Neutral Citation Number: **[2026] EWHC 361 (KB)**

Case No: KB-2025-002338

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20 February 2026

Before:

MR JUSTICE BIRT

- -

Between:

(1) GUY CARPENTER & COMPANY LIMITED
(2) MARSH SERVICES LIMITED
(3) MARSH LIMITED
(4) GUY CARPENTER BERMUDA LTD
(a Bermuda Company)

Claimants

- and -

(1) WILLIS LIMITED
(2) WILLIS GROUP LIMITED
(3) MARTINO UK OPERATING COMPANY LIMITED
(as of 14 July 2025 WILLIS RE UK LIMITED)
(4) MARTINO HOLDINGS LIMITED
(as of 14 July 2025 WILLIS RE HOLDINGS LIMITED)
(5) WILLIS RE (BERMUDA) LIMITED
(a Bermuda Company)
(6) MS LUCY CLARKE
(7) MR JAMES SUMMERS
(8) MR JOHN FLETCHER

Defendants

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Daniel Oudkerk KC, Simon Forshaw KC, Katherine Eddy, Helen Morton, Zac Sammour and Ben Cartwright (instructed by **Stephenson Harwood LLP**) for the **Claimants**
David Craig KC, Jamie Susskind and Jack Steele (instructed by **Clyde & Co LLP**) for the **1st and 2nd Defendants**
Jonathan Cohen KC, Matthew Sheridan, Grahame Anderson, Alex Francis and Amany Jabir (instructed by DWF Law LLP) for the **3rd, 4th,5th and 6th Defendants**

Andrew Edge and Joseph Lavery (instructed by **Greenwoods Legal Services Limited)** for the **7th Defendant**
Craig Rajgopaul KC, Emmeline Plews and Rhys Jones (instructed by **Fox & Partners)** for the **8th Defendant**

Hearing dates: 19-21, 24-26, 28 November 1-4, 10 and 11 December 2025

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Approved Judgment

This judgment was handed down remotely at 10.30am on 20 February 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE BIRT:

Introduction

1. The Willis Towers Watson Group ("the WTW Group") is one of the largest insurance brokers in the world. It formerly also had a business in reinsurance broking, which it sold to another insurance broker – Arthur J Gallagher – in 2021. Under the terms of that sale, it was not able to compete in the reinsurance broking market for a period of two years. Following the expiry of that period, the WTW Group considered once more entering the reinsurance broking market. Ultimately, it decided to do so through a joint venture with Bain Capital Insurance Solutions, LP ("Bain"), and corporate vehicles were set up for that purpose. These included the Third to Fifth Defendants, to which I will collectively refer as "Willis Re". Once it became known in the market that there was an intention to launch Willis Re, there was much speculation about who might join Willis Re to lead it, and from where other senior personnel might be recruited.

2. The Claimants (to whom I will refer collectively as "Guy Carpenter") carry on business as a leading global risk and reinsurance broker. They are part of the Marsh McLennan Group, which is (like the WTW Group) one of the world's largest insurance brokers. Guy Carpenter employs around 3,500 people globally, and is one of the two largest reinsurance brokers (along with Aon) in the market – the evidence at trial was that, between them, Guy Carpenter and Aon have something in the region of 80% of the market.

3. One part of Guy Carpenter's business is what it refers to as its Global Specialties business. This includes teams under the headings (i) Marine, Energy and Technical Lines ("METL"), (ii) Non-Marine Specialty ("NMS"), (iii) Credit, Bond and Political Risk ("Trade Credit"), and (iv) Global Aviation and Aerospace ("Aviation"). The CEO of Global Specialties is Mr James Boyce. In the first half of 2025, his deputy was Mr James ("Jim") Summers (the Seventh Defendant), who was also the global head of METL. Mr Richard Morgan headed the NMS team in London. Guy Carpenter also has an office in Bermuda, previously headed up by Mr John Fletcher (also known as "Fletch") (the Eighth Defendant), which largely comprised people working in NMS.

4. Starting on 9 June 2025, a number of individuals working in the Global Specialties business at Guy Carpenter tendered their resignation with the intention of going to work at Willis Re. These included Mr Summers (who resigned on 9 June), and a number of other individuals who worked in the METL team, and Mr Fletcher (who resigned on 10 June) and a number of other individuals who worked in the Guy Carpenter Bermuda office. A number of individuals also resigned from the NMS team in London. In all, 21 people resigned between 9 June and 19 June 2025, with a further individual resigning on 4 July 2025. These 22 signed contracts with Willis Re. Of those, 2 have since decided not to take up their role at Willis Re. One of those (Mr Jon Beer) has returned to work at Guy Carpenter, and another (Mr Harrison Pepper)[1] has instead taken up a role at AJ Gallagher.

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[1] There was also reference in the evidence to another Mr Pepper who worked in the METL team at Guy Carpenter, Mr Martin Pepper (Harrison's father), who was a Managing Director. He did not resign. All the references in this judgment to Mr Pepper are to Harrison, not to Martin.

5. In these proceedings, Guy Carpenter contends that the resignations were the result of what it describes as an unlawful team poaching operation, planned in secret to recruit teams of employees from the Global Specialties business with a view to diverting Guy Carpenter's clients and business opportunities to the new Willis Re. Guy Carpenter brings the claims against Willis Re, and against Ms Lucy Clarke (the Sixth Defendant), who is a director of the Fourth Defendant and WTW's President, Risk and Broking. She ran the exercise to recruit the resigning Guy Carpenter employees for Willis Re. They also bring claims against Mr Summers and Mr Fletcher, alleging that they assisted in the Willis Re recruitment of members of their respective teams (rather than taking steps to protect their teams from such recruitment).

6. The Defendants say that, in large part, there was nothing wrong with the Willis Re recruitment of the Guy Carpenter employees, that it approached each of Mr Summers and Mr Fletcher individually with very attractive offers (that they both ultimately accepted) and then made individual approaches to less senior individuals, some of which were accepted. They say that Mr Summers and Mr Fletcher were not used as "recruiting sergeants", and that there were obvious factors which caused the resigning employees to leave Guy Carpenter, including the opportunity and high quality financial packages offered by Willis Re, internal pre-existing unhappiness amongst the Guy Carpenter workforce and, in some if not all cases, a desire to continue to work for Mr Summers or Mr Fletcher. The Defendants admit that some aspects of the exercise went too far, and involved breaches of duty on the part of Mr Fletcher and Mr Summers which were induced by Ms Clarke (although the Defendants do not all admit exactly the same breaches of duty in this respect). In very broad terms, it is accepted that, in some cases, Mr Fletcher and/or Mr Summers provided contact details and/or remuneration levels and/or information about the attributes of some of those who resigned, some of which information was used by Willis Re. The Defendants contend, however, that none of that made any material difference to the overall outcome, as the same resignations would have taken place in the same time period, even if (what the Defendants referred to as) those "short-cuts" had not been taken.

7. Guy Carpenter seeks injunctive relief in terms which I will deal with later, but which in broad terms includes relief to prevent (i) any further recruitment from Guy Carpenter in the Global Specialties teams in London and Bermuda, and (ii) dealings with certain clients, in each case until 1 April 2027.

8. This trial was ordered to take place on an expedited basis, and to deal with all issues pertaining to liability and declaratory and injunctive relief. Claims for financial relief (including, if pursued, damages) are for another day.

9. I should also note at this point that the claims were also brought against the First and Second Defendants, who are UK subsidiaries within the WTW Group. The First Defendant transacts insurance business in the UK, and is wholly owned by the Second Defendant. Neither has any material treaty reinsurance business. The First and Second Defendants contended they had no involvement in the recruitment from Guy Carpenter, and should not have been sued. The proceedings between Guy Carpenter and the First and Second Defendants were settled on the second day of the trial under the terms of a Tomlin Order.

10. In this judgment I deal with matters under the following main headings:

Factual Background

Guy Carpenter

11. Guy Carpenter is a specialist reinsurance broker. It is one of four businesses which comprise the global Marsh McLennan professional services group. Another is the well-known insurance broker Marsh. Guy Carpenter, as a reinsurance broker, seeks to assist its insurer clients to determine what risks to reinsure and how to structure the reinsurance, and it liaises with underwriters of reinsurance in seeking to place the required cover (which can sometimes also include retrocession cover for reinsurers).

12. This claim relates to Guy Carpenter's Global Specialties business (which I have outlined above) in the UK and Bermuda. The Global Specialties business has about 280 employees. Although Global Specialties places both facultative and treaty reinsurance, most of its business is concerned with treaty placements.

13. The Chief Executive Officer of Global Specialties is, and has been since January 2019, Mr Boyce, to whom both Mr Summers and Mr Fletcher reported. Mr Boyce in turn reports to Mr Dean Klisura, the President and CEO of Guy Carpenter, who is based in New York.

14. Mr Summers was the Deputy Head of Global Specialties, and Global Head of METL. He was a statutory director of the First Claimant. He was also a member of Guy Carpenter's Global Operating Committee, responsible for the advancement of Guy Carpenter's growth, business and people strategies. The heads of the other teams within Global Specialties were: Mr Morgan (NMS), Mr Ian Wrigglesworth (Aviation) and Mr David Edwards (Trade Credit).

15. Other senior personnel within METL included: Mr Nick Jay (Chairman), Mr Simon Liley (Deputy Head and Sales Lead), Mr Graham Devlin (Chief Operating Officer and Head of Retrocession), Mr Robert Stocker (Head of Marine, Energy and Composite), Mr Richard Hakes (Head of International), Mr Jonathan Powell (Head of War, Terror and Political Violence), Mr Amir Mirfenderesky (Head of Global Tech Lines), Mr Demian Smith (Head of Mutual Agency & Captives), Mr Brian Stroop (Head of US, based in New York), and Ms Jenny Gardem (Head of METL Analytics). Eleven METL employees in London initially resigned to join Willis Re (including, of the above named, Mr Summers, Mr Devlin and Mr Stocker), although as I have already mentioned one (Mr Beer) has since returned to Guy Carpenter and another (Mr Pepper) has decided not to join Willis Re but rather to go to AJ Gallagher.

16. Mr Fletcher was the Chief Executive Officer of Guy Carpenter Bermuda, and was a statutory director of the Fourth Claimant. The Guy Carpenter office in Bermuda was led by Mr Fletcher and employed around 22 staff. Mr Charles Withers-Clarke was Head of Specialty, Mr Peter Komposch was Head of Casualty, and Mr James Morris headed Analytics. Other key figures included Mr Chris Dart (Head of Property Treaty), Mr Richard Keegan (Head of Property Retro) and Ms Jenni Rowntree Estis (Head of Operations). Seven of the Bermuda employees resigned to join Willis Re (including, of the above named, Mr Fletcher, Mr Dart and Mr Keegan).

17. In addition to those who resigned from METL and the Bermuda office to join Willis Re, four individuals resigned from NMS in London (the team headed by Mr Morgan).

WTW and Willis Re

18. In March 2020, the WTW Group had agreed to a merger with Aon and as part of that merger had agreed to divest its reinsurance brokerage division (also called Willis Re) to AJ Gallagher. Ultimately, the merger between WTW and Aon did not take place, but WTW nonetheless went through with the sale of (the old) Willis Re to AJ Gallagher, which completed in December 2021. As part of the deal with AJ Gallagher, WTW entered into a non-compete agreement in respect of treaty reinsurance brokerage which expired in December 2023.

19. By January 2024, WTW was looking for a partner to co-invest and assist with building a new treaty reinsurance broker. In May 2024, Bain met with senior members of the WTW management team (including Carl Hess, WTW's CEO, and Andrew Krasner, WTW's CFO) to discuss starting a new reinsurance broker. Shortly thereafter, WTW selected Bain as its investment partner, and began to work on the establishment and planning of the joint venture.

20. In September 2024, the Third and Fourth Defendants were set up in anticipation of the joint venture. The Fourth Defendant owns the Third Defendant as well as the Fifth Defendant, a Bermuda company (which was set up in December 2024). Those companies were all incorporated with the name "Martino" – their names were later changed to "Willis Re" on 14 July 2025. Under the joint venture agreement, which was formalised on 27 November 2024, the Fourth Defendant was owned as to 51% by a Bain company, and as to 49% by the Second Defendant (which, as I have said, was a WTW group company).

21. WTW made an announcement on 3 December 2024 of its proposed re-entry into the treaty reinsurance market in partnership with Bain.

22. The recruitment for the joint venture that became Willis Re was undertaken by Ms Clarke, the President of Risk & Broking at WTW (who was also, from 27 November 2024, a director of the Fourth Defendant). Ms Clarke is a senior and prominent figure in the insurance world, and was (in 2024-2025) the President of the Insurance Institute of London. Ms Clarke had formerly been an employee of Marsh, where she had been President of Marsh JLT Speciality, responsible for Marsh's specialty business around the world, until she resigned in July 2023 with a twelve-month notice period (for the duration of which she had been placed on garden leave). Towards the end of that period it appears she had started to have discussions about her involvement in the proposed new Willis Re.

Dissatisfaction at Guy Carpenter

23. Many of those who left were dissatisfied at Guy Carpenter, each for their own reasons, but one common and regular complaint was about remuneration. This was an issue both for Mr Summers' team in London and Mr Fletcher's team in Bermuda. Moreover, it was known to Guy Carpenter generally that they were behind the market in terms of pay in Global Specialty – this was recognised by Ms Jana Magnussen, Guy Carpenter's Chief People Officer, on 11 June (following many of the resignations) when she said in an email: "*We knew we were behind the market in some areas of Specialty but didn't have the dollars to resolve during the annual process.*"

24. For some time before being approached by Willis Re, Mr Summers had been raising with Guy Carpenter underpayment within his METL team and warning of growing unhappiness within that team as a result. It went back at least to 2022, when Mr Summers had obtained an offer of employment from a competitor and threatened to leave unless certain salary adjustments were provided to 23 employees within METL. Those increases were, at that point, granted by Guy Carpenter, but Mr Summers recognised (as he informed Mr Boyce and Ms Lauren Best (the Senior People Partner for Global Specialties) at the time) that this was something he could only ever do once.

25. Early in 2025, it is clear that there was, again, growing unhappiness within METL regarding remuneration. For example, Mr Summers emailed Mr Boyce and Ms Best on 18 January 2025, providing some "*key business metrics*" to support his view that "*our compensation strategy, along with the limited autonomy I have to manage this business, is becoming unsustainable.*" Included in his email was his view that "*despite the general market seeing wage inflation, our average compensation has fallen … [and] will see a further decline once we take into account our Q4 2024 actions.*"

26. By 2025, it appears that a number of the resigning employees from METL had not had a salary rise for a number of years (including Mr Whyte, Mr Stocker, Mr Devlin and Mr Hitchings). Mr Whyte, in particular, had last received a salary increase in 2016. A spreadsheet which appears to have been prepared in connection with the 2025 salary review suggested that a number of Global Specialties employees were being paid below Guy Carpenter's own internal salary range for their position, including Ms Danes.

27. The 2025 salary review process caused particular dissatisfaction among METL brokers. Mr Summers had a meeting with Mr Klisura on 6 February 2025 at which he raised

some concerns. In advance of that meeting, Mr Devlin had messaged Mr Summers saying:

> "Jim, don't know how you feel? Obviously you have personal circumstances to deal with but I'm really fed up with GC as a whole and how they treat people in general. Maybe your meeting with Dean today will give more clarity.., ha ha. Sorry but this is a low point for me let's talk tomorrow."

28. Mr Devlin and Mr Summers also exchanged messages about this on 12 February 2025, with Mr Devlin saying:

> "Heads up several unhappy punters already from what I hear, Jonno & Harrison to name two!"

And a few minutes later:

> "Can't get away from shit salary levels, totally overshadows bonuses. People see the only way to move forward is to move on, people worse off YoY based on cost of living alone. We're in an impossible position and will lose all the best staff going forward. I fear Will is just the first!"

("Will" was a reference to Will Aikman who had resigned from METL in New York to move to AJ Gallagher).

29. Various members of the METL team expressed their frustration with the situation. For example, Mr Beer emailed Mr Stocker and Mr Donne on 24 February 2025, recognising that whilst his bonus had increased, he was not content with salary:

> "With regards to salary, I feel that we are behind the market in terms of salary vs experience/ability, and wanted to ask why this would be the case given the size and success of our team in recent years? It seems this is due partly to salary bands aligning with job titles/roles."

30. Mr Stocker forwarded that on to Mr Summers along with comments from a number of others along similar lines:

> "Nicola [McIntosh] — happy with bonus but not with salary. Noted that salary moved up with promotion but feels that inflation and competitor salary levels mean that GC underpaying
>
> Simon & Murph — happy with bonus but pointed out that salary hadn't increased much over time, especially compared to growth in our book and inflation across recent years. …
>
> Harrison [Pepper] — happy with bonus, not happy with salary"

31. Also on 24 February 2025, Mr Demian Smith emailed Mr Summers with feedback from his team, noting: "*Simon, Hitch [Andrew Hitchings] and Matt [Whyte] - All a bit surprised that on another record year there were no pay rises again. Hitch most vocal*

about negative effect of high inflation over the last few years but it was a common message." He also noted that bonuses were a disappointment to them, and also that Mr Hitchings and other team members had told him that "*Paula Danes was pretty upset by all accounts.*"

32. There were other documents in evidence from early March 2025 expressing concern that Guy Carpenter underpaid against the market, and that there were concerns people would be offered more money elsewhere.

33. These sorts of points rumbled on. Mr Summers messaged Ms Best on 1 May 2025, saying:

> "Nicola [McIntosh] spoke to me yesterday about the mood in the camp, not strong and it sounds like a lot of the team are looking at other options. Mainly driven by salary concerns, they all have their own stories as to why they justify to themselves why they would leave. …
>
> I feel a bit like we have now lost the dressing room. You saw the emotion of Stroop yesterday and Nicola was not far off of that."

34. Whilst a package of salary increases was granted to 9 METL employees on 2 May, worth $250,000 in total, that was not "new" money, but rather was funded from savings resulting from the resignation of Will Aikman, from METL in New York, and was something that had been first requested by Mr Summers in January 2025 before being initially rejected by Mr Klisura on 19 March pending a review of the Q1 results. Mr Boyce appears to have pressed for it, leading to Ms Magnussen describing him as "*off the rails on this issue*", but reporting that Mr Klisura was going to approve the request. Ultimately this was granted in a revised form, and included an increase for Mr Jonathan Bryan (but none of the others who ultimately resigned to join Willis Re).[2] However, this obviously did nothing for any of the METL employees other than the 9 who got these increases.

35. It is apparent that the general approach at Guy Carpenter, driven by Mr Klisura, to offering pay increases to its staff in order to guard against recruitment by a competitor, was based on a "threat to leave" culture. In other words, in order for someone to get any rise outside the normal pay cycle, they would have to resign or threaten to do so, generally while holding an offer of employment from a competitor. It was Mr Summers' evidence, which I accept, that this had been the general approach at Guy Carpenter for a significant period of time. It was also, for example, referred to in an email dated 10 June 2025 to Mr Boyce from Mr David Pedlow, headed "*Key points you wanted*" where the latter stated: "*People have had to resign or threaten to for market normalising adjustments to be made.*"[3]

36. This was consistent with Mr Klisura's general approach to remuneration of employees, which was to have an incredibly tight hand on the purse strings (as Mrs Nicola Fowler, Guy Carpenter's Head of International Human Resources, agreed in her evidence). He

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2 At the same time, increases were granted for four NMS employees, including Mr Goddard.

3 Mr Boyce, when giving evidence, sought to distance himself from these words, saying they were Mr Pedlow's words and that he had not gone through the email in great detail, but they fairly reflected the majority of the evidence given at trial.

also appears to have been concerned about certain parts of the business being top heavy. In an email of 22 March 2025 to Ms Best, in response to some points Ms Best had sent him dealing with the 5-year compensation history for Global Specialties (prepared in response to concerns Mr Summers had expressed about underpayments in METL), Mr Boyce recorded that Mr Klisura "*thinks our MD*[4] *population is too big*" (which in his evidence Mr Boyce confirmed referred to Guy Carpenter in the UK).

