employees of Dare to resign their employment. The resignation of D2, and of others (including Mr Law) do not appear to have been as a result of D1 telling them of his move to Onyx, let alone him encouraging them to resign to do the same. There is no evidence that D1 talked to personnel at Onyx about other employees who they might be interested in approaching.

330. Mr Rahman told the Court that D1's resignation led to numerous other employees resigning. Mr Rahman's belief was that D1's resignation had caused destabilisation of the workforce at Dare, referring in particular to a wave of resignations that took place over Easter 2024, including 2 individuals (Luke Fifield and Daniel Golizadeh) who reported to D1; and a further wave of resignations between 4 April and 8 May 2024. Several of those who resigned did not return to work on grounds of sickness. Mr Rahman said in evidence that "It seems impossible to me that this unprecedented wave of resignations was a coincidence, or unrelated to the fact that three of Dare's biggest figures simply went AWOL from the business. I believe that these resignations were caused, at least in part, by the destabilization caused by Mr Soliman and Mr Hikmet (and Mr Law) suddenly vanishing".

331. There is no evidence available to the Court to support this proposition. Mr Rahman accepted in cross-examination that none of the departing employees had told him that D1 was the reason for their departure. Rather, they gave other reasons, including their own mental health. In any event, even if D1's resignation did influence the decision of other Dare staff to resign that would not amount to a breach of contract by D1; he was entitled to resign, even if it had an impact on the decision of other employees.

332. D1 did not inform Dare that he was moving to Onyx. I do not find that this in itself was a breach of contract. Clause 13(h) of the contract of employment provides that: "If Employee applies for or is otherwise offered employment or an engagement, appointment, or consultancy at any time during his employment, Employee will immediately inform the Company of such offer of employment or engagement and Employee will provide a copy of this paragraph 13 to the person or entity that he has applied to or has made such offer." This provision obliges the departing employee to inform Dare of "such offer of employment". I construe that to refer to the fact that an

offer of employment has been made to the employee. There is no reference to the identity of the offeror to be notified to Dare and, contrary to Dare's submissions, I do not consider that it is implicit in the reference to "such offer". There is no necessary reason why Dare requires to know the identity of the employer and, even if it did, it would have to be balanced against the employee's desire to keep that matter to himself. The primary purpose of the contractual obligation is that the employee informs the future employer of the post-termination restraints.

333. This construction is fortified by the fact that Dare's Articles of Association, adopted in July 2023, do specifically require the identity of the offeror to be notified to Dare:

> "During each Growth Shareholder's employment and for 12 months thereafter, the Growth Shareholder will immediately report to the Company or any director of the Company or any Group Company any Offer of work or employment made by a competitor (or potential competitor) of the Company or any Group Company. *The report will include (without limitation) the identity of the offeror, the date of the Offer and the terms of the Offer".*

(Emphasis added). This demonstrates how easy it would be to draft such a clause if that was the objective intention of the parties.

334. It is not possible, in my judgment, for Dare to achieve the same result via clause 3(c)(7) – a provision that obliged D1 to keep Dare "fully informed of his conduct". Accepting an offer of employment cannot sensibly be regarded as "conduct" for the purposes of this provision.

335. Furthermore, Dare cannot achieve the same result by invoking the implied duty of good faith and fidelity. This was not a "team move" type case, and D1 was not privy to the conversations that, for instance, D2 was having with Dare about his move to Onyx: c.f. *Kynixa Ltd v Hynes* [2008] EWHC 1495 (QB) at [283].

336. I also do not consider that D1 breached his contract by colluding with Onyx. Dare's argument with respect to collusion is encapsulated in their pleading at paragraph 60A of the Amended Particulars of Claim. That is:

> "D1 agreed a strategy with Mr Beckwith and/or Onyx/Axis to secure his early release from his employment at Dare;
>
> D1 disclosed his resignation and post-resignation correspondence, and/or its contents, with Mr Rahman to Mr Beckwith and/or Onyx/Axis;
>
> Mr Beckwith and/or Onyx/Axis also assisted D1 in drafting his responses to Mr Rahman and/or otherwise assisted D1 in avoiding work during his notice period and/or seeking to avoid his obligations under the post-termination covenants;
>
> D1 also acted in accordance with the instructions and/or advice of Mr Beckwith and/or Onyx/Axis in respect of the same; and/or

> D1 did the foregoing in the interests of himself and/or Onyx/Axis and not in, or contrary to, the interests of Dare".