37. This is also part of the backdrop to what Mr Boyce described as the "reactive strategy" adopted in relation to the potential threat to Guy Carpenter employees being recruited by Willis Re in the first half of 2025. In his witness statement he had explained this as follows:

> "Mr Klisura and I thus agreed on a reactive strategy. Guy Carpenter would have to react to indications of interest from Willis Re, and offers made by it, as they arose. We would move to protect the business as we discovered which areas, or individuals, it might be interested in approaching."

In his evidence in chief, Mr Boyce changed "agreed", preferring "accepted", and subsequently in cross-examination sought to suggest that the phrase "reactive strategy" had not been used by Mr Klisura. But that was largely beside the point. It was the content of the approach, rather than the label, that mattered, and it was clear that Mr Klisura drove the strategy, whether Mr Boyce agreed with it or just accepted it. Moreover, in the event, what triggered a reaction from Guy Carpenter was not learning of an "indication of interest from Willis Re" or discovering people or areas of the business that Willis Re "might be interested in approaching", but rather it was only at the stage of offers having been made to Guy Carpenter employees that there was any substantial reaction. This was entirely consistent with Mr Fletcher's evidence of Guy Carpenter's general practice – in his witness statement he said (and gave consistent evidence when cross-examined):

> "… I knew from experience that James [Boyce's] response … would be that unless someone has got a written offer, then there was nothing we would be doing about it. It was only if an employee had an offer in writing that he was prepared to talk about going to Dean [Klisura] in relation to a counter-offer."

38. The above has largely focussed on the dissatisfaction of Mr Summers and his team with Guy Carpenter. Mr Fletcher had also, from around 2022, become dissatisfied for slightly different, though in many ways similar, reasons. In the past, he had enjoyed close and supportive relationships with previous CEOs of Guy Carpenter, who had been "reinsurance people", but he had been unimpressed with Mr Klisura, whose background was in insurance (rather than reinsurance) broking, and who had been appointed as President and CEO in January 2022. Mr Fletcher recalled speaking to Mr Klisura just three times in as many years. He had become frustrated by Guy Carpenter's senior leadership constantly chasing for growth, as well as clamp downs on travel and

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4 Managing Director – the most senior of the four general levels of seniority within Global Specialties. The others (in descending order of seniority) being: Senior Vice President ("SVP"); Vice President ("VP"); and Assistant Vice President ("AVP").

expenses levels and other micro-management. Mr Boyce acknowledged much of this in his witness statement for trial:

> "It is true that Mr Fletcher was dissatisfied with certain aspects of life at Guy Carpenter in 2025, and the period running up to it. Mr Fletcher was critical of the leadership of Guy Carpenter and in particular Mr Klisura. He felt the business was too "growth focused". He wanted more money for his team. He was also dissatisfied with the policy surrounding travel and entertainment expenses."

Mr Boyce did not think that those criticisms were particularly justified, but whether they were or not there was no doubt that they were genuinely felt by Mr Fletcher, and that Mr Boyce knew and appreciated that.

39. Mr Fletcher was also concerned that the remuneration package was not sufficient to protect Guy Carpenter against approaches for its employees. For example, on 20 March 2025 he received an email from James Morris (a Managing Director ("MD") in the Bermuda office) who complained "*I am still very disappointed with how my performance was reflected [in the pay review]. Yet again no salary increase*" and setting out details of his position. Mr Fletcher forwarded that on to Mr Boyce and Ms Best on 21 March 2025, noting among other things:

> "On comp I will raise again my disappointment that more LTIPs [i.e. Long Term Incentive Plans] were not made available to high performing team members. I can do [no] more than flag this and advise that we could well have some challenging times ahead this year. Broking firms are constantly trying to poach our staff and we've done very little to lock in top talent by increasing this highly valued form of comp, which is considered a long term commitment from the firm and employee.
>
> We will see what transpires in 2025 but at least I know we have mentioned it so if the unthinkable happens it won't be down to a lack of communication to management on my part."

40. Mr Fletcher was clearly frustrated at Guy Carpenter's approach to remunerating his team. He had even mentioned volunteering to give up $75,000 of his own remuneration to increase that of others in his team in an email of 16 January 2025 ("*I'd offer 75k from whatever I get allocated but I understand I'm not even allowed to do that?*").

41. Other members of NMS were also unhappy. Some of them (such as Mr Keegan and Mr Hornett) had long standing complaints about salary, having felt that Guy Carpenter had resiled on a commitment to match (over time) offers they had received from a competitor around two years earlier. Mr Ogilvie had spent 13 years in Bermuda and returned to London in April 2025 and was particularly unhappy. He told Mr Goddard in March 2025, before his return to London, that he felt Guy Carpenter "*were treating him like he had been in [Bermuda] on work experience rather than out there for 13 years*" (as Mr Goddard reported to Mr Fletcher on 5 March 2025) and had been implying he might not stay with Guy Carpenter. For Mr Dart, this was combined with how hard he was having to work and he was feeling burnt out (and Mrs Fowler

confirmed in her oral evidence that there had been conversations about Mr Dart having become exhausted).

42. Ms Hall was also unhappy. A note made by Ms Best dated 18 December 2024 in relation to Ms Hall recorded "*Charlie – salary issues – unhappy last couple of years*". Mr Fletcher was seeking to look after her, and sent an email on 14 January 2025 to Ms Best stating:

> "For 2 years she [Ms Hall] has expressed disappointment with her salary increase and would like that taken into consideration this year. We discussed what she would like for salary and bonus increase and I don't have the funds to do this. I do know off the record she is being courted by other brokers and an underwriting company. She is committed to GC but we need to think about how we manage this comp cycle with CH."

43. Despite that, it appears no additional funds were allocated and Mr Fletcher reported to Ms Best and Mr Boyce on 20 February 2025 that Ms Hall was "*Disappointed with salary increase*" and was "*going to think about how she feels and come back to me.*" He also mentioned Ms Hall had done some "*external peer analysis*" which she had told him showed that "*compared to what she could earn at Aon and some other Companies we pay quite some way below.*" In the same email, Mr Fletcher also reported:

    i) Jon Ogilvie seemed disappointed in the amount of time it had taken "*to give guidance on certain aspects of his role back in London*", that the compensation offer remained below his expectations and that he was "*going to think about his future and come back to me next week.*"

    ii) He had had multiple chats about long term incentive plans (LTIPs), including with Ms Estis, Mr Hornett and Mr Keegan: "*Everyone seems disappointed we cannot grow the pot.*"

    iii) Mr Bryan was "*disappointed with his salary.*"[5]

44. A further issue for Ms Hall was that she had been left upset by comments made to her by Mr Boyce regarding the reason for her promotion to Managing Director in late 2024. There was a dispute as to what had actually been said by Mr Boyce, but it was clear that whatever had been said, Ms Hall was upset – in her witness statement Mrs Fowler confirmed her understanding that "*Ms Hall was upset because she felt the message was that she had only been nominated [for promotion] because she was female.*"

45. Other decisions were taken on financial grounds that left employees disappointed. The relatively junior Ms Wehmeyer had hoped for a secondment to Guy Carpenter's London office, but because of a decision by Guy Carpenter North America to pause future secondments for 2025 as part of a "*more rigorous approach to expense management*" her request was not approved. This was despite Mr Fletcher offering his own flat in London for her accommodation in order to save costs.

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5 Mr Bryan had been in Bermuda, and the same email records that he was moving back to London in April.

46. It is also the case that the issues with remuneration were not confined to Mr Summers' and Mr Fletcher's teams. For example, Mr Morgan sent an email to Mr Boyce on 8 January 2025 saying:

> "We will lose the very few younger brokers if we can not increase their salaries and move them closer to the mkt level and that will have a very negative impact on our business. ... We already know that it's a competitive mkt place from the young brokers we have lost and we have several of the current team who are below the GC suggested salary range for their grade."

Mr Summers and Mr Fletcher as team leaders

47. Mr Summers was very close to a number of his team, in particular Mr Graham Devlin and Ms Nicola McIntosh. Mr Devlin was his Chief Operating Officer and a "*very close friend*". They spent time with each other outside work, and among other things owned two racehorses together. As Mr Summers described it in his witness statement: "*We have been very tightly joined all the way through our employment at Guy Carpenter.*" Ms McIntosh worked closely with Mr Summers. She had joined his team about 10 years ago and he had mentored her from the outset.

48. Mr Jay, the former deputy CEO of METL and now (since March 2025) Chairman of METL, acknowledged this closeness extended to other members of Mr Summers' team. In his witness statement, Mr Jay said:

> "…those in Mr Summers' team (who subsequently resigned) were close knit. Ms McIntosh, Mr Devlin and Mr Stocker were particularly close to him. They had all worked together a long time, much of which on the same clients."

49. The position was similar with Mr Fletcher and his team in Bermuda. Mrs Fowler explained in her witness statement that the team in Bermuda "*is small and close knit*." Mr Fletcher gave evidence, which was not challenged, of his close personal and professional relations with the Bermuda employees as well as with Mr Goddard, Mr Ogilvie and Mr Wagdin-Joannides in the London NMS team. The closeness of the friendships of some of those involved was also evident in a message Mr Morgan sent after seeking to persuade Mr Keegan to stay with Guy Carpenter after he had been made an offer by Willis Re: "*It's basically down to whether he [Mr Keegan] feels he can work without his great friends …*".

50. In terms of how Mr Fletcher was regarded as a leader, Mr Withers-Clarke (who decided to stay at Guy Carpenter) explained: "*I value Mr Fletcher as a leader: he looks out for his people, … Mr Fletcher builds loyalty and it made me more likely to want to join knowing he was involved [in the new Willis Re]*." In his oral evidence he went further: "*John Fletcher is brilliant. As I say, I have said it twice, he is the best boss I've ever had.*"

Mr Kevin Fisher

51. I mention at this stage, before going into the chronology of the Willis Re recruitment exercise, a matter that featured at the trial, particularly in Guy Carpenter's submissions

and its cross-examination of the Defendants' witnesses, as relevant context to some of the communications I deal with below. This was the potential role within Willis Re of Mr Kevin Fisher. Mr Fisher, often referred to as "Fish" in the contemporaneous messages, was at the time of the events material to this claim, and still is, the President of the IQUW Group, which is an insurer/reinsurer and one of Guy Carpenter's clients. Mr Fisher had previously been employed, until October 2022, at Guy Carpenter, and before he left had served as Chairman of Global Specialties and of Guy Carpenter UK.

52. It was clear that Ms Clarke had hoped that Mr Fisher would join Willis Re in a leadership role, as CEO or Chairman. His name was mentioned in internal WTW documents back in April 2024, and by around July or August 2024 Ms Clarke was speaking to him hoping to attract him to Willis Re. One note suggested that the plan was "*to affirm interest from Kevin and then let Kevin be more of the tip of the spear alongside Lucy [Clarke]…*". Ms Clarke explained in her evidence that she had been very keen to get Mr Fisher to Willis Re. He is clearly someone she hugely respected and liked (as indeed did every witness who was asked about Mr Fisher), and thought he would be an excellent figure for Willis Re. However, she said, Mr Fisher made it clear at an early stage that he was not interested.

53. This, however, did not cause Mr Fisher to cease to be part of this story. First, because Ms Clarke continued to involve him in her deliberations and thinking. This was largely as a sounding board for her ideas, but also because notwithstanding his expressed denial of interest, she still hoped to kindle in him an enthusiasm for joining Willis Re at some point. This hope was shared by the individual from Bain with the closest involvement – Mr Matthew Cannan[6] – who said when giving evidence that he hoped that, if Mr Fisher (who he described as a "guru" of the market) was ever going to leave IQUW, Willis Re would be high on Mr Fisher's list of things to do at that point in time.

54. Second, Mr Summers believed, for a considerable period whilst he was in discussions with Ms Clarke about a potential move to Willis Re, that Mr Fisher (who had previously been Mr Summers' boss at Guy Carpenter) would be taking a leading role, likely as Chairman, at Willis Re. This reflected wider speculation in the market that Mr Fisher was going to be involved in Willis Re, and appears to have been one of the pull factors for Mr Summers, at least at the outset. In a message to a family member in May 2025, he noted his understanding that Mr Fisher was "*pulling all the strings behind the scenes.*" Mr Summers had a number of discussions with Mr Fisher about his potential role at Willis Re, at least some of which were conducted in the belief (on Mr Summers' part) that Mr Fisher would indeed be part of the set-up. He was latterly, in a phone call with Ms Clarke on 16 May 2025, disabused of this understanding, but nonetheless appears to have continued to discuss matters with Mr Fisher.

55. Third, Mr Fisher was in contact at various points with most of the other senior individuals at Guy Carpenter. He had worked with many of them, and remained in contact with them as a friend and/or respected market figure who was willing to be consulted on an informal basis on, it appears, numerous topics. Ms Clarke referred to him in her witness statement as a "*highly respected member of the reinsurance community, and the type of person many go to for advice. … People trust him and value his perspective.*" Mr Summers in his oral evidence described him as "*a bit of a guru of the reinsurance business.*" Mr Boyce said he was a "*big figure*" and explained that he

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6 A Partner at Bain Capital Insurance Solutions and Director of the Third to Fifth Defendants.

had called Mr Fisher to see what he had heard about the resignations on 7 June, and that he expected Mr Klisura had also called Mr Fisher to discuss the matter.

56. Guy Carpenter sought to make a lot of Mr Fisher's potential involvement with Willis Re during the trial. The thesis was not entirely clear, although at times it appeared to be the suggestion that Mr Fisher had agreed to join Willis Re and that Willis Re would not admit it. But i) there is no evidence for that beyond speculation, and it is contrary to Ms Clarke's evidence on the point, and ii) it is difficult to see why in any event it is relevant to the issues I have to determine. Similarly, it was suggested on a number of occasions by Guy Carpenter that Mr Fisher was "assisting" or "working alongside" Ms Clarke, but it was difficult to detect to what claim that was thought to relate or where it otherwise went in terms of advancing matters. It was never suggested that Mr Fisher in any way owed any duties to Guy Carpenter, and although there was a plea that Willis Re was vicariously liable for his acts, there was never any explanation of how that would be pursued (there was, for example, no allegation of an employment or agency relationship between Mr Fisher and Willis Re or any other explanation of how it was said Willis Re might be liable for his acts), and no case was run at trial that Mr Fisher had acted unlawfully. Ultimately, in his oral closing submissions, Mr Oudkerk KC (representing Guy Carpenter) explained that his case did not turn on whether Mr Fisher was or was not involved, and that if I made no finding about Mr Fisher's involvement or potential role in Willis Re, it would make no difference to anything in the case. However, in light of the amount of time that was spent on Mr Fisher in the cross-examination of the Defendants' witnesses, and given his profile in the reinsurance industry, it is right to record that there is nothing to support any suggestion that Mr Fisher was involved in any unlawful act.

Early appreciation within Guy Carpenter about the risk of Willis Re seeking to recruit

57. The fact that Willis Re was being launched was well-known in the market, and the established market participants were aware that Willis Re would be looking for recruits. There was discussion in the trade press about who might lead the new Willis Re business.

58. Mr Summers himself sought to warn the Guy Carpenter hierarchy of the potential threat as early as December 2024. In an email dated 11 December 2024 to Mr Devlin for the purpose of preparing Board papers for the meeting of the UK company Board, Mr Summers stated:

> "Willis are about to launch Willis Re and this will be the biggest threat to our staff retention and in turn our business. We have successfully kept the team together whilst the challengers have sought to poach our staff but the Willis Re is a far more credible threat."

59. Mr Summers shared his view at the Board meeting on 16 December 2024, although his evidence was that the "*required degree of urgency was far from there.*" The minutes record that:

> "Mr Boyce highlighted talent retention, which he noted would likely be exacerbated by the relaunch of a reinsurance solution by direct competitor, Willis Towers Watson."

60. Mr Summers also explained in his witness statement, in evidence that was not challenged in cross-examination, that:

> "Willis Re was a clear and obvious threat. I raised the risk of poaching repeatedly at senior meetings including at the board meeting on 5 March 2025. The Chair asked if we had the tools we needed to combat any threat. Paul Moody, the UK CEO, dismissed it as "all fine in the sandpit," Nicki [Fowler] pointed to the low staff turnover data and concluded that Guy Carpenter was not at risk. Boyce claimed that he and Klisura had "run the math" and that Willis Re's business case did not add up. I found this complacent at best."

61. At a virtual "town hall" meeting for Guy Carpenter personnel on 11 March 2025, Mr Moody (Guy Carpenter's UK CEO) was asked (as subsequently reported by another employee): "*with this years poor performance pay review how do you plan for a mass exit if willis re rebrands?*" Mr Moody's response was reported as being that they had "*been working on the lower grades to get their pays up but as far as mass exits if it happens there is not much we can do. Everyone has the free will to work where they want. It won't affect as a business as it didn't with howdens etc*." The reference to "*howdens*" was to the fact that, in early 2023 some 37 employees had left Guy Carpenter for a rival broker, Howden Re ("Howden").[7] Mr Moody reported to Mr Klisura that the "mass exodus" question had been asked and suggested putting some points together for the next "town hall" in July explaining "*why GC is better than Willis*", and how little business was lost after the Howden exits, saying "*these all play nicely to anyone thinking of jumping to the new Willis Re.*"

62. During the course of a two-day offsite meeting for the Global Specialties Leadership Team on 25-26 March 2025, the matter was discussed. In a presentation used at that meeting dealing with NMS, under the heading "*Competition*" there was identified: "*Willis Re – Staff up following Lucy Clarke's arrival to be seen.*" At one of the meetings, Mr Fletcher asked what the plan was to respond to the threat posed by other brokers, specifically mentioning Willis Re as an example. Mr Boyce responded to the effect: "*in all honesty we don't really have a plan.*" In his witness statement, Mr Boyce sought to explain that by saying that there are always potential threats but Guy Carpenter cannot respond to each one because the cost is too high: "*Sometimes you have to wait for the attack to happen and take action then.*"

63. Mr Boyce confirmed in his oral evidence that at this stage "*we believed it was a possibility that she [Ms Clarke] was going to be looking at various areas of global specialties, and at that stage we were thinking it could be the non-marine business, be it London or Bermuda, yes*," though he went on to caveat that by noting that the traction Willis Re might get would depend on who was going to be brought in to lead Willis Re.

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[7] A WhatsApp exchange between Harry Sanders and Alexander Houston at Guy Carpenter on 11 June, in the context of the resignations to go to Willis Re, included the reflection that two years after the departures to Howden, only two clients had been lost by Guy Carpenter.

Ms Clarke's initial approach to Mr Summers

64. Mr Summers was a reasonably obvious person for Ms Clarke to approach for a role at the new Willis Re. She had a background in Marine and Energy insurance, she knew Mr Summers from her time at Marsh, and he ran one of the most successful Marine and Energy teams in the market.

65. Ms Clarke sent Mr Summers a WhatsApp message on 17 February 2025. She had obtained his number from Mr Fisher. She said:

> "Jim hi it's Lucy Clarke (Willis). Is there any chance we could speak, if so let me know if there's a good time for you thanks"

They spoke the following day and arranged a meeting.

66. On 23 February 2025, Ms Clarke provided an update to Mr Krasner, Mr Cannan and Mr Adam Garrard (WTW's Chairman of Risk & Broking):

> "I am going to start talking to the next level down leaders of the teams we would want – the first one is Jim Summers, (Global Head of Marine & Energy for GC). I'm seeing him for dinner on the 26th. I will not need to be able to detail the MIP[8] or the ongoing plan at that meeting but hope to need to be able to do that shortly…."

67. Mr Summers met Ms Clarke on 26 February 2025 at the Holborn Dining Room at the Rosewood Hotel in London. The reason for their choice to meet there was, as Ms Clarke said in her witness statement, to avoid "*bumping into someone in the industry we both knew.*" At this meeting, Ms Clarke explained the Willis Re set up, and how it was a joint venture with Bain, that she was thinking of Mr Summers for the role of CEO Marine and Energy in London and that she was not seeing anyone else about it. She talked about her time at Marsh, and the frustrations which had led to her leaving Marsh, which caused Mr Summers in turn to share his frustrations at Guy Carpenter. He talked about his role and what he had achieved over his career. Their discussions included mention of some of the people Mr Summers worked with, in part because they had mutual connections e.g. those who Ms Clarke knew from her time at JLT and Marsh, and others as part of a more general discussion of the market and what Mr Summers had managed to achieve. Among others he mentioned Mr Devlin (who he said was in effect his "*number two*") and Ms McIntosh. Ms Clarke said that it was entirely up to him whether he decided to talk to Guy Carpenter or anyone else about their meeting, and that there was no time pressure as nothing was going to take place before June 2025. Mr Summers' evidence (which I accept) was that Ms Clarke said she was aiming for a Willis Re formal launch in June 2025 with a full leadership team then in place (which he identified in his statement as: CEO, Chair, Head of Property, Head of International and Head of Casualty). He said Ms Clarke's vision was to announce a team that would "*make the market take notice.*"

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8 The "MIP" was the Management Incentive Plan, also elsewhere referred to as the "MEP", Management Equity Plan.

68. The following day (27 February), Mr Summers had a WhatsApp exchange with a member of his family, in which they discussed his meeting with Ms Clarke. In response to the question how the meeting had gone, Mr Summers explained:

> "It was excellent and very interesting. It is really a once in a lifetime opportunity. The[re] is a big but however. I don't know this but I think they are also going after one of my big rivals and I don't want [t]o work with him. So for them it is an either or. My old boss Fish is going to be the chairman so I am going to have a chat with him. Financially it is a no brainer but I want to end my career on a high!"

69. Mr Summers did then have a call with Mr Fisher on 28 February. This was not just about Willis Re – Mr Fisher is the CEO of reinsurance at IQUW, with whom Guy Carpenter place business, and Mr Summers was also around this time seeking to set up, for Guy Carpenter, a general agency with Mr Fisher and IQUW. Part of the call was therefore about that. However, they did also discuss Willis Re, as Mr Summers asked Mr Fisher whether he was going to be involved, to which Mr Fisher did not commit (saying he "*may or may not be involved*") though Mr Summers was left with the impression he had an involvement in some way.

70. Mr Summers messaged his family member in the early hours of 1 March, referring to his discussion with Mr Fisher, explaining:

> "Spoke to Fish today about Willis Re. It really is a no brainer, just feel bad about letting Guy Carp down but this sort of thing is a once in a lifetime opportunity….
>
> It's a June launch. She [Ms Clarke] wants to get the CEO in place (she is the interim) and Chair (fish) then build the global specs. So I guess get the 1st April renewals out of the way then negotiate!"

In response to his family member saying he should be proud of himself, Mr Summers said:

> "I am a bit flattered to be honest. Can't go wrong as it is a five year guarantee. Then if all goes well a significant capital gain!"

71. Mr Summers and Ms Clarke met for a second time later on 31 March. They had arranged to meet again at the Holborn Dining Room, but in the event decided to go elsewhere as Ms Clarke had spotted her brother-in-law at the bar and she preferred that she and Mr Summers were not seen together. Mr Summers confirmed in his witness statement that, during the discussion he had with Ms Clarke on this occasion, he spoke to her about people in his team. These included Ms McIntosh, who Ms Clarke expressed an interest in recruiting, and Mr Summers explained that Willis Re would need to provide Ms McIntosh with maternity benefits from the start of her employment.

72. Following a number of exchanges in early April, including Mr Summers providing Ms Clarke with his personal email address and details of his remuneration at Guy Carpenter, on 24 April 2025 Ms Clarke sent Mr Summers an initial draft offer to join

Willis Re for the role of CEO, Global Marine and Energy, with a proposed start date of 1 June 2026. It included an increase in his Guy Carpenter salary, a bonus which was guaranteed for 5 years, plus further financial reward based on a Management Incentive Plan ("MIP"), which Ms Clarke did not send, but gave outline details in a WhatsApp message the same day. She also confirmed by WhatsApp that Willis Re would compensate Mr Summers for the year of existing bonus that he would miss during his 12 months' notice period at Guy Carpenter that he would have to spend on garden leave. In response Mr Summers asked Ms Clarke, among other things, how much of the proposed revenue share she was allocating to Marine and Energy as it "*would help me understand the type of team that I would need to build in due course.*" He went on to say:

> "We should discuss the other lines I currently look after and how and who you see these lines growing with.
>
> The CEO will be critical for me as I am sure you will appreciate. Would help to know who else is part of the team when you feel comfortable in telling me."

73. Mr Summers also explained in his witness statement that, around April 2025, Ms McIntosh approached him to ask about rumours she had heard about his moving to Willis Re. Mr Summers told her he had a compelling offer from Willis Re but did not elaborate further, though he did say that he thought Ms McIntosh was going to be contacted by Ms Clarke.

74. Mr Summers clearly remained under the impression at this stage that Mr Fisher was going to be involved as Chairman of the new Willis Re. He had the following further WhatsApp exchange with his family member on 4 May 2025:

> Mr Summers: "It seems as though Fish is pulling all the strings from behind the scene. He can't join until next year but wants everyone in place so he doesn't take the flak for pulling people out of GC (he told management when he left he would never compete with GC). Makes me wonder whether I want to do it to be honest. I mean it is a lot of money but equally working with people who don't keep to their word. Don't have a firm offer and don't know the name of the CEO. Fish said that I could have the wider role I was looking for but havent heard that from Lucy yet."
>
> Family Member A: "Is Fish not going to be the CEO?"
>
> Mr Summers: "Chairman, doesn't want the stress about being a CEO – wants all the glory and the money but none of the responsibility"

Mr Summers informs Guy Carpenter of the Willis Re approach and the threat to METL

75. Mr Summers was happy to tell Guy Carpenter that he had been approached by Willis Re and was considering matters. Ms Best made some notes, which appear to be of a

call she had with Mr Boyce on 27 March 2025 (headed "*Call with James on Thursday Notes*"), stating:

> "Jim Summers – approached by Willis – Hasn't killed it off
>
> …
>
> - Concerning"

76. It was not clear from that note who was informing the other of this, but it is clear that that they both knew about it. In addition, the fact that Mr Summers had been contacted by Willis Re was also recorded by Ms Best in a further note dated 1 April 2025 (though it was not clear whether they were notes of a discussion she had had, and if so with whom, or a note to herself).

77. In any event, there was no dispute that on or around 31 March 2025, Mr Summers told Mr Boyce in person that he had been approached by Willis Re and was listening to them. Mr Summers' account in his witness statement was as follows:

> "I told [Mr Boyce] I had been approached by Willis Re, that they had a compelling story, and that I had not dismissed it out of hand. …. Boyce smiled but looked crestfallen. He replied: "I wish you'd have just said you dismissed it out of hand.""

78. Mr Boyce's account in his witness statement was similar in terms of what was said:

> "Although I do not recall his exact words now, Mr Summers said something to the effect, "I should just let you know: Willis has been in contact, and I want you to know I'm going to listen to them". I responded to say something to the effect that I was disappointed to hear that Mr Summers would listen, but I appreciated him letting me know."

79. Mr Boyce sought to play down the conversation, suggesting in his witness statement that Mr Summers mentioned this "*in passing*" and that it was just a "*casual remark*". However, he clearly regarded it as a serious comment. He passed it on to Mr Klisura. Moreover, Mrs Fowler's evidence was that she was told around the end of March, by both Ms Best and Mr Boyce, that Willis Re had approached Mr Summers for the purpose of offering him a job, and they had both told her they were worried not just that Mr Summers might leave, but also that more junior brokers might also go. Mrs Fowler confirmed she appreciated that the Willis Re approach to Mr Summers was a serious approach, and she knew that Mr Boyce had escalated the matter to Mr Klisura.

80. Mr Summers had a further conversation with Ms Best on 28 April 2025 in which he explained the threat that Willis Re posed to METL and that there was an expectation of resignations (although it does not appear that he said anything further about his own role or potential move in that conversation). Ms Best's handwritten notes of this conversation recorded the following:

> "Competitors – salaries pay 20% more
>
> Jonno – not supportive

- Be off next offer

Guardrails

- Following resignations

Willis Re – GMETL setting up first.

Expectation is that 20% will resign

- What can I reinvest
- Reinvest salaries to make them competitive 20%
- Nicola [McIntosh]
- John [Beer]
- Harrison [Pepper]

Not interested in Challengers in other areas.

Continue to build junior talent

Soft market – this approach will work with youngsters.

…

Expecting to be under pressure - -

- Keep select number of seniors
- Rebuild with juniors"

81. In his third witness statement, dealing with this note (which was only disclosed shortly before trial), Mr Summers recounted that he explained to Ms Best that the ongoing threat from "challenger brokers" (e.g. Lockton Re) was nothing in comparison to the threat from Willis Re in terms of poaching staff. He explained that his suggestion that "*20% will resign*" was something of a "finger in the air" number, but he thought it was a realistic number based on it being clear in what business area Willis Re was seeking to launch and how "*chronically dissatisfied Guy Carpenter staff were with their pay*". He had identified particular individuals as being vulnerable to an approach because (i) Ms McIntosh was the lowest paid MD in the METL team, and (ii) Messrs Pepper and Beer had been complaining about salary levels and the stress they felt under.

82. When Mr Boyce gave evidence, he was unclear in saying whether his evidence was he could not recall Ms Best having told him about this meeting or denying she had told him but, in any event, it appears highly likely she would have passed on to him the key information from this, including Mr Summers' saying he expected that 20% of METL would resign. A number of witnesses commented on Ms Best's competence, and she and Mr Boyce were speaking on a weekly (or more frequent) basis. This was clearly important information from a senior colleague, particularly in light of the concerns both

Ms Best and Mr Boyce had arising out of the discussions at the end of February / start of March concerning Mr Summers having been approached by Willis Re, and it is unthinkable that Ms Best would have kept it to herself.

83. Whilst Mrs Fowler, when she gave evidence, could not recall the particular 20% figure (in terms of people potentially resigning from METL) being mentioned to her by Ms Best, she confirmed that Ms Best told her that Mr Summers was deeply concerned that many of his brokers would leave or resign and move to Willis Re, that Mr Summers had identified three particular brokers he was concerned about moving, naming Ms McIntosh, Mr Pepper and Mr Beer, and that Mr Summers was asking for money for his team so that he could make his brokers' pay more competitive. Moreover, Mrs Fowler confirmed, in relation to the threat from Willis Re seeking to recruit Guy Carpenter METL employees at this time:

> "We knew there was a risk to the business, Jim had highlighted there was a risk to the business, Jim had highlighted there was a risk to himself personally. We -- we were all aware of -- of that information."

84. Mrs Fowler escalated the information she had received from Ms Best to her boss, Ms Magnussen, including telling her the specific names of the individuals Mr Summers had identified as at risk from a Willis Re approach. Whilst Mrs Fowler did not know whether Ms Magnussen had, in turn, informed Mr Klisura of these matters, it is highly likely that she would have done so. Mrs Fowler herself thought it unlikely Ms Magnussen would have kept such information to herself, and said that Ms Magnussen "*had a very good sort of finger on the pulse of – of the feedback we were giving her, and invariably would use it in her discussions with Mr Klisura.*"

85. Despite the above concerns being shared by a number of people, and the risk of people leaving from METL to Willis Re being shared with Mr Klisura at least in a general sense, and quite possibly with specific names being mentioned, Guy Carpenter did not seek to shore up the position with its staff by, for example, offering enhanced packages. That was consistent with the general "reactive" strategy it had to employees who might potentially leave. Mr Klisura's general position was that until someone resigned or threatened to resign having been given an offer by a competitor, he was not prepared to authorise any retention package.

Ms Clarke's initial approach to Mr Fletcher

86. Ms Clarke was aware of Mr Fletcher's reputation and the success of Guy Carpenter's Bermuda office from her time at Marsh. On 26 March 2025, she contacted Mr Fletcher via WhatsApp: "*John hi it's Lucy Clarke. We haven't met, I'm a Willis person".* She had obtained his number from Mr Fisher. They met the following day for breakfast at the Corinthia Hotel in London for an initial discussion. A few days later, on 31 March, Mr Fletcher messaged Ms Clarke saying:

> "Hi Lucy. Hope all is well. Very much enjoyed talking last week. It seems like a really interesting opportunity and given your commitment to the project I'm sure it will be very successful. There are of course some follow up questions I would like to go

> over with you so if you would like to arrange a time for that please let me know. All the best John."

87. On 21 April 2025 Ms Clarke flew to Bermuda. The Claimants sought to make something out of the fact that she was keen to keep a low profile, describing it to her PA as a "*secret mission*", and asking Kirsten Beasley, the head of WTW's Bermuda office, whether Ms Clarke could say she was coming to Bermuda to see Ms Beasley if she happened to meet anyone she knew on the plane or in the hotel. In an obviously light-hearted exchange, Ms Clarke said: "*It's great to have a partner in crime!*", to which Ms Beasley responded: "*Clandestine operations – who ever said re/insurance was boring ?!*"

88. Ms Clarke and Mr Fletcher met on 21 April 2025 at the Hamilton Princess Hotel in Bermuda. During the course of the discussion, Mr Fletcher mentioned his team and a number of the individuals in it. These included Ms Estis, Ms Hall, Mr Withers-Clarke, Mr Keegan, Mr Hornett, Mr Dart, Ms Wehmeyer and Ms Boonstra. Ms Clarke also asked him about Mr Ogilvie (who had recently moved back to London from Bermuda). This was not a specific list of names given by Mr Fletcher to Ms Clarke as some sort of shopping list for recruitment purposes, but rather names who came up in the course of a discussion in response to questions about Mr Fletcher and what he had managed to achieve in Bermuda. To a large extent at this meeting, Mr Fletcher was "selling" himself, seeking to emphasise his skills in managing a team. Ms Clarke already knew some of the individuals, for example Ms Clarke mentioned Mr Withers-Clarke (who had been, like her, ex-JLT).[9]

89. They also discussed (at Ms Clarke's request) how remuneration packages for Guy Carpenter's Bermuda employees were structured, and Mr Fletcher provided her with specific details about the remuneration levels of certain of the Bermuda employees: Mr Dart, Mr Keegan, Ms Boonstra, Mr Hornett, Mr Withers-Clarke and Ms Estis, as well as of Mr Ogilvie. Ms Clarke wrote these details down on one of the hotel's notepads, and subsequently used the remuneration levels she had recorded to assist in formulating offers to Guy Carpenter's employees. The evidence Ms Clarke gave about this was that she knew taking the details from Mr Fletcher of other employees' remuneration was "*the wrong thing to have done*", and that she told Mr Fletcher a couple of days later on 23 April that she would not use the information and would throw away the note, but that instead she did not throw it away but rather communicated its contents to others at Willis Re for the purpose of formulating offers. The note itself was not produced at trial – it was said to have been misplaced around the period 30 May to 6 June 2025.

Mr Summers and Mr Fletcher in Bermuda

90. Between 12 and 15 May 2025, Mr Summers was in Bermuda visiting the Guy Carpenter Bermuda office. Mr Fletcher's evidence was that Mr Fisher had previously told him that he understood Mr Summers had been approached to join Willis Re. Whilst Mr Summers was in the office, Mr Fletcher took him into a side room and said he had been approached by Ms Clarke about Willis Re, and asked whether Mr Summers had also been approached. Mr Summers confirmed he had been and was considering the offer.

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[9] Others Ms Clarke also knew of from her time at Marsh, including Mr Dart, Ms Hall, Mr Keegan and Mr Ogilvie.

That was the extent of their conversation, and this was the only occasion on which the two of them discussed Willis Re.

Further meetings in London

91. On 23 May 2025, Ms Clarke met Mr Fletcher at the Raffles hotel in London. They had a more detailed discussion about the structure of Willis Re, and how the MIP would work. Ms Clarke also told him she was hoping to travel to Bermuda shortly, with a finalised offer for him, and also to try to see other potential recruits in Bermuda. Her evidence (which I accept) was that she did not tell Mr Fletcher who else she planned to meet, and that she was clear that he should not get involved as she wanted to contact people herself and meet with them personally. Following this meeting, on 25 May 2025, Mr Fletcher messaged Ms Clarke to give her his personal phone number.

92. On 27 May 2025, Ms Clarke met Mr Summers at the Andaz Hotel in London. They discussed structure, with Mr Summers emphasising that his role at Guy Carpenter was broader than Marine and Energy (which was the role set out in the first draft offer he had received from Willis Re) and he explained how Technical Lines contributed to the business (and in doing so mentioned two of the individuals at Guy Carpenter involved in Technical Lines: Mr Liley and Mr Mirfenderesky, who Ms Clarke had not previously heard about). During the course of the meeting, Ms Clarke asked for Mr Devlin's personal mobile phone number, which Mr Summers gave to her. He explained in his witness statement that Ms Clarke had not said why she wanted the number, but that it was obvious. Mr Summers did not consider he was disclosing anything sensitive – he explained that the number appears at the end of all of Mr Devlin's emails and "*could easily have been found with a simple search through other contacts in the market.*"

93. On 2 June 2025, Mr Summers was sent a revised offer by Willis Re. The offered role was now CEO of Global Specialties, and the offered salary had increased, as had the guaranteed bonus. Further details were given of the MIP.

Ms Clarke's trip to Bermuda 29-30 May 2025

94. Ms Clarke flew to Bermuda on 29 May 2025 with a view to meeting other members of Guy Carpenter's Bermuda office team. She had previously looked up potential recruits on LinkedIn, and already been in touch with some of the employees. She had sent Mr Withers-Clarke an invitation to connect on LinkedIn on 28 May, to which his evidence was "*I thought "I know what this is about"*", given the rumours of Willis re-entering the reinsurance market, and he contacted Ms Clarke via WhatsApp on the number she provided and arranged to meet her in Bermuda the following day.

95. On the morning of 28 May, Mr Withers-Clarke met with Mr Fletcher at the Guy Carpenter Bermuda office. Mr Withers-Clarke's account was that Mr Fletcher called him into a side room and:

> "…[Mr Fletcher] started by saying "You are going to be contacted…" I finished the sentence for him: "…Lucy Clarke". I told him that I would meet with her and he said "good"."

96. In the evening of 29 May, Mr Fletcher met and had pizza with Ms Clarke in her hotel room, and had a general catch-up about the Willis Re project including about when he

might resign. Ms Clarke also asked Mr Fletcher for the phone numbers for Mr Dart, Mr Keegan and Ms Estis, which she had not been able to find when she had looked them up on LinkedIn. He gave her those phone numbers.

97. The following day (30 May), Ms Clarke met a number of Guy Carpenter's Bermuda employees at the Hamilton Princess Hotel. She met Ms Hall, Mr Withers-Clarke, Mr Hornett, Mr Keegan, Mr Dart and Ms Boonstra. After those meetings, and before she left for the airport, she had another short meeting at her hotel with Mr Fletcher.

98. On 2 June 2025, Mr Fletcher received a formal offer letter for the role at Willis Re of CEO, Bermuda. This included a salary increase from what he was receiving at Guy Carpenter, a housing allowance, a signing on bonus, and then a bonus that was guaranteed until 2030; he would receive a buy-out of any forfeited Guy Carpenter long term incentive award, and would be included in the Willis Re MIP.

99. Mr Fletcher explained that from around 29 May onwards, some of the other Bermuda employees had mentioned to him they had been approached by Ms Clarke, and asked whether he had too. He said his response was always along the same lines: that he had been spoken to by Ms Clarke and he thought that Willis Re was an interesting proposition and worth finding out more about.

100. Mr Fletcher gave evidence of a particular conversation he had had with Ms Estis towards the end of May, when they were leaving the office at the same time, and he mentioned to Ms Estis that she might be contacted by Ms Clarke. His account in his witness statement went on:

> "Shortly after that, Jenni sent me a WhatsApp message saying that she was concerned that she might be away travelling if Lucy was coming to Bermuda. I called Jenni and said to her that she should not be messaging me about Lucy and should speak directly with Lucy. After that, Jenni deleted the message (I presume she used the delete for all option because I did not delete it). I do not recall telling any other employees that they may be contacted by Lucy before she had reached out to them herself and they raised it with me."

101. As I explain further below, Ms Estis was subsequently made an offer by Willis Re but decided to stay at Guy Carpenter.