337. I have no doubt that D1 discussed a strategy with Mr Beckwith about how he could secure his early release from Dare's employment, disclosed correspondence with Onyx, had some assistance from Mr Beckwith in drafting responses to Mr Rahman, and followed advice that Mr Beckwith gave him. Although much of the correspondence between D1 and Mr Beckwith has not been disclosed on the basis of legal professional privilege as lawyers were present and may well have advised during their meetings, conversations and other communications, it is possible to infer that Mr Beckwith – who was not a lawyer, and whose advice would not be protected by privilege – gave advice to D1 which he followed. As an example, D1 withdrew from Dare's WhatsApp groups on 21 February 2024. Although D1 claimed that he could not recall discussing this with Mr Beckwith, his withdrawal took place after he had had a 36 minute conversation with Mr Beckwith. I cannot accept that this was a mere coincidence.

338. However, as already explained, the illnesses that D1 were suffering from were genuine, and they provided him with a lawful excuse for not working for Dare during the notice period, and for disconnecting from work communications. Whilst I find that Mr Beckwith advised D1 to use his sickness as an excuse for not working, and that Mr Beckwith regarded that as the centrepiece of a strategy to secure D1's early release from Dare's employment, the sickness was genuine and so the reality of the situation coincided with Mr Beckwith's strategy.

339. Furthermore, the fact that indemnities were signed with Onyx did not, in my judgment, explain D1's behaviour. They may have provided him with some comfort that he would be financially protected if a claim was brought against him by Dare, and they may have fortified the approach that was taken by him, but that approach was one which I consider he would have taken in any event.

340. In the circumstances, I do not find that D1's conduct was unlawful collusion in breach of the duty of fidelity, when it was premised on something that was genuine.

341. As for whether D1 breached a fiduciary duty owed to Dare, I conclude that he did not. A number of factors have been identified as being relevant to whether the relationship and contractual duties and responsibilities give rise to fiduciary obligations:

- The seniority of the employee, and the extent of responsibility for, and autonomy in relation to, management of the employer's business or a part of that business.

- The degree of autonomy afforded the employee, or conversely control exercised by the employer, in relation to specific obligations or relationships relevant to the case (as in the case of a salesperson responsible for passing back information as to business opportunities).

- Whether the employee is entrusted with or assumes control over relevant tangible or intangible property (including in particular confidential information) and is relied upon to deal

with it for the benefit of the employer and/or only for authorised purposes.

- Whether the employee is entrusted with relevant initiatives and responsibilities, such as negotiation of a contract, in which he is required to act solely in the interests of the employer to procure the best terms for the employer.

- Whether the nature of the employee's role or responsibilities (whether by virtue of the contract or assumed in practice), such as his influence over the placing of relevant orders, is such as to leave the employer vulnerable to abuse unless the employee acts solely in the best interest of the employer.

- The nature of the breach. A fiduciary obligation will more readily be found in the case of a bribe or secret commission.

See Selwyn Bloch QC and Kate Brearley, *Employment Covenants and Confidential Information* (4th ed. 2018), at paragraph 4.55.

342. When he was trading with Dare's capital, D1 owed Dare fiduciary obligations. Although he was not part of the senior management of Dare, and had no responsibility for the strategic direction of the business or even for recruitment decisions, as head of the Propane and Naphtha desk D1 had considerable autonomy with respect to the making of trades. He was also entrusted with Dare's confidential information and permitted to exploit it for Dare's benefit. Nevertheless, the allegations against D1 do not involve his trading for Dare; rather, they are concerned with the time after he had handed in his notice and was not trading for Dare. Furthermore, the allegations against D1 do not include breach of confidence. In those circumstances, fiduciary obligations do not arise and so no breach of fiduciary duty is made out against D1.