Ms Clarke's meetings with various other London-based Guy Carpenter employees

102. Ms Clarke had met two of the other Guy Carpenter London employees before she went to Bermuda, and she met others afterwards. The first was Mr Ogilvie, whose name had come up in her discussion with Mr Fletcher on 21 April. Mr Ogilvie was part of the NMS team and had recently returned to London having spent some years in Bermuda. He was known to be unhappy at Guy Carpenter. Mr Morgan, when giving evidence, explained that Mr Ogilvie had asked for an uplift in salary when he came back from Bermuda as well as the continuation of his housing allowance, and Mr Morgan "*realised we were going to be struggling with him.*" Mr Ogilvie was, according to Mr Morgan, "*speaking to four other companies about trying to get a job with a higher*

salary" – he was "*looking for the highest bidder when he came back from Bermuda. And that turned out not to be us.*"

103. Ms Clarke met Mr Ogilvie on 27 May 2025 (having been keen to find a place to meet that was "*off the beaten path*"). During the course of their meeting, Mr Ogilvie discussed four other Guy Carpenter employees on his team – Mr Goddard,[10] Mr Wagdin-Joannides, Mr O'Donoghue and Mr Edwards, each of whom was subsequently approached by Ms Clarke (Mr Ogilvie having subsequently supplied Ms Clarke with contact numbers for Mr Goddard and Mr Wagdin-Joannides). Mr Ogilvie gave Ms Clarke his new personal number, and they met again on 1 June.

104. Ms Clarke also met with Mr Devlin on 29 May 2025, before her trip to Bermuda later that day.

105. Once she was back in London, Ms Clarke started meeting other Guy Carpenter employees. She contacted Ms McIntosh on 31 May via LinkedIn, and then they met on 2 June. Ms McIntosh had told Mr Summers before the meeting that she was meeting with Ms Clarke.

106. She also contacted Mr Bryan on 31 May, and then on 1 June she sent messages via LinkedIn to Mr Beer, Mr Pepper, Ms Danes, Mr Hitchings and Mr Wainwright-Brown. She met with various Guy Carpenter employees over the next few days, and they were sent offers and written contracts shortly after.

107. Around this time, Ms Clarke was continuing to speak to Mr Fletcher. At some point she asked him about names of some of the Guy Carpenter employees in London that she had heard good things about, namely Mr Goddard, Mr Firmin and Mr Sandeep Nijjer. Whilst neither of them had a precise recollection of what Mr Fletcher said in response, the gist was that it was brief and positive but non-specific, along the lines of "*certain people are good at their jobs*" or "*there are some great people in London.*"

108. On 4 June, Ms Clarke met Mr Vaughan (of METL). On 5 June, she met Ms Danes, Mr Goddard, Mr Wagdin-Joannides, Mr O'Donoghue, Mr Firmin and Mr Nijjer (all of NMS London), as well as Mr Liley and Mr Sanders (both of METL).

Mr Boyce learns of approaches to various Global Specialties employees

109. Mr Boyce said that he heard of Willis Re approaching Global Specialties people when Demian Smith texted him on 4 June 2025 telling him as much, and that he understood from Mr Smith that Ms Clarke had approached at least three employees (who he understood were Mr Mirfenderesky, Mr Liley and another, who he suspected was Mr Wainwright-Brown). He suspected others must also have been approached. He spoke to Ms Magnussen, who emailed Ms Best noting that Mr Boyce "*was concerned about WTW making offers to our Marine colleagues*". She said they had spoken to Shruti Raja (Guy Carpenter's CFO) who understood some proactive action may be required, but "*we want to keep things tight.*" She asked Ms Best to identify individuals she felt were most critical, those that may be targeted and those Guy Carpenter would prioritise to retain: "*It needs to be reasonable and confined to the most critical as dollars are tight.*"

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[10] Ms Clarke already knew of Mr Goddard from her time at Marsh.

110. Ms Best made notes of a discussion she had with Mr Boyce on 5 June 2025. The note started:

> "Marine - WTW
>
> 3 people have now been approached by Lucy Clarke — convinced that a lot more — Saturday — one person has had an offer"

It went on noting various points, including who was thought to have been approached, and stated:

> "Try and retain Jim is the priority – but will be impo"

111. In his oral evidence, Mr Boyce sought to suggest that "impo" was short for "important" (although recognising they were not his notes and that he did not have much recollection of the discussion), but in context that makes no sense (in particular given it was introduced with the word "but"). More plausible is that it stood for "impossible", given Mr Boyce had been aware for some months that Mr Summers had been approached by Willis Re, and the fact that the note went on to refer to compiling a "*Most close to Jim list*" and then "*Build the team around Simon Liley*" (who was the Deputy Head of METL).

Friday 6 June 2025

112. Mr Boyce and Mr Summers spoke on Friday 6 June. Mr Summers explained that he was seriously considering an offer from Willis Re, which he was minded to accept. Mr Summers and Mr Devlin were supposed to be travelling to New York on Monday 9 June. Given how close he was to resigning, Mr Summers discussed this with Mr Boyce, who agreed that in the circumstances it would not be appropriate for Mr Summers to go to New York. Mr Boyce gave Mr Summers permission to speak to Mr Stroop (who was based in the New York office) about this and explain why he was not going to travel, which Mr Summers subsequently did on the evening of Sunday 8 June.

113. Also on 6 June, Ms McIntosh told Mr Summers that she had received an offer from Willis Re, that if terms could be agreed she intended to resign from Guy Carpenter, but that there were certain aspects of the Willis Re offer she was not happy with. Mr Summers suggested that she push back and ask for what she wanted.

114. Ms Clarke was continuing to meet other Guy Carpenter employees. On 6 June 2025, she met with Mr Stocker and Mr Mirfenderesky (both of METL). Also on 6 June 2025, Mr Bryan said to Ms Clarke that he wanted to ensure that he had an offer in place so that he could resign, and was advised by Ms Clarke to "*Hold on till Monday if you can.*"

115. At trial, Guy Carpenter sought to make something of the fact that, on 6 June, André Clark (the interim Chief Human Resources Officer of Willis Re at the time) messaged Ms Tandon (who was Bain's representative on the joint steering committee of Willis Re), referring to the fact they had "*briefed the KC for that expected nuclear warhead coming in*" and, in the context of a message about a planned transfer of IT systems and not wanting to be offline when there were likely things to be done, referred to the risk of getting "*a bloody injunction in where we have to stop dead in our tracks*". It was

suggested that this showed Willis Re knew it was going to be sued. Indeed, Ms Clarke said in her witness statement that once Mr Summers or Mr Fletcher (or both) resigned, Guy Carpenter might apply for an injunction, which she said was a common occurrence in this "*very litigious industry.*" She repeated in oral evidence, on several occasions, that she expected an application for an injunction at some point – she described such an application as "*absolutely industry standard … [i]t happens almost any time you recruit more than one or two people.*" Although Guy Carpenter sought to derive from this the conclusion that Ms Clarke (or Willis Re more generally) knew or thought she was acting unlawfully, that does not appear to me to be correct. Her explanation, which I accept, was that she was expecting an injunction application simply on the basis she was seeking to recruit a number of employees from Guy Carpenter, and her view and experience was that is a regular response, at least in this particular market, once employees start to leave.

The weekend of 7-8 June 2025

116. Following the conversation he had had with Mr Summers on Friday 6 June, Mr Boyce sought to retain Mr Summers by putting together a retention package for him, with Mr Klisura's approval. He relayed the package to Mr Summers by phone on Saturday 7 June. The Defendants suggested (as appears to be the case) that this was entirely consistent with Guy Carpenter's general "threat to leave" approach to remuneration increases.

117. Also on 7 June, Mr Devlin told Mr Summers that he had been contacted by Ms Clarke, and that he was intending to resign from Guy Carpenter and accept the Willis Re offer. Mr Summers passed this information on to Mr Boyce when he spoke to him on 8 June. Mr Hitchings also told Mr Summers over the course of this weekend that he intended to resign from Guy Carpenter and asked whether that would cause Mr Summers a problem, to which Mr Summers replied "no".

118. On 7 June, Mr Boyce and Mr Fletcher spoke. Mr Boyce said that Mr Summers had been approached by Willis Re and was considering whether to resign. Mr Fletcher confirmed he had received, and was considering, an offer from Willis Re.

119. Ms Clarke remained keen to speak to further people. On 7 June, she requested Ms Wehmeyer's phone number from Mr Fletcher, which he supplied. On 7 June, Ms Clarke also spoke to Ms Estis.

120. Mr Summers and Mr Boyce spoke again on Sunday 8 June, and Mr Summers confirmed that he was rejecting the retention offer that had been made the previous day and was resigning. Mr Summers also spoke to Mr Klisura that afternoon, during which conversation Mr Klisura sought to persuade him to stay, pointing out the risks of moving. Mr Summers was unmoved. In the evening, Mr Boyce called Mr Summers again, saying he ought to resign face to face, and asked him to meet in person the following morning. Despite his seeking to postpone Mr Summers' resignation in this way, Mr Boyce cannot have been in any doubt that Mr Summers had decided to go. Mr Jay's evidence was that Mr Boyce told him on 8 June that Mr Summers was resigning. A summary of a meeting held (by Zoom) on 8 June between Mr Boyce and others (which appears to have been produced by AI) recorded that "*James announced that Jim Summers has resigned and shared that he will meet with Jim tomorrow to handle the transition.*"

Resignations on Monday 9 June 2025

121. Before his meeting with Mr Boyce at 9am, Mr Summers was sat on a bench outside the office. He happened to see Ms Danes and had a brief chat in which he said he was shortly seeing Mr Boyce and that it might be the last time she would see Mr Summers. His evidence (which I accept) was that he did not mention his resignation, and nor did Ms Danes say (or Mr Summers know) that she intended to resign or that she too had been approached by Ms Clarke.

122. Mr Summers met Mr Boyce at 9am and passed him his resignation letter, which Mr Boyce twice sought to push back, asking him to reconsider. Mr Summers confirmed that his decision to resign had been made. To avoid any doubt, Mr Summers emailed his resignation letter to Mr Boyce (copying Mr Klisura) later that morning. At 10am, Mr Boyce held a meeting with the METL team (without Mr Summers), which he had set up the previous day, and in which he says that he informed the METL team that Mr Summers was considering whether to resign in order to join Willis Re and to tell the team that Guy Carpenter had a plan to counter the Willis Re offers and retain the key people.

123. By the end of Monday 9 June, however, the following Guy Carpenter employees, all from the METL team, had resigned: Mr Summers, Mr Devlin, Mr Bryan, Mr Vaughan, Ms Danes, Mr Hitchings, Ms McIntosh and Mr Beer.

124. Ms Clarke was still seeking to meet Guy Carpenter employees to consider them for recruitment. During the course of 9 June, she met Mr Rothstein, Mr Berkane, Mr Edwards and Mr Overall (all of NMS, London).

125. As to Mr Fletcher, he spoke again to Mr Boyce on 9 June, and Mr Boyce told him that Mr Klisura had rubber stamped a "*substantial new package*" for leaders and others, saying it was not reactive to the Willis Re approaches. This irked Mr Fletcher, who could not believe it was a coincidence that money had, at the last moment, been made available when he had been attempting for a considerable period of time to encourage proactivity in retention strategy, rather than being merely reactive to offers from competitors. This added to his frustration with the Guy Carpenter hierarchy. His call with Mr Boyce had irritated him. It was that, and the awareness that Mr Boyce and Mr Morgan had been calling round various employees asking about Willis Re approaches, that caused him finally to "*just get on and resign*" (as he put it in his witness statement).

Resignations on Tuesday 10 June 2025

126. Mr Fletcher resigned on 10 June 2025 by sending an email to Mr Boyce, and saying he would follow up with a call. He did so. The two of them had differing recollections of the call. Mr Fletcher said that Mr Boyce threatened him saying "*Your reputation will be ruined and I don't know how you can even look at yourself in the mirror.*" Mr Boyce's version was (although he did not have a complete memory about the conversation) that he had sought to start by saying how gutted he was that Mr Fletcher was leaving, following which Mr Fletcher got short with him. Whichever was more accurate, Mr Fletcher was clearly upset by the Guy Carpenter reaction. He sent a WhatsApp message to Ms Clarke later on 10 June saying:

> "I am gutted about their reaction. I was naive enough to think that I might just get a thanks for 37 years of service and we wish you all the best, but you did say it's unlikely to play out like that."

127. He had not, by this time, accepted the offer from Willis Re, as he was still negotiating some details, but did so on 4 July 2025.

128. By the end of Tuesday 10 June, the following Guy Carpenter employees, all from Guy Carpenter Bermuda, had resigned: Mr Fletcher, Ms Hall, Mr Hornett, Ms Boonstra and Ms Wehmeyer.

129. Ms Clarke continued to seek to meet more Guy Carpenter employees. She met Mr Whyte on 10 June 2025. She then spoke to Mr Esser (of METL) by phone on 11 June 2025, and also messaged and/or spoke to Mr Morgan and Mr Law (of NMS) and Mr Hakes (of METL) around this period.

Further resignations

130. Over the following days, further Guy Carpenter employees resigned. On 11 June 2025, Mr Dart (from the NMS team in Bermuda), Mr Stocker (of the METL team in London) and Mr Ogilvie (of the NMS team in London) resigned. On 12 June 2025, Mr Goddard and Mr Wagdin-Joannides, both of the NMS team in London resigned. On 13 June 2025, Mr Keegan (of the NMS team in Bermuda) and Mr Rothstein (of the NMS team in London) resigned. Then, some days later, on 19 June 2025, Mr Pepper (of the METL team in London) resigned.

131. The last resignation was that of Mr Whyte (of the METL team in London) on 4 July 2025. In his exit interview with Ms Best on 7 July, he explained his reasons for leaving:

> "Was frustrated that GC had managed to lose finest marine practitioner I had ever worked with being Jim Summers. Worked with him at Cooper Gay and followed him here. MW felt that the more business you produce is not reflected in your compensation package — no incentive and so felt unmotivated. Felt comp had gone backwards despite revenue growth due to removal of LTIP's. Doesn't like `Sales Culture' and is of the believe that if you look after your client, the brokerage will take care of itself."

> "He felt it made no sense economically or careerwise to stay at GC. There was no competition on paper — the opportunity to build a business again from the ground up was very appealing. Felt like a tiny cog at GC."

Guy Carpenter retention efforts

132. During the course of the period from around 6 June onwards Guy Carpenter was engaged in various efforts seeking to retain its staff in the face of the offers of employment from Willis Re. Mr Boyce was offering enhanced packages to various employees, to the consternation of more senior Guy Carpenter and Marsh leaders.

133. Ms Magnussen notified Mr Klisura on Sunday 8 June that there were "*ten critical retention actions that James would like to confirm with colleagues tomorrow*" which she explained were "*just Group 1*" dealing with senior people, but did not "*include the next tier down nor the Bermuda team*". She reported that Mr Boyce felt "*strongly that these are required if he is going to retain this talent and secure the teams below them*" and set out the total figures in question. Mr Klisura's response was not to embrace Mr Boyce's efforts but rather to say that they looked excessive:

> "These look excessive to me. Several of these leaders have already committed to GC.
>
> He needs to understand that these are not approved.
>
> Let's discuss tomorrow."

134. Ms Magnussen forwarded this to Mrs Fowler and to Ms Best saying this was:

> "Not a surprising response … he did go far beyond what we discussed with Dean [Klisura] on Friday."

135. The scale of the offers was brought to the attention of John Doyle (Marsh's President and CEO) on 11 June who asked that the offers be scrutinised further, particularly the higher increases and amounts, as well asking "*why we haven't yet asked for or received offer letters from these individuals. Otherwise the view is that we're negotiating with ourselves.*" Ms Magnussen's response was to note that:

> "They are eye-watering salary increases. We knew we were behind market in some areas of Specialty but didn't have the dollars to resolve during the annual process. We actually have some off-cycles already in the system for this group for June because we knew competitors were circling and salaries were our biggest issue."

136. She noted that competitors were willing to "*pay high to buy the talent*" as well as saying:

> "Dean [Klisura] has sent a clear message to James [Boyce] that we know we have to retain these top leaders but he has to be very mindful of what he is offering in retentions for those below the senior leaders."

137. Senior personnel were taking steps to persuade employees to stay. Mr Morgan spoke to many of those in NMS, including a number of those who ended up resigning from NMS. Mr Morgan spoke to Mr Keegan on 10 June, and reported part of that conversation as follows:

> "…the Dickie Keegan chat was good. He genuinely seems to have had v little conversation with Fletch and is shaken by the whole thing. He has the offer and I'm seeing him tomorrow. It's basically down to whether he feels he can work without his great friends … hopefully the $ will help."

138. It is clear that Mr Klisura thought that the retention packages Mr Boyce had been offering over the period since 8 July had been over the top. On 20 June he sent a WhatsApp to Mr Boyce stating:

> "James,
>
> We can't afford all of the $100k salary requests. You are now jeopardizing the financial health of Specs and all of GC.
>
> Going forward we need offer letters for any counters. I need to review all of the new requests with Jana & Shruti. This is getting out of control."

139. However, in his oral evidence, Mr Boyce said he spoke to Mr Klisura after this message, and Mr Klisura made it clear Mr Boyce had his support to carry on doing what Mr Boyce wanted to do, and he said he had a call from Mr Doyle to the same effect i.e. to do whatever he needed to do to retain the people he needed to retain.

140. On 21 June 2025, Mr Klisura described things from his point of view in a series of WhatsApp messages with Mr Moody as follows:

> "Total meltdown by Boycie yesterday. Never seen anything like it. Tears & threats to quit! …
>
> I sent him a text questioning all of the exorbitant salary increases for everyone. I never said we wouldn't honor the guarantees he's thrown to everyone. He's exhausted and needs a break. Doesn't want any oversight from me! …
>
> Boycie has blamed me and MMC for the departures … "

141. Mr Boyce explained in his oral evidence that, in the heat of the moment in the period around and following the departures, he was having to act quickly and was "*stepping outside the boundaries of the process that we would normally have*."

Further Willis Re efforts to recruit – Aviation

142. Willis Re also sought to recruit two individuals from the Aviation & Space team within Global Specialties – Mr Chris Eaton and Mr William Morritt – after most of the resignations listed above had already taken place.

143. Ms Clarke described in her witness statement that Mr Eaton and Mr Morritt are a well-known duo and the WTW Head of Aviation, John Rooley, knew them both and passed on their contact numbers to Ms Clarke. Ms Clarke messaged Mr Morritt on 23 June 2025, and they met the next day. Willis Re made him an offer on 25 June. She messaged Mr Eaton on 30 June 2025, and they spoke on the phone later that day. Mr Eaton sent her his remuneration and his personal email address, and Willis Re sent him an offer on 1 July. Shortly thereafter, these proceedings were commenced, and after discussion with the Willis Re lawyers Ms Clarke explained to Mr Eaton that she could no longer discuss the Willis Re offer with him, but that he could execute it; she did not discuss matters further with Mr Morritt.

144. Both Mr Eaton and Mr Morritt accepted the Willis Re offers of employment on 9 July 2025, although it is not clear whether they immediately resigned from Guy Carpenter. When Mr Boyce gave evidence, he said that they had resigned to their leader at Guy Carpenter, following which he discussed matters with them and managed to persuade them to stay (and it was not made clear whether they were offered any form of increased package by way of what Guy Carpenter's opening called "retention efforts"). They have therefore stayed and not taken up the Willis Re offers.

Summary of the resignations

145. At the time of the trial, the position in terms of those who had resigned from Guy Carpenter to join Willis Re was as follows:[11]

    i) 7 people from Bermuda had resigned. Willis Re had also approached 4 other people who had not resigned.

    ii) 4 people from NMS in London had resigned. Willis Re had also approached 8 other people who had not resigned.

    iii) 11 people from METL had resigned. Of those, one (Mr Pepper) had chosen not to join Willis Re but go elsewhere, and one (Mr Beer) had returned to work at Guy Carpenter. Willis Re had also approached 7 other people who had not resigned.

    iv) The 2 aviation brokers had been approached, appeared to have accepted offers and resigned, but then decided to stay at Guy Carpenter.

146. In other words, although a number resigned and stayed with their intention to join Willis Re, a number did not do so. Of the 43 people who Ms Clarke approached, 20 are joining Willis Re.

Other elements of the factual background

147. The parties referred to certain other matters which it is convenient to identify at this stage.

(i) Documents printed by Ms McIntosh

148. Ms McIntosh was the Account Co-ordinator for METL for its account with Lancashire Group Insurance ("Lancashire"). On Friday 6 June 2025, Ms McIntosh printed off three documents relating to the Lancashire account, including a 32 page post renewal document, containing commercially sensitive information relating to the Lancashire renewal. It was described in Guy Carpenter's written opening as "*precisely the sort of document that would be damaging in the hands of a competitor*", suggesting this was the start of a case about misuse of such information. However, this was a damp squib. There was no evidence that Ms McIntosh used any of the documents, or even took them with her when she left Guy Carpenter. Oddly, the Claimants' pleaded case included the assertion that "*at least some of*" these documents were found on her desk at Guy

[11] The numbers in the first three sub-paragraphs are based upon organograms for these three teams produced by Guy Carpenter during the course of the trial which included identification of who had resigned and who had been approached. I attach these at Appendix 1 to this judgment.

Carpenter after she had resigned. No allegation was put to Mr Summers or Ms Clarke that the printing of these documents was at their instigation, or that they even knew about it. In his oral closing submissions, Mr Oudkerk accepted that there was no evidence Ms McIntosh had taken any of these documents with her or that any use had been made of them. The point goes nowhere.

149. A further point was made that Ms McIntosh had emailed from her work account to her personal email account certain things in the period leading up to her resignation. This included i) her tax calculations on 30 May 2025, ii) her compensation statements for the previous 4 financial years on 2 June, and iii) a series of emails with around 49 attachments (including her marriage certificate and Guy Carpenter training materials) on 4 June. There was no suggestion that she was not entitled to the material she emailed to herself, and no complaint was made that she had done this. The point Guy Carpenter sought to rely on was that these emails demonstrated that Ms McIntosh was preparing to leave Guy Carpenter. One can see why in some circumstances emailing such material from a work address to a personal address might suggest an anticipation that the user is shortly to lose access to the work email address. However, that might not always be the case, and it likely would depend on the individual's particular record keeping practices, and what the reason was for the emails in question. For example, an upcoming meeting with an accountant may explain the compilation and sending of tax and financial information. It is difficult, therefore, in the absence of further information about this, to draw any sort of firm inference as to Ms McIntosh's state of mind about her employment with Guy Carpenter from her sending these emails to her own personal email address. The material emailed on 4 June, including its volume as well as its nature, may well indicate that by that date she had formed the view that she was likely to be leaving Guy Carpenter, and indeed by that point in time she had already met Ms Clarke and discussed her potential employment with Willis Re. However, to draw any inference based upon her sending herself her own financial information on 30 May and 2 June would be no more than speculation.

(ii) Ms Estis's email

150. As recorded above, Ms Estis was a Guy Carpenter employee in Bermuda who Mr Fletcher had spoken to saying she might be contacted by Ms Clarke. She was indeed approached by Ms Clarke, who made her an offer, but Ms Estis ultimately decided to stay with Guy Carpenter. In an email dated 22 June 2025 (sent to Mr Fletcher via his wife), Ms Estis explained her decision to stay with Guy Carpenter as "*multi faceted and very personal*" and ended by thanking Mr Fletcher "*for the offer to join you at Willis.*" It was difficult to make much of this in circumstances where Mr Fletcher denied having made any such offer to Ms Estis, and where Ms Estis was not called by Guy Carpenter to explain it. I deal further with this email below in the context of the allegations by Guy Carpenter that Mr Fletcher was engaged in encouraging members of his team to leave.

(iii) Indemnities provided by Willis Re to resigning employees

151. Willis Re have provided indemnities to the employees who resigned from Guy Carpenter to join Willis Re. The letters of indemnity disclosed by Mr Summers and Mr Fletcher are both dated 14 June 2025 and are in relatively broad terms. They extend to "*any costs*" arising from the defence of "*any legal claim*" by Guy Carpenter including "*any judgments and settlements*".

152. Although on their face the indemnities require at clause 2.2 that the resigning employee should comply with their obligations to Guy Carpenter, it appears that despite the admitted breaches of duty on the part of Mr Summers and Mr Fletcher, Willis Re are nonetheless providing the indemnity. It was confirmed by Ms Clarke when giving her evidence that Willis Re was indemnifying them in this litigation and that Willis Re would "protect" them.

153. This was relied on by Guy Carpenter at trial as supporting their case of unlawful conduct on the part of Messrs Summers and Fletcher. Reliance was placed on what was said by Jack J in *Tullett Prebon Plc and others v BGC Brokers LP and others* [2010] IRLR 648 (at paragraph 142) in a passage cited with approval by Hooper LJ in the Court of Appeal in the same case ([2011] IRLR 420 at paragraph 59):

> "But indemnities carry … dangers. A recruit who has an indemnity is more likely to break, or run the risk of breaking, his existing contract if he is covered by an indemnity…".

154. On the facts of this case, however, it is difficult to see what this point adds. The indemnities were not provided to Mr Summers and Mr Fletcher until 14 June 2025. By that time they had both already resigned. Mr Summers had no discussion about any indemnity before he resigned. Mr Fletcher's lawyer had raised the question of an indemnity with Willis Re's lawyer the day before Mr Fletcher resigned, which was after most of the acts Guy Carpenter claim were unlawful had been carried out. Mr Fletcher's evidence in his statement (which was not challenged in this respect) was that he had given no consideration to the possibility of any sort of indemnity from Willis Re before speaking to his Bermudan lawyer on 9 June (which was the first time he had spoken to her) and, following that discussion, was content to leave the matter in her hands. His evidence (which was not challenged and which I accept) was:

> "Frankly, the possibility of a costs indemnity played no real part in my decision-making about resigning – I would have resigned when I did even if Willis Re had not yet confirmed that they would provide a costs indemnity."

(iii) Alleged "obstruction" by Mr Summers and Mr Fletcher

155. Guy Carpenter relied on certain acts of Mr Summers and Mr Fletcher which they said demonstrated their obstruction of Guy Carpenter's "*efforts to investigate and discover the truth of what had occurred.*" In the case of Mr Summers, it was said that, in his Guy Carpenter exit interview, when asked the standard question "*Did they suspect any other GC colleagues were also being contacted?*" Mr Summers replied: "*Suggest that this is a question for the lawyers – no comment.*" In the case of Mr Fletcher, it was said that he left the Bermuda office on 10 June 2025 (the day he resigned) without providing the passwords to his work devices and without providing any means to contact him; it was said Guy Carpenter made repeated attempts to contact him, and then finally that Mr Fletcher got in touch on 26 June, but refused to answer any questions about the circumstances of his departure.

156. The point based on Mr Summers' exit interview went nowhere. It was not suggested in opening or closing that the "*obstruction*" (as described) had any material consequence, and the point was not put to Mr Summers when he gave evidence. In his witness

statement he had explained that this was not a formal exit interview, but a set of pre-prepared questions asked of him by Ms Best when he went into the office on 11 June to return his Guy Carpenter equipment. He explained his answer ("*Suggest this is a question for the lawyers*") by reference to the fact that, earlier in the day, he had read in the insurance press that Guy Carpenter intended to take legal action and so he did not think it appropriate to answer. He went on in his statement to say that Ms Best in fact advised him to say "*no comment*", which he did. None of that was challenged in cross-examination (and Ms Best was not called to say anything different).

157. There was also nothing to be said for the criticism of Mr Fletcher in this respect. Mr Fletcher's evidence in his witness statement was that he had an acrimonious telephone call with Mr Boyce on 10 June after he had sent his resignation email, in which he said he would leave his phone and other Guy Carpenter equipment and go home (which Mr Boyce on the call had agreed with), and that he left a post-it note beside his desk with passwords for his equipment. He said he received correspondence to his home address from Guy Carpenter on 17 June, making allegations about his legal obligations, on which he wanted to take legal advice, and a further letter on 24 June, asking him to make urgent contact. He did so and spoke to Mrs Fowler, providing his password information, and asking why she had not made contact with him for such information by calling his wife's phone (which Guy Carpenter kept as an emergency contact number) – Mrs Fowler responded that she had not wanted to disturb him. Mrs Fowler said she would like to discuss a timeline of his discussions with Willis Re, which Mr Fletcher was not ready for on that call, given he had not understood that to be the purpose of the call, given his last call with Mr Boyce had been unpleasant, and that he was with his daughters in his house at the time and he did not want the call to become heated. Mr Fletcher said he would be happy to arrange another time to discuss such a timeline, but was never contacted about fixing another time for such a conversation. He asked again, in a conversation with Ms Best on 9 July about some pension issues, whether he would have an exit interview, but again was never contacted about that. Mr Fletcher was not challenged on any of that evidence in cross-examination (and Mrs Fowler, who was asked about her conversation with Mr Fletcher in cross-examination, largely agreed with Mr Fletcher's account). Given that evidence, and the lack of challenge to it when Mr Fletcher gave evidence, there was no case to be sustained about "*obstruction*" by Mr Fletcher.

(iv) Mr Devlin's list

158. On 13 June 2025, a few days after he had resigned from Guy Carpenter, Mr Devlin had a meeting with Mr André Clark to discuss on-boarding matters and to provide him with a copy of his post-termination restrictions. At the meeting, he handed to Mr Clark a piece of paper on which he had written the names of some 43 Guy Carpenter employees, and for most of them also wrote their phone numbers, some of whom had resigned (including himself) and some of whom had not. Later that day, Mr Clark placed the document in an envelope and, on 17 June, gave it to Willis Re's solicitors, DWF Law LLP. Willis Re and Ms Clarke said they made no use of this document (and no suggestion was made by Guy Carpenter at trial that they had done so). It was suggested in closing by Guy Carpenter that this list must have been prepared by Mr Devlin to assist Willis Re with contacting more Guy Carpenter employees with a view to recruiting them for Willis Re.

159. The provision of this list by Mr Devlin to Mr Clark was pleaded by Guy Carpenter as an example of Mr Summers and Mr Fletcher having misused confidential information. No explanation was given as to how it was said this was a misuse of confidential information by either of them. The list was shown to Mr Summers in cross-examination, who confirmed he had only seen it as part of the disclosure process in this litigation, he agreed (as was obvious) that it would be a useful list for Willis Re to have if it were looking to recruit further Guy Carpenter employees, but it was not put to Mr Summers that he had asked or suggested to Mr Devlin to do this, or even that he knew about it at the time. It was not put to Mr Fletcher at all. There was, in short, no evidence that it was anything to do with Mr Summers (still less Mr Fletcher). There was no specific allegation pleaded against Ms Clarke in relation to this and, when she gave evidence, she was asked why the list had not been mentioned until service of the Willis Re defence, but it was not suggested to her that she had had anything to do with its production by Mr Devlin or its handing over to André Clark. She said she had only seen the list the Friday she started giving evidence.

160. In his oral closing submissions, Mr Oudkerk acknowledged that he could not take this point much further than suggesting that it generally supported the idea that Willis Re were seeking a team and that Mr Devlin understood that.

(v) Ms Boonstra's alleged meeting with a client

161. Mr Morgan said in his second statement (dated 31 October 2025) that he noted "*Ms Boonstra was seen having breakfast with an MS Re contact two weeks ago in Bermuda*". MS Re is a Global Specialties client. Mr Morgan did not explain who had seen this or how he had learned about it, and there was no pleaded allegation relating to this. Guy Carpenter drew my attention to a letter it had written to Ms Boonstra on 23 October 2025 alleging she had met with the CEO of a Guy Carpenter client on 15 October at the Hamilton Princess Hotel, and had reached out to another Guy Carpenter client to arrange a lunch. Ms Boonstra's lawyer in Bermuda responded on 30 October denying Ms Boonstra had met with the CEO of any Guy Carpenter client on 15 October at the Hamilton Princess Hotel, but saying that without knowing which client was being referred to she could not respond further, and that the allegation she had reached out to another Guy Carpenter client was insufficiently specific to respond to. The letter from Ms Boonstra's lawyer suggested Guy Carpenter identify who it was talking about so Ms Boonstra could respond. The letter confirmed Ms Boonstra was aware of her Guy Carpenter post-termination restrictions and that she fully intended to comply with her legal obligations. There were further exchanges which did not advance matters. Guy Carpenter did not tell Ms Boonstra which clients they were talking about, and Ms Boonstra did not give any further information.

162. The upshot is that this goes nowhere. There was no allegation that Ms Boonstra had breached any of her obligations. This was not put to any of the Defendants' witnesses in cross-examination. It was not suggested that Willis Re or any resigning employee had asked her to meet anyone.

(vi) Recruitment by Guy Carpenter following the resignations

163. Since the resignations, Guy Carpenter has recruited a number of new employees into its METL and NMS teams within Global Specialties, as well as transferring in existing employees from other areas. This, and the question of how if at all client relationships

have been affected by the unlawful activity which led to the resignations, is relevant to the question of relief. I deal with it below in that context.

The proceedings

164. This claim was issued on 3 July 2025. There was a hearing before Andrew Kinnier KC (sitting as a Deputy Judge of the High Court) on 10 July 2025, at which the Court accepted undertakings in lieu of an injunction from some of the Defendants. At a return date on 23 July 2025, the Court (Steyn J) accepted undertakings from all of the Defendants to the end of trial. In summary, Mr Summers gave undertakings to the Court that he would not, until the earlier of 9 June 2026 (the expiry of his 12 month notice period with Guy Carpenter) or judgment in this claim, work for any Willis Re company, or induce or encourage any Guy Carpenter Global Specialties employee to leave or to become employed by Willis Re. Mr Fletcher gave undertakings in similar terms (with 9 June replaced by 10 June). The various corporate Defendants undertook until judgment not to make any employment offer to any Guy Carpenter Global Specialties employee or encourage any such employee to leave Guy Carpenter or to join Willis Re.

The trial and the witnesses

165. Thirteen witnesses gave evidence at trial – seven for Guy Carpenter and six for the Defendants. For Guy Carpenter, evidence was given by Mr Morgan, Mr Jay, Mr Moody, Mr Withers-Clarke, Mr Boyce, Mrs Fowler and Mr Edmund Lucas.

166. Whilst I do not take the view that any of those witnesses came to the court with an intention to mislead, it did appear to me that Mr Boyce and Mr Morgan, and to a lesser extent Mr Jay and Mr Moody, were at least to some extent keen to toe the party line for Guy Carpenter. They were sometimes slow to accept points against them, and had to retreat from some of the positions taken in their witness statements. The impression given by Mr Boyce was that he was trying to protect Guy Carpenter's business in giving his evidence, perhaps partly because he had felt himself slightly hamstrung and unable fully to do so during the early part of 2025 up to mid-June. It came across reasonably clearly in the evidence that the general position was that Mr Boyce could only go as far as Mr Klisura would let him, in terms of pay offers, although in the period from 7 June 2025 onwards Mr Boyce sought to push at that as far as he could.

167. Mr Morgan's witness statement had been conspicuously light on details of the Guy Carpenter recruitment exercise to replace those who had left for Willis Re. In respect of recruitment in Bermuda, his statement mentioned only an unnamed individual replacing Mr Dart, failing to mention that in fact three senior brokers and two more junior brokers had accepted offers from Guy Carpenter some weeks before he had signed his witness statement. Mr Jay's witness statement had also made similar omissions.

168. Mrs Fowler was clearly an honest witness, carefully not overstating the position, and accepted points against herself in cross-examination. Mr Lucas' evidence was short and largely related to the documents printed off by Ms McIntosh relating to the Lancashire account (which, as I have set out above, does not go anywhere). He was clearly being straight with the court, as was Mr Withers-Clarke.

169. For the Defendants, evidence was given by Ms Clarke, Mr Fletcher, Mr Summers, Mr Cannan, Mr Iain Pocock and Mr Adrian Fahy.

170. Guy Carpenter contended that each of Ms Clarke, Mr Fletcher and Mr Summers was "*evasive, refused or failed accurately to answer questions, and flatly refused to accept the logical consequences of questions being put to them.*" I reject that. Each of them gave their evidence carefully (which, given that serious allegations were levelled against each of them was not surprising) but fairly, seeking to assist the court in their answers. Each had made admissions on various points in their witness statements, and much forensic capital was sought to be made in cross-examination out of the admitted unlawful conduct, though that was of limited use given that it had already been admitted. Ms Clarke in particular was careful in giving some answers, which I can see might have been capable as coming across as, in part, slightly evasive. However, I do not think that was her intention. It seemed to me she was being careful to understand the question and to give an honest answer to the question that had been asked. Guy Carpenter's closing submissions referred to her "*pauses to frame her answers…*" but that itself did not seem to me to be a matter for fair criticism. Ms Clarke was reflective in her evidence, and admitted that part of her conduct had been dishonest.

171. Mr Fletcher gave his evidence in an honest and straightforward manner. He had been flattered to be approached by Ms Clarke, and in his meetings with her was trying to impress and "sell" himself. In doing so, he told her more than he should have done, including the details of the remuneration paid by Guy Carpenter to members of his team, but that was not because of an intention deliberately to breach his duty, but rather through a combination of getting carried away in his efforts to impress and naivety in not appreciating what he should avoid disclosing. He was content to accept and volunteer points against himself.

172. Mr Summers was also an honest witness, although at some points in his cross-examination he appeared to be slightly too focussed on trying to spot what he thought were the points coming down the line which made him appear a bit defensive in some of his answers. It clearly came across that he had wanted to look after the individuals in his METL team, and genuinely believed they were not being paid properly by Guy Carpenter. He accepted the facts against himself (such as the provision of certain information to Ms Clarke), though also did not appreciate the gravity of some of that conduct (in other words, that it amounted to a breach of duty to Guy Carpenter on his part) at the time.

173. Each of Mr Cannan, Mr Fahy and Mr Pocock gave honest evidence. The Claimants contended that Mr Cannan and Mr Fahy were at pains not to say anything to damage the Willis Re case, but I do not accept that. They were seeking to assist the court in their evidence.

Absent witnesses

174. Both sides sought to make a certain amount of capital in relation to witnesses that the other side did not call. I will deal with the question whether any inference should be drawn in relation to such absences when considering the factual allegations to which the absence relates. There was no issue as to the applicable legal approach, which was set out by Lord Leggatt in *Efobi v Royal Mail Group Ltd* [2021] 1 WLR 3863 at paragraph 41:

> "The question whether an adverse inference may be drawn from the absence of a witness is sometimes treated as a matter governed by legal criteria, for which the decision of the Court of Appeal in *Wisniewski v Central Manchester Health Authority* [1998] PIQR P324 is often cited as authority. Without intending to disparage the sensible statements made in that case, I think there is a risk of making overly legal and technical what really is or ought to be just a matter of ordinary rationality. So far as possible, tribunals should be free to draw, or to decline to draw, inferences from the facts of the case before them using their common sense without the need to consult law books when doing so. Whether any positive significance should be attached to the fact that a person has not given evidence depends entirely on the context and particular circumstances. Relevant considerations will naturally include such matters as whether the witness was available to give evidence, what relevant evidence it is reasonable to expect that the witness would have been able to give, what other relevant evidence there was bearing on the point(s) on which the witness could potentially have given relevant evidence, and the significance of those points in the context of the case as a whole. All these matters are inter-related and how these and any other relevant considerations should be assessed cannot be encapsulated in a set of legal rules."