Did D2 breach his contract/breach fiduciary duty?

343. D2 did breach his contract with Dare. He failed to turn up for work in circumstances where he did not have a genuine sickness preventing him from doing so. After resigning from Dare on 13 February 2024, D2 had not been placed on "Garden Leave" by Dare. D2 had been asked to return to work and carry on trading on the Crude desk. I find that this request was a genuine one. D2 did not have a lawful excuse for his non-attendance or not working at all for Dare during his notice period.

344. I am not asked, at this hearing, to consider questions of quantum. It seems to me that there may be various heads of loss available to Dare to pursue, such as loss of profits on the Crude Oil Desk as a result of D2's absence, or lost management time. The materials that I have seen indicate that, at least in the first month after D2's departure, the Crude Oil Desk did make a loss, and there is some evidence that losses were suffered thereafter: see paragraph 117 above. Nevertheless, the evidence is not comprehensive. Mr de Silva KC contended that this showed that Dare had not suffered any actual loss. That may be right, but it may be that evidence of loss was not produced by Dare as the speedy trial was for liability only.

345. Mr de Silva KC also contended that the evidence shows that the Crude team were trading actively, positively and seemingly successfully after D2's resignation. That also may be right, although the positive comments from Mr Rahman to the team that Mr de Silva KC relied upon may have simply been to encourage and motivate staff with positive messages, when the reality of what was actually taking place on the "pnl" was different.

346. At this stage of the proceedings, I am unable to make any findings as to whether any loss was actually made on the Crude desk. It is clear, however, that management time was plainly diverted to deal with D2's absence. This may sound in damages. In any event, even if no actual loss was sustained by Dare, they would be entitled to nominal damages for D2's failure to comply with the reasonable instruction and to work his notice.

347. Mr de Silva KC has also pointed to the evidence that Mr Khan was recruited, submitting that he was a replacement for D2. Again, that is not an issue for me to determine at a liability trial. It would go to the question of quantum, where the Court will need to decide if Mr Khan's recruitment staunched, or even reversed, the loss that Dare suffered as a result of D2's failure to work during his notice period, and/or whether Dare acted reasonably to mitigate any loss.

348. It is also clear that D2 was in breach of the duty of fidelity in that he took preparatory steps to compete with Dare during the course of his notice period. Unlike D1 who did not have significant dealings with Onyx following his resignation, D2 had a number of significant dealings with Onyx which were not simply meeting and greeting the people who he was going to work for. D2 started to work with Onyx to prepare the layout of his pricing sheet; D2 also started to work with Onyx to discuss what he wanted to do with "Eagle", Onyx's energy trading and risk management system.

349. On his visit to Dubai, D2 visited Onyx's premises and reported back his view about the size of the office. D2 also offered to help Onyx find different offices in Dubai. I do not find that what D2 did can properly be regarded as assisting Onyx to find permanent premises in Dubai, and so this did not constitute a breach of contract.

350. D2 was in breach of contract, however, in that he provided Mr Kayaam with information about the Crude Desk's "pnl", and other items that fed into his remuneration package at Dare, such as the rebates, fees, and administration costs paid by his desk. This information was confidential to Dare and D2 did not have permission to share it with a competitor. In passing on this information, D2 was not using his best efforts to promote or protect the interests of Dare, thereby contravening clause 3(c)(1) of his contract of employment, and was in breach of the duty of fidelity.

351. D2 also informed Mr Beckwith about the management and performance of Dare's Crude desk, which was information that was confidential to Dare and might be useful to a competitor. In this regard, I refer to D2 telling Mr Beckwith that Mr Afzali was managing fine in terms of de-risking the book (21 February 2024); that there were a certain number of people working on the desk (22 February 2024); that the book was up a certain amount when he left (23 February 2024); that the position was down by a specific amount a few days later (26 February 2024). In passing on this information, D2 was not using his best efforts to promote or protect the interests of Dare, thereby

contravening clause 3(c)(1) of his contract of employment, and was in breach of the duty of fidelity.