The issues

175. In broad terms, the main issues at trial were as follows:

i) What duties were owed by Mr Summers and Mr Fletcher to Guy Carpenter?

ii) To what extent did Mr Summers and Mr Fletcher breach their duties to Guy Carpenter (some breaches of duty having been admitted)?

iii) To what extent did Ms Clarke (and, through her, Willis Re) induce Mr Summers' and/or Mr Fletcher's breaches of contract (inducement of some of the breaches having been admitted)?

iv) Did Ms Clarke (and, through her, Willis Re) dishonestly assist in Mr Summers' and/or Mr Fletcher's breaches of fiduciary duties?

v) To what extent was there a conspiracy to use unlawful means between Ms Clarke (and, through her, Willis Re), Mr Summers and Mr Fletcher (a limited conspiracy between Ms Clarke/Willis Re and Mr Fletcher having been admitted)?

vi) To what extent did the passing of information by Mr Summers and/or Mr Fletcher to Ms Clarke (and Ms Clarke/Willis Re's use of such information) constitute a breach of confidence (this being admitted in respect of the remuneration information provided by Mr Fletcher to Ms Clarke)?

vii) What would have happened absent those breaches of duty and other wrongful conduct?

viii) What, if any, injunctive relief should be granted?

ix) To what extent do Guy Carpenter have to prove any loss at this trial and have they done so?

The duties owed by Mr Summers and Mr Fletcher

176. There was little dispute about the duties owed by Mr Summers and Mr Fletcher in general terms, at least as insofar as material to the circumstances of this case.

177. Mr Summers was a statutory director of the First Claimant and was employed by the Second Claimant. Mr Fletcher was a statutory director of and employed by the Fourth Claimant. They were both senior employees.

178. Mr Summers admitted he owed duties under sections 172, 175 and 176 of the Companies Act 2006 to the First Claimant. He also admitted that his employment contract contained implied terms ("the implied terms") that he:

i) Would serve Guy Carpenter with good faith and fidelity; and

ii) Would not, without reasonable and proper cause, conduct himself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between himself and Guy Carpenter as his employer,

(although Mr Summers contended that the duty at (ii) did not add materially to his duty of good faith and fidelity).

179. Mr Fletcher admitted he owed duties to the Fourth Claimant under the (Bermuda) Companies Act 1981 that were materially similar to the obligations under sections 172 to 176 of the Companies Act 2006. He also admitted his employment agreement contained the implied terms and accepted he owed those duties to the Fourth Claimant.

180. Mr Summers and Mr Fletcher accepted that they owed those duties to the particular Claimant(s) I have identified above. That was their pleaded position, although no other argument was advanced by the Defendants at the trial based upon their contention that they did not owe duties to other of the Claimants; nor did Guy Carpenter advance any positive argument at the trial that Mr Summers' and/or Mr Fletcher's duties were owed to other of the Claimants. In other words, no party's arguments were said to turn on this. In fact, the parties' submissions at trial often just referred in this context in a non-discriminating way to "Guy Carpenter" (e.g. in the written closing submission of Mr Fletcher, it was said that "*Mr Fletcher owed Guy Carpenter an implied contractual duty of good faith and fidelity and (as a senior employee and statutory director) a duty of disclosure*"). I therefore refer below to the duties being owed to "Guy Carpenter" in a similar general way, without prejudice to each of the parties' cases on the particular entities to which duties were owed in the event that becomes material at any later stage.

181. It was accepted by both Mr Summers and Mr Fletcher that the statutory duties they owed included a fiduciary duty of single-minded loyalty. That duty included obligations to (i) act in good faith in what the director considers to be the best interests of the

company as a whole, and (ii) avoid actual or potential conflicts of interest between the director's duties to the company and his/her personal interests.

182. The first of those, which arises under section 172 of the Companies Act 2006, was addressed by Constable J in *Friend Media Technology Systems Limited v Friend* [2025] EWHC 2897 at paragraph 17, where he set out the following summary of the principles to be applied in respect of a director's duties pursuant to section 172:

> "On the basis of the various authorities relied upon by the parties, the following principles can be distilled as applicable to considering the question of compliance with the s.172 duty to promote the success of the company in good faith ('the Duty to Promote'):
>
> (1) The duty is to be assessed subjectively. The issue is as to the state of the director's mind. The question is whether the fiduciary honestly believed his actions to be in the best interests of the company, and not whether objectively it was so in the opinion of the Court: *Regentcrest plc v Cohen* [2001] BCC 494 at [120];
>
> (2) A director will not be in breach if he honestly held an unreasonable or even mistaken belief as to what was in the company's best interests: *Extrasure Travel Insurances Limited v Scattergood* [2003] 1 B.C.L.C. 598 at [88]-[89];
>
> (3) The fact that a director is duty-bound to promote the success of the company does not preclude them from simultaneously promoting their own interests, absent any conflict (see *Hirsche v Sims* [1894] A.C. 654 at 660-661) or the interests of another company (see *Charterbridge Corporation Ltd v Lloyds Bank Ltd* [1970] Ch. 62 at p74-75);
>
> (4) The duty may encompass a duty to disclose one's own breach of duty: *Item Software (UK) Ltd v Fassihi* [2004] EWCA Civ 1244, [2005] BCC 994 at [41]-[44]. The duty is to be seen through the lens of the overarching duty and would, also, be judged subjectively as described above;
>
> (5) Good faith reliance upon advice will be a relevant and important factor to be taken into account in considering compliance with the duty to promote the success of the company, even if that advice is wrong. See *Re Vining Sparks UK Ltd* [2019] EWHC 2885 (Ch) at [192 (d)] and [184]-[191]; *Wessely v White* [2019] B.C.C. 289 at [44]"

183. The caveat, however, to the reference to a subjective test being applied in respect of the section 172 duties is that the "good faith" aspect ("*A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole ...*") imports an objective consideration of honesty into the fiduciary's view of what is in the best interests of the company: see *Saxon Woods Investment Limited v Costa* [2025] EWCA Civ 708 at

paragraphs 103-112, 121-123. In *Saxon Woods* the Court of Appeal explained (at paragraph 106) that paragraph 120 of the *Regentcrest* case (relied on by Constable J in the extract above at (1)) "*was primarily designed to explain that in a commercial company it is the directors and not the court who decide what the best commercial approach for the company is. They have to take business decisions and the court will not find a breach of fiduciary duty … simply because the court (or anyone else) might have taken a different commercial view.*" However, the section 172 duty contains a requirement of good faith, the core meaning of which is that it requires honesty, and the test as to whether a person "*has acted honestly or dishonestly requires an objective assessment of the conduct of the relevant person, in the light of the facts as they knew or believed them to be when they embarked on their course of conduct*" (*Saxon Woods* paragraph 110, citing *Ivey v Genting Casinos (UK) Ltd (trading as Crockfords Club)* [2017] UKSC 67; [2018] AC 391). The Court of Appeal summarised the position thus at paragraph 122:

> "In our judgment, section 172 requires a director, in all he does, to act in good faith towards the company, in the way he considers would be most likely to promote the success of the company for the benefit of its members as a whole; and the requirement that the director acts in good faith includes, as a core fiduciary duty, a requirement that the director acts honestly towards the company."

184. In this case, one of the key complaints is that Mr Summers and Mr Fletcher failed to disclose their own wrongdoing to Guy Carpenter. In *Item Software (UK) Ltd v Fassihi* [2005] ICR 450 at paragraphs 41-44, Arden J (as she then was), recognised that a director's failure to disclose their own wrongdoing could amount to a breach of their overarching duty to act in good faith in the interests of the company. The nature of the duty was described as follows:

> "For my part, I do not consider that it is correct to infer from the cases to which I have referred that a fiduciary owes a separate and independent duty to disclose his own misconduct to his principal or more generally information of relevance and concern to it. So to hold would lead to a proliferation of duties and arguments about their breadth. I prefer to base my conclusion in this case on the fundamental duty to which a director is subject, that is the duty to act in what he in good faith considers to be the best interests of his company. This duty of loyalty is the "timehonoured" rule: per Goulding J in *Mutual Life Insurance Co of New York v Rank Organisation Ltd* [1985] BCLC 11 , 21. The duty is expressed in these very general terms, but that is one of its strengths: it focuses on principle."

185. However, it is to be noted that the obligation on the fiduciary to make disclosures is not necessarily limited to disclosures of wrongdoing. In *GHLM Trading v Maroo* [2012] EWHC 61 (Ch), [2012] 2 BCLC 369, Newey J at paragraph 195 observed:

> "it can be incumbent on a fiduciary to disclose matters other than wrongdoing. The "single and overriding touchstone" being the duty of a director to act in what he considers in good faith to be

> in the best interests of the company (to quote from Etherton J in *Shepherds Investments Ltd v Walters* [2006] EWHC 836 (Ch), [2007] 2 BCLC 202, at paragraph 132), there is no reason to restrict the disclosure that can be necessary to misconduct."

186. This is likely to require a director to report to his company a competitive threat to the company of which he becomes aware. Indeed, such a requirement may also be part of the duty of fidelity held by an employee who is not a fiduciary. Popplewell J in *Imam-Sadeque v Bluebay Asset Management LLP* [2013] IRLR 244 at paragraph 133 explained:

> "The duty of fidelity may also require an employee to report to his employer a competitive threat of which he becomes aware, irrespective of whether he or any fellow employees are involved in that competitive threat. So too may an express term to act in the best interests of the company (cf *Swain v West (Butchers) Ltd* [1936] 3 All ER 261). Whether it does so is again fact sensitive, and will depend upon the terms of his contract of employment, the nature of his role and responsibilities, the nature of the threat, and the circumstances in which he becomes aware of it. A senior manager who becomes aware of a competitive threat to an aspect of the business for which he is responsible will normally come under such a duty, whereas a junior employee without such responsibility would not. The manager of a branch of a supermarket in the high street would normally be obliged to tell his superiors if he learned that a rival supermarket chain was proposing to open a store next door; whereas a junior employee working in the unloading bay would not."

187. The position of a director who takes preparatory steps (before termination) to compete following termination of the fiduciary relationship has been the subject of a number of authorities, which were reviewed by Rix J in *Foster Bryant Surveying Limited v Bryant* [2007] IRLR 425, who explained the position as follows at paragraphs 76 and 77:

> "76. … As has been frequently stated, the problem is highly fact sensitive. ... There is no doubt that the twin principles, that a director must act towards his company with honesty, good faith, and loyalty and must avoid any conflict of interest, are firmly in place, and are exacting requirements, exactingly enforced. Whether, however, it remains true to say, as James L.J. did in *Parker v McKenna …* (cited in *Regal (Hastings) Ltd v Gulliver* ...) that the principles are (always) "inflexible" and must be applied "inexorably" may be in doubt, at any rate in this context. Such an inflexible rule, so inexorably applied might be thought to have to carry all before it, in every circumstance. Nevertheless, the jurisprudence has shown that, while the principles remain unamended, their application in different circumstances has required care and sensitivity both to the facts and to other principles, such as that of personal freedom to compete, where that does not intrude on the misuse of the company's property whether in the form of business

> opportunities or trade secrets. For reasons such as these, there has been some flexibility, both in the reach and extent of the duties imposed and in the findings of liability or non liability. The jurisprudence also demonstrates, to my mind, that in the present context of retiring directors, where the critical line between a defendant being or not being a director becomes hard to police, the courts have adopted pragmatic solutions based on a common-sense and merits-based approach.
>
> 77. In my judgment, that is a sound approach, and one which reflects the equitable principles at the root of these issues. Where directors are firmly in place and dealing with their company's property, it is understandable that the courts are reluctant to enquire into questions such as whether a conflict of interest has in fact caused loss. …Where, however, directors retire, the circumstances in which they do so are so various, as the cases considered above illustrate, that the courts have developed merits-based solutions. At one extreme (*In Plus Group Ltd v Pyke …*) the defendant is director in name only. At the other extreme, the director has planned his resignation having in mind the destruction of his company or at least the exploitation of its property in the form of business opportunities in which he is currently involved (*IDC v Cooley…*, *Canadian Aero…*, *CMS Dolphin Ltd v Simonet*, and *British Midland Tool …*). In the middle are more nuanced cases which go both ways: in *Shepherds Investments Ltd v Walters…* the combination of disloyalty, active promotion of the planned business, and exploitation of a business opportunity, all while the directors remained in office, brought liability; in *Island Export Finance Ltd v Umanna…*, *Balston Ltd v Headline Filters Ltd…* and *Framlington Groupd plc v Anderson …*, however, where the resignations were unaccompanied by disloyalty, there was no liability."
>
> [internal citation of case references omitted]

188. The question of fact-specific disloyalty is therefore likely to be of significant importance in delineating cases on the borders of the doctrine. See also in this respect *Shepherds Investments Ltd v Walters* [2007] 2 BCLC 202, Etherton J at paragraph 108 (cited by Rix LJ in *Foster Bryant* at paragraph 74) and *Recovery Partners GP Ltd v Rukhadze* [2019] Bus LR 1166, Cockerill J at paragraphs 82-83.

189. In the context of attempts to recruit senior personnel and the teams that sit below them, the following summary was provided by Jack J in *Tullett Prebon v BCG* (above) at paragraphs 67-69:

> "67. So to the duties of desk heads in a recruitment situation. I start with the obvious – that there is nothing wrong in a desk head responding to an approach to recruit himself. …

> 68. Where it is sought to recruit a desk as a whole, or the greater part of the desk, it is very likely that the desk head will be approached first with the object of sounding him out as to the desk. He is then in a difficult and sensitive situation. While the desk head may see his obligation to his desk as being to get the best for them, his duty in law as desk head is to act in the interest of his employer and not that of the desk. His employer's interest is to prevent the recruitment of the desk. He is obliged to inform his employer that the rival company is seeking to recruit the desk. He would be obliged to follow his employer's instructions to prevent that happening. …
>
> 69. In addition the desk head must not do anything to assist the recruitment of his desk. Information may or may not be categorised in law as confidential. But where he provides information which he knows is requested for the purpose of furthering the recruitment, this is a breach of his duty to his employer. Where a desk head decides that he is in favour of the recruitment of his desk and thereafter assists the recruitment in such small or large ways as may arise, he is in plain breach of his duty: he has crossed the line between observing his duty to his employer and acting in the interest of his employer's rival. I appreciate that what I have set out may not be how some of those in the inter-dealer business commonly conduct themselves, but the legal principle is straightforward."

190. One feature of the argument in this case was what Guy Carpenter characterised as Mr Summers' and Mr Fletcher's duty to take steps to thwart attempts by Willis Re to recruit Guy Carpenter's workforce. Reliance in this respect was placed on the following passage from *British Midland Tool Ltd v Midland International Tooling Ltd* [2003] 2 BCLC 523, Hart J at paragraph 90:

> "The situation was one, quite simply, where to the knowledge of three of the six members of the board of BMT, a determined attempt was being made by a potential competitor to poach the former company's workforce. The remaining three at best did nothing to discourage, and at worst actively promoted, the success of this process. In my judgment this was a plain breach of their duties as directors. Those duties required them to take active steps to thwart the process. Plainly their plan required the opposite. Active steps should have included alerting their fellow directors to what was going on. Their plan required, on the other hand, that their fellow directors be kept in the dark."

191. That passage, although referring generally to a requirement that the directors "*take active steps to thwart the process*", did not identify any such step beyond "*alerting their fellow directors to what was going on*." Jack J considered a similar point in *Tullett Prebon* in saying (in paragraph 68, quoted more fully above) that the senior employee "*is obliged to inform his employer that the rival company is seeking to recruit the desk. He would be obliged to follow his employer's instructions to prevent that happening.*" The principal "*active step*" in both cases identified was to inform fellow directors / the

employer of the situation and then (per Jack J) to follow the employer's instructions. There was no suggestion in the passages relied upon by Guy Carpenter that the senior employee or director should have taken it upon themselves to take some other active step to "thwart" before informing the company, though situations such as these are, of course, undoubtedly fact- and case-sensitive. Ultimately, in his oral closing submissions, when pressed on what any such "thwarting" might involve, Mr Oudkerk focussed on the need to inform the employer and then follow such instructions as might be given, bolstering that in his oral reply submission by reference to the passage from *Tullett Prebon* referred to above.

192. In the present case, on the facts of which they were aware, it was a requirement on Mr Summers and Mr Fletcher to inform Guy Carpenter that others in their teams were the subject of recruitment efforts by Willis Re (insofar as they were aware of them), and then if Guy Carpenter had instructed them to take particular steps to seek to "thwart" those attempts (such as offering enhanced packages to their teams) they may (depending on what those steps were) have been required to follow them (although it seems unlikely, on the facts here, that Guy Carpenter would have put retention efforts in the hands of Mr Summers and Mr Fletcher when they too were considering leaving in the same recruitment exercise).

Breaches of duty

The admissions

193. Mr Summers made the following admissions of breach of his contractual and fiduciary duties:[12]

i) During his second meeting with Ms Clarke, on 31 March 2025, in response to Ms Clarke expressing an interest in recruiting Ms McIntosh, Mr Summers stated that Ms McIntosh was seeking to start a family and so if Ms Clarke was interested in recruiting Ms McIntosh, she would need to be provided with maternity benefits from the start of her employment.

ii) In or around April 2025, Mr Summers told Ms McIntosh that it was likely that she would be contacted by Ms Clarke.

iii) On 27 May 2025, during the course of his third meeting with Ms Clarke, in response to a request from Ms Clarke, Mr Summers provided her with Mr Devlin's mobile telephone number.

iv) He failed to disclose certain matters to Guy Carpenter, including the above admitted breaches of duty, plus his awareness that five other Guy Carpenter brokers had been approached by (or received offers from) Willis Re:

a) On or in the week commencing 12 May 2025, Mr Summers was told by Mr Fletcher that he had been approached /contacted by Ms Clarke.

[12] No party at trial sought to distinguish between breaches of contractual and breaches of fiduciary duty, but rather the various breaches alleged (and admitted) were treated as both.

b) During the first week of June 2025, Mr Liley informed Mr Summers that he had been contacted / approached by Ms Clarke (via LinkedIn) and Mr Summers had suggested that he call her.

c) On 2 June, Ms McIntosh informed Mr Summers that she had been approached by Ms Clarke.

d) On 6 June, Ms McIntosh informed Mr Summers that: (i) she had received an offer from Willis Re, aspects of which she was not happy with, and (ii) that once those issues were agreed, she intended to resign from Guy Carpenter.

e) During a telephone conversation, which took place over the weekend of 7-8 June 2025, Mr Hitchings informed Mr Summers that he intended to resign from Guy Carpenter on Monday 9 June.

f) Following his own resignation, on 9 June 2025, Mr Summers was informed by Mr Whyte that he had been approached by Ms Clarke on LinkedIn.

194. Beyond that, Mr Summers denied that he had acted in breach of duty to Guy Carpenter, or that he had entered into any conspiracy with Ms Clarke /Willis Re. He contended that he did not encourage Ms Clarke to approach any particular employee, disclose Guy Carpenter's confidential information, encourage anyone to resign or choreograph any resignations.

195. Mr Fletcher also admitted that certain aspects of his conduct constituted a breach of his fiduciary and contractual duties:

i) He gave remuneration information about certain Guy Carpenter employees to Ms Clarke on 21 April 2025. (He also admitted this breached his duty of confidence to Guy Carpenter).

ii) He provided the names of certain Guy Carpenter Bermuda employees to Ms Clarke and mentioned the attributes/skills of certain Guy Carpenter employees to Ms Clarke.

iii) He provided contact details of certain of the Bermuda employees to Ms Clarke.

iv) He did not disclose information relating to the matters above to Guy Carpenter.

196. In addition, Mr Fletcher admitted that there was a tacit understanding between himself and Ms Clarke that the information he provided (as set out above) may be used by Ms Clarke for recruitment purposes, such that he admitted there was a common design to that effect between himself and Ms Clarke (and therefore Willis Re) and that this involved unlawful means (being the breaches of duty he had admitted).

197. Willis Re and Ms Clarke also admitted the same common design as was admitted by Mr Fletcher, and admitted that the remuneration information Ms Clarke was given by Mr Fletcher was information in respect of which they owed an equitable duty of confidence. They also admitted that Ms Clarke induced the breaches of duty of Mr Summers and Mr Fletcher set out above. They denied, however, that they had

dishonestly assisted in any of the breaches of fiduciary duty, or that there was any wider conspiracy than had been admitted.

198. The Guy Carpenter case was that the breaches of duty and the conspiracy went further than was admitted. Among other points, Guy Carpenter contended that Mr Summers was encouraging and recruiting his team to resign in favour of Willis Re (and, as they put it in their closing submissions, he was "*walking his METL employees out of the door in the lead up to the resignations*"), that he identified to Ms Clarke the members of his team that he rated highly, that he discussed Ms Clarke's approach with Mr Devlin, Ms McIntosh and the resigning employees more generally, that he co-ordinated the "*simultaneous resignations*" on 9 June and the days following, that he failed to attempt to dissuade any of them from resigning and that he failed to disclose the threat to Guy Carpenter so that Guy Carpenter could take preventative action. It was alleged he had failed to disclose all those breaches of duty, plus that he had failed to disclose that Willis Re/Ms Clarke was seeking to recruit Guy Carpenter employees and/or was a "*nascent commercial threat to GC*", that Willis Re was seeking to recruit a team, and that recruitment efforts would begin in earnest in June 2025.

199. In addition to the matters that Mr Fletcher admitted, Guy Carpenter alleged that he had informed his team that they would be approached by Ms Clarke, co-ordinated the "*simultaneous resignation*" on 10 June and the days following, failed to attempt to dissuade any of the resigning employees to resign from Guy Carpenter, encouraged various of the resigning employees to resign and join Willis Re, and failed to disclose the threat to Guy Carpenter such that Guy Carpenter could take preventative actions. It was alleged he had failed to disclose those breaches of duty, plus that he had failed to disclose that Willis Re/Ms Clarke was seeking to recruit Guy Carpenter employees and/or was a "*nascent commercial threat to GC*", that Willis Re was seeking to recruit a team, and that recruitment efforts would begin in earnest in June 2025.

200. Guy Carpenter alleged Willis Re (through Ms Clarke) induced and dishonestly assisted the breaches of duty by Mr Summers and Mr Fletcher. It was also alleged that the conspiracy went much wider than was admitted, being an alleged conspiracy to use unlawful means (being the breaches of duty admitted and alleged) (a) to launch and/or develop a reinsurance business for Willis Re, (b) to recruit a substantial number of Guy Carpenter employees, and (c) therefore to divert client business and/or business opportunities from Guy Carpenter to Willis Re. It also alleged that the breaches of confidence went wider than admitted (largely because of the differences between the parties as to what constituted confidential information).

201. The first matter to deal with is the extent to which Mr Summers' and Mr Fletcher's conduct was in breach of their duties beyond each of their admissions. I will deal first with Mr Summers.

Mr Summers' breaches of duty

202. I have already set out above the breaches that Mr Summers admitted. I will not set those out again.

203. Guy Carpenter also alleged that Mr Summers, in breach of duty, identified the members of his team that he rated highly to Ms Clarke, including for the purposes of her seeking to recruit them. It is undoubtedly the case that Ms McIntosh was mentioned, because

Mr Summers explained to Ms Clarke that Ms McIntosh would need to be provided with maternity benefits, and he also certainly discussed Mr Devlin (who he described as his "number two"), and subsequently gave Mr Devlin's phone number to Ms Clarke. During a conversation in May, Ms Clarke was left with the clear impression that it was important to Mr Summers that he continued to work with both Mr Devlin and Ms McIntosh. Even if their early conversations were more about Mr Summers and his abilities as team leader, and even if there was no occasion on which Mr Summers expressly said "*I would like you to employ (or try to recruit) Ms McIntosh and Mr Devlin*" (which I think is unlikely), the understanding between Mr Summers and Ms Clarke in these discussions – in particular when taken as a whole – was that he valued these individuals in particular, and would want them to move with him. There was, at least implicitly, some clear guidance from Mr Summers to Ms Clarke towards seeking to recruit these two individuals. That was in breach of his duties to Guy Carpenter.

204. Beyond Ms McIntosh and Mr Devlin, during the course of his discussions with Ms Clarke, Mr Summers also mentioned a number of other Guy Carpenter employees. I do not find that he consciously or deliberately gave to Ms Clarke a list of employees that he wanted her to recruit, or otherwise suggest that she recruit the individuals he referred to. They discussed people at their meetings in a number of contexts and for different reasons. Some, particularly at their first meeting, they discussed as they were mutual acquaintances e.g. Mr Jay, Ms Fawcett and Mr Vaughan (all of whom were former JLT employees who had moved to Guy Carpenter, as Ms Clarke had moved to Marsh). Others were discussed as Mr Summers sought to "sell" himself as a manager who had assisted others develop their careers, e.g. Mr Hitchings, Mr Wainwright-Brown and Mr Pepper (and, likely, others). Others that Ms Clarke recalled had been mentioned included Mr Bryan (who Mr Summers explained he had persuaded to stay at Guy Carpenter, Mr Bryan having recently entertained offers of employment elsewhere), Mr Whyte, Ms Danes, Mr Beer, Mr Stocker and Mr Hakes. Mr Summers also, in explaining that the METL structure included Technical Lines, mentioned Mr Liley and Mr Mirfenderesky.

205. Although, as I have said, I do not think Mr Summers was giving these names or discussing these individuals with the deliberate purpose of Ms Clarke adding them to a list for Willis Re recruitment, he must have known – given the context of his meeting with her (his proposed recruitment) and the fact that, as a start-up, Willis Re would need teams of people, not simply one or two individuals – that Ms Clarke would be interested in what he was saying for such a purpose. It would have been naïve of Mr Summers to think that Ms Clarke would not pay attention to whatever he said about the merits of others at Guy Carpenter (and he was not naïve), and he must have appreciated that, in discussing the attributes of his team (even if, in some cases, for the purpose of promoting his own abilities) he was providing valuable information to Ms Clarke for the purpose of her recruitment exercise. Willis Re admitted that the provision of this sort of information about other Guy Carpenter employees was a breach of Mr Summers' duty (which was induced by Ms Clarke), though Mr Summers himself did not. Based on the above, I find that it was.

206. I have referred above to Mr Summers' explaining that Technical Lines was part of METL and, in that context, mentioning Mr Liley and Mr Mirfenderesky (neither of whom ended up joining Willis Re). Guy Carpenter contended, and I accept as I have set out, that reference to such individuals in the context of the discussions Mr Summers

was having with Ms Clarke was a breach of Mr Summers' duty. It was not clear whether Guy Carpenter was also seeking to contend that Mr Summers' explanation to Ms Clarke that Technical Lines was part of METL was itself a breach of his duties – that was not a pleaded complaint although it was hinted at in cross-examination. In any event, that explanation, which was merely Mr Summers explaining to Ms Clarke what was the scope of his current role as part of his seeking to persuade her to give him a role of equivalent scope at Willis Re, was not a breach of any of his duties to Guy Carpenter. It was part of Mr Summers' negotiation for his own role, which at no stage did Guy Carpenter suggest he was not able to do (including, for example, disclosing his own current salary and other parts of his remuneration package to Ms Clarke). The information that Technical Lines was part of the METL team was not confidential (as I address further below) and it was not provided by him or requested by Ms Clarke to further the recruitment of others, but rather for the purposes of Mr Summers' own recruitment.

207. It is also necessary to consider Mr Summers' interactions with the other Guy Carpenter employees, in relation to potential recruitment by Willis Re, starting with Ms McIntosh. As I have already recorded, Mr Summers admitted that in or around April 2025, he told Ms McIntosh that it was likely that she would be contacted by Ms Clarke. Mr Summers also admitted that, on 2 June 2025, Ms McIntosh informed Mr Summers that she had been approached by Ms Clarke, and that on 6 June, Ms McIntosh informed Mr Summers that: (i) she had received an offer from Willis Re, aspects of which she was not happy with, and (ii) that once those issues were agreed, she intended to resign from Guy Carpenter.

208. Guy Carpenter sought to suggest that it went further than this, and that Mr Summers was negotiating with Ms Clarke directly on behalf of Ms McIntosh. This suggestion was based on what was said about the timing of phone calls between Ms Clarke and Mr Summers relative to employment offers and revisions to the same being sent by Ms Clarke to Ms McIntosh. That was, however, no more than speculative. Mr Summers and Ms Clarke spoke by telephone at least once a day on each of 5, 6, 7, and 8 June. Given that these were the 4 days leading up to Mr Summers' own resignation, including the period when Mr Summers was speaking to Mr Boyce and Mr Klisura about his resignation, that is hardly surprising. The fact that Ms McIntosh was getting revised offers from Willis Re over the period is also not surprising. For example, following the draft revised contract she received on 6 June from Mr André Clark of Willis Re, she emailed him back asking some questions and asking for her name to be corrected (to use a capital "I"), the email back from Mr Clark on 8 June starting "*Revision attached, addressing the upper case*" and answering her questions about pensions and benefits. There is nothing to suggest that Mr Summers was in some way behind that exchange.

209. Guy Carpenter relied upon Mr Summers' communications with Ms McIntosh (and their allegations that he negotiated on her behalf) as supporting their contention that Mr Summers was "*walking his METL employees out of the door in the lead up to the resignations.*" I reject that. Mr Summers' communications with Ms McIntosh went no further than I have explained above. He had, at least implicitly, suggested to Ms Clarke she ought to seek to recruit Ms McIntosh, and he had told Ms McIntosh that Ms Clarke would be in touch; Ms McIntosh told him when Ms Clarke did get in touch, and when she was made an offer. However, he did not seek to persuade Ms McIntosh to leave Guy Carpenter, and he did not negotiate on her behalf with Ms Clarke.

210. For completeness in relation to Ms McIntosh, as I have mentioned, reliance was placed by Guy Carpenter on the fact that she emailed certain (of her own) information to her personal email address on 30 May, 2 June and 4 June 2025, suggesting that she knew she was going to leave. However, as I have already said, I do not see how any safe inference can be drawn from the emails on 30 May and 2 June, given the lack of information about Ms McIntosh's general practice of record-keeping in relation to personal information such as this, as well as there being no account as to whether (based on an investigation of her email) this was something she regularly did or had never done before. Whilst the 4 June 2025 email may, as I have noted above, suggest she had by that date formed the view she was likely to leave Guy Carpenter, that is against the background that she had met Ms Clarke on 2 June and no doubt formed a view about the likelihood of moving to Willis Re. None of this assists in the suggestion that Mr Summers and Ms McIntosh had discussed Ms Clarke's approaches in detail or that Mr Summers encouraged Ms McIntosh to move to Willis Re, as Guy Carpenter alleged.

211. In relation to Mr Devlin, Mr Summers admitted that he discussed his (Mr Summers') potential leaving with Mr Devlin on 6 June 2025 (in the context of explaining why he would not be travelling to New York that weekend), and that Mr Devlin told him, on 7 June 2025, that he was intending to resign. I reject the contention made by Guy Carpenter that Mr Summers had been discussing his potential departure with Mr Devlin from a much earlier stage. The suggestion in Guy Carpenter's written closing submissions that Mr Summers had admitted that he told Mr Devlin in February about the Willis Re approach was based on a misreading of an answer Mr Summers gave in cross-examination.[13] Guy Carpenter also suggested that Mr Summers and Mr Devlin spoke about Willis Re earlier based on the number of calls it appeared there had been between them on their respective personal phone lines in the period after 18 February 2025 (compared to before that date). This again, however, was no more than speculation. Mr Summers and Mr Devlin were great and close friends, and had been for many years. They had interests together outside work, including co-owning two horses. The fact and number of communications by phone, including on personal phone numbers, does not assist in a suggestion that they must have been discussing Willis Re, even if the number of calls between them on personal numbers happened to differ over different periods of time. Mr Summers said that he did not speak to Mr Devlin about leaving for Willis Re until 6 June, and when asked questions about Mr Devlin, Mr Summers said: "*I wasn't involved in the recruitment of Mr Devlin, outside of the fact I gave a telephone number to Ms Clarke.*" I accept his evidence about that.

212. Guy Carpenter also suggested, in its written closing submissions, that "*Mr Summers' efforts did not stop with his two right hand people*" but extended to others, and gave as an example Mr Hitchings. The suggestion was that, based on the facts Mr Hitchings was sent offers between 5 and 7 June by Willis Re, on 8 June committed to joining Willis Re, and spoke to Mr Summers by phone a number of times on both 7 and 8 June, the two of them must have been discussing the Willis Re approach and coordinating their resignations on 9 June. This, however, took things no further than Mr Summers' admission in his witness statement that, in a telephone conversation over the 7-8 June weekend, Mr Hitchings had informed Mr Summers that he intended to resign from Guy

[13] "Q. The reality is that you would have discussed with him the fact that Lucy Clarke had approached you in February? A. Yes, I did." The reference to "in February" was to the date of the approach from Lucy Clarke, not to the "discussed with him". Consistently with that, in re-examination Mr Summers said he told Mr Devlin "much later" than February.

Carpenter on Monday 9 June. It would be entire speculation to go further than that in relation to what was discussed on those calls. Moreover, no suggestion was made to Mr Summers when he was cross-examined that they had discussed anything more than that.[14] In fact, those calls with Mr Hitchings were not mentioned at all to Mr Summers when he gave evidence.

213. Guy Carpenter also sought to make a similar, general, point in respect of every resigning employee, in a footnote in their closing submissions to the point made in respect of Mr Hitchings it was said:

> "Although Mr Summers was not cross-examined on all of the telephone records for each and every resigning employee, similar points apply, and cloth was cut in cross-examination for expedience. Nonetheless, the position is clear on the documents."

214. This was a hopeless attempt to advance the point. First, as mentioned above, the fact that there might have been phone calls taking place does not itself demonstrate what was being discussed, particularly in view of the lack of any other evidence relating to any discussion between Mr Summers and the other employees relating to Willis Re. Second, this was an incredibly vague submission to make in the context of an allegation of breach of fiduciary duty consisting of alleged efforts on Mr Summers' part to "*walk his METL employees out of the door.*" (It was not clear, in any event, that Guy Carpenter meant to include "every resigning employee" in this submission, given there was never otherwise any case that Mr Summers had sought to persuade individuals outside the METL team.) Third, how the calls with others were said to line up with offers made and accepted (even if that was a suitable basis for drawing an inference) was never explained. Fourth, as with the allegation regarding Mr Hitchings, no such allegation in relation to any of the other resigning employees was put to Mr Summers in cross-examination.[15] The excuse in the footnote quoted above – that "*cloth was cut in cross-examination for expedience*" – is not a good reason in the circumstances here. Guy Carpenter had more time available than it took up for its cross-examination. The trial timetable allowed Guy Carpenter to continue its cross-examination of the Defendants' witnesses until 1pm on Monday 8 December 2025, had it needed to do so. In fact, their cross-examination of all the Defendants' witnesses was completed before 3pm on Thursday 4 December – foregoing the opportunity to use not only the rest of that day, but also the whole of Friday 5 December and the following Monday morning. The three witnesses who followed Mr Summers were always going to be less critical, and only took about half a day between them to give their evidence. There was, therefore, plenty of time for Guy Carpenter to put a case to Mr Summers about his telephone calls with other employees over the course of the weekend of 7-8 June (or at other times) had they wanted to do so. There was no need to "*cut cloth*" in this respect.

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[14] And Mr Summers' evidence in his statement that this was the only discussion he had had with Mr Hitchings about his resigning, and that he did not encourage him to resign (and indeed that he had no knowledge prior to that conversation that Mr Hitchings had even had any contact with Willis Re), was not challenged in cross-examination.

[15] It was put to Mr Summers that he had spoken to Mr Hakes about Ms Clarke's approach, to which Mr Summers responded that he did speak to Mr Hakes after he (Mr Summers) had resigned. Mr Hakes was approached by Ms Clarke, but did not resign, and is now the Head of METL.

215. Guy Carpenter also suggested that, taking a step back, there were a number of factors which pointed to the conclusion that Mr Summers was encouraging and recruiting his team to resign in favour of Willis Re. These were all matters related to i) how stable the METL team was at Guy Carpenter, how long the resigning employees had been there and held senior and secure jobs, and how difficult it was to leave (Mr Summers himself having said that the decision to move to Willis Re was a difficult one), ii) that Willis Re was an untested start up, carrying significant risk, and the resigning employees were given little information about their future role, reporting line and senior management, and iii) that 8 METL employees (many of whom had worked together for many years) resigned on the same day (9 June 2025), such that it was unrealistic to suggest that Mr Summers did not know there were going to be "mass resignations".

216. This was, therefore, an allegation that an inference should be drawn that Mr Summers encouraged and recruited his team to resign based upon the suggestion that it could not plausibly have happened any other way. The first issue with this, though, is that the allegation that Mr Summers was encouraging his team to resign, was never put to Mr Summers. When this was raised in closing submissions, Guy Carpenter produced a list of references to the transcript which they said showed that Mr Summers was cross-examined on this, because the references showed (said Guy Carpenter) that "*Mr Summers was questioned extensively about providing Mr Devlin's number to Ms Clarke, discussing colleagues with her, and not persuading Mr Devlin to stay. Mr Stocker and Mr Pepper were also discussed during this cross-examination*"[16] and "*Mr Summers was similarly questioned about giving details of Ms McIntosh's benefits to Ms Clarke.*" None of those matters includes or included putting the case that Mr Summers encouraged his team to resign, or even any individual members of his team to resign. The closest it gets is "*not persuading Mr Devlin to stay*", which is obviously not the same allegation.

217. The point was not, therefore, put to Mr Summers. He had clearly said in his witness statement that:

> "I did not discuss any "team move" with the Resigning Employees. Any conversations I had with colleagues were limited, vague and not intended to encourage them to move."

In his second statement he explained what he had said to colleagues:

> "From the point at which I first met with Lucy and discussed a potential role at Willis Re, I gave the same response to anyone who asked me about it; namely that I had received a compelling offer that I was considering. I said this to Nicola [McIntosh], I said this to Boyce, I said this to Fletch, and it appears … that I must have told Lauren [Best] by 27 March 2025 too."

If Guy Carpenter had wanted to run a case that Mr Summers encouraged his METL team to move to Willis Re, that needed to be put to him and those parts of his statements challenged. In fact, nothing was put to him about conversations he had with members

[16] The allegations put in relation to Mr Pepper and Mr Stocker were that Mr Summers told Ms Clarke about them, not that he sought to persuade them to leave.

of his METL team who resigned, save for the discussions he admitted had taken place with Ms McIntosh and Mr Devlin, and they did not amount to encouragement to leave.

218. Second, and in any event, the matters relied upon by Guy Carpenter do not give rise to the inference that Mr Summers encouraged and recruited his team to leave. Among other points:

i) It ignores the huge financial benefits that were being offered to the resigning employees to join Willis Re. The packages were an upgrade from what they were getting at Guy Carpenter, where there had been substantial dissatisfaction with remuneration. This provided a serious incentive for these employees to leave Guy Carpenter for Willis Re.

ii) There was the pull of being in at the start of an exciting new reinsurance broker start up, backed by very substantial capital from Bain. Bonuses were guaranteed. It was not as risky as Guy Carpenter suggested.

iii) Ms Clarke herself wasclearly part of the draw. She was an extremely well known and prominent person in the industry, and to have been approached personally by Ms Clarke to join the new operation was itself a pull and would have encouraged the resigners. She was also clearly persuasive.[17]

iv) There may be a suspicion raised when 8 members of one department resign on the same day that it has all been co-ordinated. However, that ignores the point that Mr Boyce convened a meeting of the entire METL team on the morning of 9 June at 10am to inform them of Mr Summers' decision. All apart from Mr Devlin resigned after that meeting. It is hardly surprising that the meeting precipitated resignations of other brokers who had been approached by Ms Clarke who had not yet decided or announced their decision. In any event, even if that was not itself the trigger, it would not mean that Mr Summers must have been responsible for coordinating resignations that day. Ms Clarke had been heavily involved in meeting many of the METL employees the previous week, and getting employment offers sent out, particularly around 5-6 June, and then dealing with any comments, revisions, etc. Many of the negotiations were advanced over the weekend, such that the next working day for handing in resignation would have been the Monday. Although Ms Clarke did not specify resignation dates or encourage any particular timetable, it was in her and Willis Re's general interest to get things in place as soon as possible once Mr Summers had decided to resign, such that comments and revised offers were turned round reasonably speedily for most people. Taking all these matters into account, the fact of the resignations on the same day does not itself demonstrate, or provide cogent evidence, for Mr Summers having co-ordinated matters, or having encouraged members of his team to resign.

v) Moreover, and strikingly, none of the Guy Carpenter employees in the METL team who were approached by Ms Clarke but decided not to resign were called by Guy Carpenter to give evidence. If Mr Summers had sought to persuade any

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[17] Memorably, in a text message from January 2025 referring to someone leaving Marsh on the insurance side to join Willis, Mr Moody described to Mr Klisura that Ms Clarke "*had the magic cobra on a number of these guys.*"

> of them to leave, one would expect that to have figured in the evidence, either by way of witness evidence from one or more of those individuals and/or in the evidence of another Guy Carpenter witness (such as Mr Boyce, who had discussions with employees seeking to retain them) and/or in an internal Guy Carpenter document recording it in some way. Moreover, it is not just the "remainers" who are available to Guy Carpenter, but also one of the "leavers" – Mr Beer, who has returned to work for Guy Carpenter. If Mr Summers had been instrumental in his departure from Guy Carpenter and his initial decision to join Willis Re, Mr Beer surely would have been called as a witness to say so.