352. D2 also discussed with Mr Kayaam the capabilities of Dare's employees: this was referred to in the *Oka* conversation. In cross-examination, D2 stated that this was a reference to the four individuals who had worked on his desk at Dare. The very fact that D2 was giving information about Dare's employees and their capabilities to a competitor was a breach of the duty of fidelity owed to his employer, and contravened clause 3(c)(1).

353. Nevertheless, I do not consider that D2 solicited, or encouraged, other Dare employees to join Onyx. There is no direct evidence of that in the materials that were before the Court, and it is not an inference that I can make from the evidence that I have seen and heard. The conversation at the *Oka* restaurant does contain references to other members of staff, but does not suggest that D2 had sought to encourage them to join him at Onyx or was likely to do so in the future. Indeed, when D2 was asked by Mr Kayaam as to whether any of the juniors working for Dare were "good", he gave negative feedback about them. The references in the *Oka* conversation to other members of Dare's staff did not provide evidence that D2 had had discussions with them about moving with him from Dare to Onyx.

354. As for encouraging Mr Law himself to join Onyx, I do not find that this is made out on the evidence. It is clear that Mr Law had already had conversations with Mr Kayaam from Onyx entirely independently of D2. Whilst D2 spoke very positively about Onyx in the conversation at *Oka*, he did not suggest that Mr Law join him there. Indeed, part of their conversation involved the difficulties that Mr Law might face if he was to join, or seek to join, Onyx given the trading strategies that he had previously been involved in at Dare and which had caused difficulties with the regulators in the United States.

355. I also find that D2 breached his contract, and in particular the duty of fidelity, by meeting with a number of brokers during the course of his notice period: Carlo Peccioli, Marco Courtney, Jeremy Abihssira, Luke Oldershaw, Anthony Georgiou, Will Brentnall, Marlon Lindsey, Jeremy Chamberlain and Joshua Conners. Whilst I accept that the meetings were primarily for social purposes, as the persons with whom D2 met were longstanding friends of his, I have no doubt that D2 told them that he was leaving Dare and moving to Onyx. Whilst there is no support for the allegation that D2 encouraged the brokers not to do business, or to do less business, with Dare, his meetings with the brokers were in part designed to, and would have had the effect of, preserving his relationship with the brokers for the purpose of doing business with them again in the future. In other words, D2 was keeping warm his business relationship with the brokers.

356. D2 was also in breach of his contract of employment by failing to inform Dare of his wrongdoing, in contravention of clause 3(c)(6). On the other hand, D2 was not in breach of contract for failing to inform Dare that he was moving to Onyx, for the same reasons as I have given above for D1. For the same reasons as I have found above with respect to D1, I do not consider that D2 breached his contract by destabilising the workforce.

357. As for the allegation of breach of fiduciary duty, the same analysis applies to D2 as to D1. When he was trading with Dare's capital as Head of the Crude Oil desk, D2 would have been in a fiduciary relationship. The allegations against D2 involve the period

when he was not trading and so, generally speaking, he owed no fiduciary duties to Dare. The exception however is the misuse of Dare's confidential information. This information was entrusted to D2 for Dare's benefit only, and he was not entitled to share that information with a competitor. To that extent, therefore, D2 was in breach of fiduciary duty. By disclosing confidential information to Onyx, D2 had (i) failed to act in good faith, exclusively in the best interests of Dare and not in his own; (ii) placed himself in a position where his duties to Dare conflicted with his own personal interests.

Should the Court grant an injunction to enforce the non-competition covenant?

358. I do not refuse to grant an injunction for enforcement of the post-termination restraints on the basis that damages would be an adequate remedy for Dare. If either of the Defendants had gone to work for Onyx straight after their termination of employment, it would not have been possible for the Court to assess what damages had been sustained as a result.

359. I refuse to exercise my discretion, however, to grant Dare injunctive relief against D1. This is not because granting the relief will cause D1 hardship, or would lead to an unconscionable or oppressive outcome. D1 would continue to receive a base salary during the restraint period, his job with Onyx will still be available and his skills are unlikely to atrophy. I refuse relief because, in substance, Dare has already enjoyed protection against competition for more than 12 months.

360. From 20 November 2023 to 10 July 2024, Dare enjoyed protection akin to what it would have enjoyed had D1 been asked not to carry out any work. During that period, D1 did not access or use confidential information and he has not solicited employees to move over to Onyx, nor has D1 done any work for Onyx or prepared to compete against Dare. From 10 July 2024 until the date of judgment (a period of more than 6 months), Dare has had the benefit of undertakings akin to the non-competition covenant.

361. I appreciate that Dare did not receive the benefit of a handover from D1, but this was a result of D1's sickness absence, which I have found was genuinely based. As a result, Dare could not reasonably have expected to benefit from D1's services during this period.

362. As against D2, I consider that the non-competition covenant should be enforced for the period of 12 months following his termination: that is, until 10 July 2025. As already explained, the non-competition restraint is enforceable. There is no basis to deduct from the 12 month period any time spent on Garden Leave, as D2 was never placed on Garden Leave by Dare.

363. Mr de Silva KC contended that the Court has discretion as to whether to grant an injunction to enforce the post-termination restraints and could enforce only part of the term, as reflected in Underhill LJ's judgment in *Sunrise Brokers* at [49] that there was no reason in principle why the exercise of the Court's discretion as to whether to grant an injunction to enforce a post-termination restraint must be "all-or-nothing". (I note in this regard that Mr Solomon KC made the contrary argument, that a Court could not enforce a shorter period of restraint than the contractual entitlement. Mr Solomon KC contends that the covenant either applies for the entire period of restraint as contracted for, or not at all. The Court cannot rewrite the length of the covenant). In essence, Mr de Silva KC submitted that as D2 had been out of the market since 14 February 2024,

so an injunction to enforce the post-termination restraints should be limited to 14 February 2025.

364. I disagree. I do not consider that an injunction should be refused on account of the fact that D2 was absent from work for the period from 13 February 2024 to 10 July 2024, on the basis that Dare has been provided with the protection that it would be expected to enjoy during the post-termination restraint period. However, as set out in my findings above, Dare did not enjoy that protection. First, D2 carried out preparatory work for Onyx during the notice period; D2 disclosed confidential information to Onyx; and D2 continued to meet with brokers. Second, Dare did not have the benefit of any handover from D2, which was what he was asked to do by Mr Rahman.

365. I have also found that D2's absence from work was not genuinely due to sickness. Rather, it was a deliberate refusal to comply with the terms of his contract of employment, pursuant to which Dare was entitled to request D2 to work his notice. It would, in my judgment, be wrong to refuse relief in these circumstances. D2 feigned sickness, using it as an excuse for not working when he knew that he was not ill and could work for Dare. In the circumstances, it would not be unconscionable or cause undue hardship to D2 if the full length of the restraints was applied to him. To hold otherwise would be to allow him to take advantage of his own wrongdoing.

366. Furthermore, there is no evidence that granting the relief will cause D2 any other hardship. He would continue to receive a base salary during the restraint period; his job with Onyx will still be available; and his skills are unlikely to atrophy.

367. In the circumstances, I do not need to decide whether or not it is open to the Court to grant an injunction to enforce only part of the contractual period of the post-termination restraint. In my judgment, the entire period the restraint should be enforced against D2.

Is Dare entitled to springboard relief against the Defendants?

368. The purpose of springboard relief is to put the parties on a level playing field, and to eliminate the head start that would otherwise have been obtained by the departing employee as a result of the breach of contract. In *QBE Management Services Ltd*, Haddon-Cave J asked at [284]: "how much of a march have the Defendants in this case, in fact, stolen on the Claimant as a result of their wrongdoing?".

369. I do not consider that springboard relief should be granted against D1. As already explained, his failure to work during his notice period was not in itself a breach of contract, and so would not justify the grant of any injunctive relief. The refusal of D1 to attend an occupational health appointment would also not be a basis to justify injunctive relief: it did not provide D1 with any head-start over Dare.

370. The situation with respect to D2 is different. He engaged in competitive conduct during the notice period as discussed above, which included some preparatory steps in anticipation of his working for Onyx. This gave him a head-start over Dare which is not cancelled out by any extra protection that Dare has enjoyed as a result of the undertakings given to the deputy judge on 18 July 2024 and the period of notice. The head-start obtained by D2 from this competitive conduct is not substantial; springboard relief for a period of one month would be the appropriate measure.

371. I do not consider that any springboard relief should be granted in respect of D2's refusal to work during his notice period. Counsel were not able to locate any authority to support the proposition that springboard relief was available in these circumstances. I am doubtful that the springboard doctrine could apply in these circumstances, as it is predicated on an employee taking an "unfair advantage" by his unlawful conduct. The main focus, therefore, is on the "actual advantage" gained by the wrongdoer, and the appropriate measure for the length of the springboard is the length of time that it would have taken the wrongdoer to obtain lawfully what he in fact achieved unlawfully, relative to the victim: see *QBE Management Services Ltd* at [284]-[285].

372. The advantages that Dare has identified as accruing to D2 as a result of his failing to work during the periods when he could have worked, are that (i) D2's employment would not have been brought to an early end, and he would not have been able to commence work for Onyx until 14 February 2026; and (ii) D2 will be able to start work for Onyx in a context in which Dare is weakened. I am doubtful as to whether these are the kinds of "unfair advantage" that the springboard doctrine should embrace. Nevertheless, even if they could in theory be treated as falling within the springboard doctrine, they do not justify injunctive relief on the present facts.

373. With respect to (i), this is far too speculative. It is not known why D2's employment was actually brought to an early end, and it is certainly possible that termination would have taken place at or around the same time in any event. The decision to terminate D2 was one that Dare was entitled to make under the terms of the contract of employment. Dare has not advanced an argument that it was forced to terminate D2's employment in July 2024, or at any time before 14 February 2025. Dare has not, for instance, contended that D2's wrongdoing constituted a repudiatory breach which was accepted by the act of termination. Indeed, such an argument would be doomed to fail, given that the termination was made in accordance with the terms of the contract of employment as payment in lieu of notice was made to D2 and so would amount to an affirmation of the contract rather than an acceptance of breach.

374. Furthermore, it is speculative as to whether Dare would have allowed D2 to continue trading on the Crude Oil desk for the entirety of the notice period, in any event. The initial intention was for D2 to work on the Crude Oil desk for 6 months. It is possible that Mr Rahman would have had second thoughts about D2 working in that capacity for so long if D2 had returned to work. It is possible that "specified duties" or no duties would have been allocated to D2 in the period "immediately" before the termination of employment. If so, then this would have reduced the period of time for which the post-termination restraint applied and D2 would have been able to commence work for Onyx at an earlier date than 14 February 2026.

375. As for (ii), this is in essence another way of describing the disadvantages caused to the company as result of D2's failure to work during the notice period which form part of the quantum assessment that the Court will need to carry out. That is, (i) losses on the Crude Oil desk; (ii) no handover, leading to disarray on the Crude Oil desk; (iii) no assistance in the recruitment or training of replacements; (iv) precarious relationships with and knowledge of brokers; (v) wider disruption and opportunity costs. Given that D2 has the benefit of an indemnity from Onyx, and there is no suggestion that Onyx would not be able to meet its obligations under the indemnity, it is clear that damages would be an adequate remedy and so a springboard injunction would not be appropriate.

Conclusion

376. In conclusion, therefore, I refuse any injunctive relief against D1, but find that he breached his contract of employment in not agreeing to Dare's request to attend an Occupational Health appointment until June 2024.

377. I find that D2 has breached his contract of employment in a number of ways, and has also breached his fiduciary duty to Dare. I grant injunctive relief against D2: he is ordered to comply with the non-competition restraint until 11 July 2025, and is restrained for a further period of one month (that is, until 11 August 2025) from taking up employment with Onyx.

378. I dismiss the claims for unjust enrichment against both Defendants.