219. Therefore, even if it was open to Guy Carpenter to run this case without having put it to Mr Summers, they do not succeed in establishing that Mr Summers encouraged and recruited his team to resign.

220. It was also alleged that Mr Summers failed to dissuade any of the resigning employees from resigning. It is right to say that he did not try to dissuade any of them, although he did not have an overview of all of the people that Ms Clarke had approached or who was considering resigning. He certainly knew that Ms McIntosh was considering an offer, and Mr Devlin told him he was going to resign on 6 June, and Mr Summers did not seek to persuade either not to resign (indeed, when this was put to him in relation to Mr Devlin, Mr Summers agreed he did not seek to persuade him not to resign, saying "*Devlin was more resolute in leaving than I was.*").

221. However, there was little analysis of the question whether a senior employee considering his own resignation has an obligation to try to persuade a junior colleague, who he learns is also considering resignation with a view to joining the same competitor, to stay and, as I have noted above, Guy Carpenter's focus in referring to what Mr Summers should have done in seeking to "thwart" the recruitment exercise was ultimately on his informing Guy Carpenter (along with following any instructions he was then given). It was admitted here that Mr Summers did not inform Guy Carpenter of the specific approaches to some of the individuals of which he was aware. In practice, if Mr Summers had informed Guy Carpenter of the fact that an offer had been made to, for example, Ms McIntosh, given Mr Summers' own position (including that he had been seriously considering the Willis Re approaches since March, as Guy Carpenter knew) it is highly unlikely that Guy Carpenter would have charged Mr Summers with the task of seeking to persuade Ms McIntosh to stay with Guy Carpenter. Indeed, as Mr Boyce started to become aware of the offers being made by Ms Clarke from 4 June onwards, he did not ask Mr Summers (or indeed Mr Fletcher) to assist him to fight to retain Guy Carpenter employees, but sought to retain them by his own efforts (and those of Mr Morgan). Similarly, when Mr Summers told Mr Boyce on 8 June that Mr Devlin was going to resign (which Mr Devlin had told Mr Summers the previous day), Mr Boyce did not suggest that Mr Summers ought to seek to dissuade Mr Devlin from that course.

222. In any event, even if Guy Carpenter were correct to suggest that Mr Summers should himself have sought to dissuade from leaving those Guy Carpenter employees that he knew were being courted by Ms Clarke, it is difficult to see how that would have made any difference at all, in particular in relation to Mr Devlin and Ms McIntosh. Mr Devlin was bound to leave, especially if Mr Summers was leaving, even if Mr Summers had sought to persuade him to stay – in fact, contemplating the hypothetical conversation between the two of them illustrates the oddity of the submission about Mr Summers

having some duty to seek to dissuade Mr Devlin from leaving. Mr Summers would not have been able to say "I am not leaving", because that would not have been true; if he had said "I am leaving, but you should stay", it would have carried no credibility or persuasive power; and if he had said "I am not telling you whether I am leaving or not, but you should stay" that would have been no better because it would have tacitly communicated he was leaving (otherwise, why would he not say he was staying, which would be the most powerful persuasive factor for Mr Devlin to stay if it was true). The same applies in relation to Ms McIntosh, who would have followed Mr Summers. (And, if there had been any others who Mr Summers knew had been contacted by Ms Clarke, similar points would have arisen).

223. Lastly, in relation to Mr Summers' failure to disclose matters to Guy Carpenter, he admitted that he did not disclose to Guy Carpenter those breaches of duty to which he had admitted, and he admitted he did not disclose to Guy Carpenter the Willis Re approaches to certain individuals (including Ms McIntosh). He also did not disclose to Guy Carpenter the additional breaches of duty I have found above. However, Guy Carpenter went further, saying that Mr Summers failed to disclose to Guy Carpenter the fact that Willis Re / Ms Clarke was seeking to recruit Guy Carpenter employees and/or was a "nascent commercial threat" to Guy Carpenter, was seeking to recruit a team, and that recruitment efforts would commence in earnest in June 2025. However, Mr Summers did raise the Willis Re threat several times, for example:

i) Before he had even been approached by Ms Clarke he raised it at Board meetings on 16 December 2024 and 5 March 2025.

ii) The Willis Re threat to Global Specialties was the subject of a specific discussion at the Global Specialties leadership team two-day meeting in March 2025.

iii) Mr Summers told Mr Boyce on 31 March that he had been approached by Willis Re (as well, possibly, as telling Ms Best). They both understood that Mr Summers had not dismissed this approach. Mr Boyce's account was that Mr Summers told him: "*…and I want you to know I'm going to listen to them [Willis Re]*". Mr Boyce escalated it to Mr Klisura. Both Mr Boyce and Ms Best told Mrs Fowler, who confirmed in her evidence that they were all concerned, and the concern was not just a fear of losing Mr Summers but that it "*might have a bit of an avalanche effect, because other people who were loyal to him might also leave.*" This was obvious given (i) the well-known fact that Mr Summers' team was close to him, and (ii) that Willis Re was a start-up which would inevitably be looking for more than one person to recruit.

iv) Mr Summers again discussed the Willis Re threat with Ms Best on 28 April 2025. After recording that competitors were paying 20% more in salaries than Guy Carpenter, he informed her in respect of Willis Re that "*GMETL setting up first*" and that "*Expectation is that 20% will resign*". He named individuals at risk – Ms McIntosh, Mr Beer and Mr Pepper. He was asking what amount he could "reinvest" in salaries to retain people. I have found, above, that Ms Best is likely to have told Mr Boyce. Mrs Fowler confirmed that Ms Best informed her, including that Mr Summers was "*deeply concerned that many of his brokers would leave or resign or move to Willis Re.*" (And Mrs Fowler told Ms Magnussen, who likely told Mr Klisura).

224. It is against that background that Guy Carpenter's contentions that Mr Summers failed to disclose to it the "nascent threat" posed by Willis Re are to be assessed. It is clear that Guy Carpenter was well aware of the nascent threat posed by Willis Re, as Mr Summers knew, and sought to reinforce on the above occasions. He told Guy Carpenter he had been approached and had not dismissed that approach. Guy Carpenter knew, as was obvious, that Willis Re would be wanting to recruit more than one individual, and that a senior individual such as Mr Summers leaving may precipitate others to go, as Mrs Fowler's agreement to the point about a possible "*avalanche effect*" makes clear. Mr Summers told Guy Carpenter that Willis Re was setting up GMETL first, and that he expected 20% to resign, naming particular individuals he considered particularly at risk.

225. It was alleged that he failed to tell Guy Carpenter that "*recruitment efforts would commence in earnest in June 2025*", but that is not something that he knew. He had been told by Ms Clarke (at their first dinner) that Willis Re would "*formally launch in June 2025 with a full leadership team in place*" (i.e. Chair, CEO, Head of Property, Head of Casualty, Head of International) and that she wanted to announce a leadership team that would make the market take notice. But that was not a statement about recruiting more junior members of teams. What Ms Clarke told Mr Summers was her plan was not that "*recruitment efforts would commence in earnest in June 2025.*"

226. In other words, of the matters that Guy Carpenter said Mr Summers ought to have disclosed (apart from his own breaches of duty and the matters he has admitted), Mr Summers either did tell Guy Carpenter the matter, and/or it was a matter that he knew Guy Carpenter already knew/appreciated such that it was entirely fair for him to think he did not need to tell Guy Carpenter, and/or it was not something he knew. There was, in short, no additional more general breach of his duty of disclosure as alleged by Guy Carpenter.

227. Mr Summers' breaches of duty, therefore, did not go so far as were alleged by Guy Carpenter, though went slightly further than he had admitted. In summary, in breach of his duties to Guy Carpenter:

    i) In relation to Ms McIntosh, Mr Summers identified to Ms Clarke terms of employment that would be important to Ms McIntosh, let Ms Clarke know that he would want to continue to work with Ms McIntosh, and told Ms McIntosh she would be approached. Mr Summers knew Ms Clarke was going to approach Ms McIntosh, and later (on 2 June) he knew that Ms McIntosh had been approached by Willis Re and then (on 6 June) that she was intending to leave Guy Carpenter. Mr Summers did not inform Guy Carpenter of any of these matters.

    ii) In relation to Mr Devlin, Mr Summers gave his telephone number to Ms Clarke, and let Ms Clarke know that he would want to continue to work with Mr Devlin. He knew Ms Clarke was going to approach Mr Devlin. Mr Summers did not disclose any of that to Guy Carpenter at the time. (For completeness, Mr Devlin told Mr Summers on 7 June that it was his intention to resign and take up employment with Willis Re, and Mr Summers passed that information on to Mr Boyce on 8 June).

iii) Mr Summers also provided identities and information about other members of his team at Guy Carpenter that he knew would be useful to Ms Clarke in her recruitment exercise.

iv) Mr Summers knew (from around 12 May 2025) that Mr Fletcher had been approached by Ms Clarke, and he did not pass that information on to Guy Carpenter.

v) Mr Summers did not tell Guy Carpenter, in the first week of June 2025, that Mr Liley had told him he had been approached by Ms Clarke via LinkedIn, asking what he should do about it, and Mr Summers had replied he should call her.

vi) Mr Summers did not tell Guy Carpenter during the weekend of 7-8 June that he had been told by Mr Hitchings that weekend that he intended to resign on 9 June.

vii) Following his own resignation on 9 June, Mr Summers was informed by Mr Whyte he had been approached by Ms Clarke on LinkedIn but he did not pass that information on to Guy Carpenter.

228. For the avoidance of doubt, I find that Mr Summers did not, beyond the few instances noted above, discuss Ms Clarke's approach with any of the Guy Carpenter employees who resigned, he did not seek to persuade or encourage Mr Devlin, Ms McIntosh, or any other employee to resign from Guy Carpenter, and he did not coordinate the resignations on 9 June and the days following.

Mr Fletcher's breaches of duty

229. As I have noted above, Mr Fletcher admitted certain breaches of duty to Guy Carpenter, including giving remuneration information to Ms Clarke on 21 April 2025, providing the names of, and mentioning the attributes and skills of, certain Guy Carpenter employees to Ms Clarke, providing contact details for Guy Carpenter Bermuda employees to Ms Clarke and failing to disclose to Guy Carpenter that he had done any of that.

230. The discussions that he had with Ms Clarke, in fact, included each of the individuals from the Bermuda office who ultimately resigned from Guy Carpenter, as well as an explanation how the compensation structure worked at Guy Carpenter in Bermuda, as well as the specific remuneration information for each of Mr Hornett, Mr Dart, Ms Wehmeyer, Ms Hall, Ms Boonstra, Mr Keegan and Mr Ogilvie (as well as that for Mr Withers-Clarke and Ms Estis, neither of whom resigned). He knew, in doing so, that this information was going to be used by Ms Clarke for the recruitment of Guy Carpenter employees. He knew, when Ms Clarke flew out to Bermuda on 29 May, that she was intending the following day to meet individuals from Guy Carpenter with a view to recruitment, and provided Ms Clarke with the phone numbers for Mr Dart, Mr Keegan and Ms Estis, knowing she was looking to meet those employees with a view to recruiting them for Willis Re. He subsequently (on 7 June) provided Ms Clarke with Ms Wehmeyer's telephone number also to assist with her recruitment.

231. He knew from the outset that Ms Clarke was looking to build the new Willis Re business in London as well as Bermuda, and he knew from his short discussion with Mr Summers in the week commencing 12 May that Mr Summers had been approached (Mr Fletcher

having previously understood this was likely the case from Mr Fisher). So he was aware of the recruitment exercise not only in Bermuda but also, at least to some extent, that there was one in London.

232. These were all matters in respect of which he was in breach of his duties to Guy Carpenter.

233. As to other matters alleged by Guy Carpenter, Mr Fletcher certainly had some discussions with some of his Guy Carpenter colleagues about Willis Re, though the extent of those discussions and to what extent, if at all, they constituted Mr Fletcher's encouraging of Guy Carpenter colleagues to leave was in dispute. He explained in his witness statement that some or all of those Bermuda employees who ultimately resigned, as well as Mr Withers-Clarke, mentioned to him (from around 29 May 2025) that they had been approached by Ms Clarke and asked whether he had been too, though he could not recall exactly who had spoken to him, or when, or precisely what had been discussed. It was not unusual for Bermuda employees (with many of whom Mr Fletcher was close friends) to tell Mr Fletcher if they had been approached or been given an offer by another prospective employer, knowing he would give them a frank view on things. In relation to the Willis Re situation, his view was that it was for each individual to consider their own position and take their own view. His usual response when asked by his Bermuda colleagues about the approaches from Willis Re was to say that he had been spoken to by Ms Clarke and thought that Willis Re was an interesting proposition and worth finding out more about. He said he did not, however, try to persuade or encourage anyone to join Willis Re – he was clear that it was a personal decision for each individual in their particular circumstances.

234. There was evidence of two particular conversations that Mr Fletcher had with other Bermuda employees. One of those was the conversation with Mr Withers-Clarke, on the morning of 28 May, in relation to which Mr Withers-Clarke said:

> "…[Mr Fletcher] started by saying "You are going to be contacted…" I finished the sentence for him: "…Lucy Clarke". I told him that I would meet with her and he said "good"."

235. The second conversation was one that Mr Fletcher had with Ms Estis. Mr Fletcher said to Ms Estis around the end of May 2025 that she might be contacted by Ms Clarke, following which Ms Estis sent Mr Fletcher a WhatsApp message (which was subsequently deleted) saying she was concerned she might be away travelling if Ms Clarke was coming to Bermuda. Ms Clarke's evidence was that Mr Fletcher called her about this message (which Ms Clarke said worried her, because she had told Mr Fletcher not to discuss any Willis Re approach with his colleagues). Ms Estis' phone number was one of those that Mr Fletcher provided to Ms Clarke when she arrived in Bermuda.

236. Guy Carpenter also relied, in relation to Ms Estis, on the email dated 22 June 2025 she sent to Mr Fletcher (via his wife), in which she explained her decision to stay with Guy Carpenter as "*multi faceted and very personal*" and ended by thanking Mr Fletcher "*for the offer to join you at Willis.*" Mr Fletcher, in giving his evidence, denied that he had made her such an offer, and was slightly suspicious of this email and its final sentence. I do not think much, if any, weight can be placed on it in the circumstances, in particular where Ms Estis was not called as a witness by Guy Carpenter. If Mr Fletcher really had

made her "an offer", or indeed sought to encourage or seek to persuade her to move to Willis Re, it is difficult to understand why she was not called to give evidence. She chose not to move, and still works for Guy Carpenter. There was no explanation as to why she did not give evidence. In those circumstances, I accept Mr Fletcher's evidence that he did not make an "offer" to Ms Estis.

237. The evidence about Mr Fletcher's conversations with Ms Estis and Mr Withers-Clarke, along with his own evidence of his general position when discussing the Willis Re approach with other colleagues in the Guy Carpenter Bermuda office, does, in my view, constitute a breach of duty on Mr Fletcher's part, albeit not to the extent that Guy Carpenter was pressing at trial. In giving Ms Estis advance notice that Ms Clarke might contact her (in particular given the terms in which Ms Estis then messaged him about Ms Clarke coming to Bermuda) he was, at least tacitly, confirming it would be fine if Ms Estis were to speak to Ms Clarke and that it might be in her interest to do so. It was a form of encouragement, even if fairly mild. Similarly in relation to Mr Withers-Clarke, Mr Fletcher wanted to make sure Mr Withers-Clarke knew Ms Clarke was going to be in contact and was happy to communicate to Mr Withers-Clarke he was content for Mr Withers-Clarke to meet her. Whether or not Mr Fletcher actually uttered "good" (as was disputed) is a slight red herring – given Mr Fletcher had started the discussion and was the CEO in Bermuda, when Mr Withers-Clarke said he was going to meet Ms Clarke even silence from Mr Fletcher would have communicated a tacit approval.

238. Of course, neither Ms Estis nor Mr Withers-Clarke resigned to join Willis Re – they both stayed with Guy Carpenter. There was, therefore, no direct consequence in terms of resigning employees from those particular exchanges. They do, though, cast light on Mr Fletcher's discussions with his other colleagues. Mr Fletcher, as I have noted above, generally told people he had been spoken to by Ms Clarke and thought that Willis Re was an interesting proposition and worth finding out more about. That did constitute an encouragement to the other Guy Carpenter employees to meet Ms Clarke and consider any offer from Willis Re. That was not in compliance with his duties to Guy Carpenter, particularly in circumstances where this was not a single employee who had been approached by another potential employer, but where Mr Fletcher himself had been approached (and was anticipating an offer) and he knew that Ms Clarke was approaching a significant number of his Bermuda team. Moreover, the fact that Ms Clarke was meeting and seeking to recruit a significant number of the Bermuda employees (and meeting many of them in person in Bermuda) was something that Mr Fletcher ought to have told Guy Carpenter (whether by telling Mr Boyce or Ms Best).

239. However, I do not think that Mr Fletcher went further than that in terms of his encouragement – it related to their meeting Ms Clarke and listening to her. There was no evidence that he sought to persuade or cajole any of the Guy Carpenter employees to resign from Guy Carpenter or to join Willis Re. It was notable, in this respect, that no Guy Carpenter employee from Bermuda who stayed with Guy Carpenter gave evidence suggesting that Mr Fletcher had sought to persuade them to leave. Mr Withers-Clarke said that he told Mr Fletcher on 20 June that he had decided to stay, but did not suggest that Mr Fletcher sought to persuade him to move (he said Mr Fletcher asked him whether he was going to go back to Ms Clarke to ask for more money, to which Mr Withers-Clark said he was not); indeed, Mr Withers-Clarke agreed in cross-examination that Mr Fletcher said to him that he was doing the "*right thing for you,*

your family and your clients by staying at Guy Carpenter". Ms Estis did not, as I have said, give evidence to explain what her subsequent email meant, or to suggest that Mr Fletcher had sought to persuade her to leave Guy Carpenter.

240. Consistently with this, when Mr Morgan spoke to Mr Keegan, in his efforts to persuade him to stay with Guy Carpenter, he noted on 11 June that Mr Keegan "*genuinely seems to have had v little conversation with Fletch*".

241. In their written closing submissions, Guy Carpenter sought to suggest that there were an unusual number of telephone calls between Mr Fletcher and various members of his Bermuda team over the weekend of 7 to 9 June 2025 which, it was said, was only consistent with Mr Fletcher assisting in their recruitment by Guy Carpenter. This was, however, in the written submissions little more than an assertion, and the schedules that Guy Carpenter prepared show that over the weekend (Saturday 7 and Sunday 8 June) the only resigning Bermuda employees with whom Mr Fletcher spoke were in fact Ms Hall and Mr Dart. Some points had been put to Mr Fletcher about this, from what appeared to be carefully curated schedules of calls provided and updated part-way through the trial, showing calls between Mr Fletcher and resigning employees. What these did not show, however, was the frequency of calls that Mr Fletcher had over a similar period with other, non-resigning, employees. This made assessment of any inference to be drawn from the frequency difficult – as Mr Fletcher said when cross-examined about the frequency of calls between him and Ms Hall: "*you would see a similar call cadence with someone who hasn't joined Willis Re.*" Moreover, Mr Fletcher worked closely with Mr Dart and Ms Hall and it was not on the face of things surprising that Mr Fletcher might speak to them about work-related issues. When asked in cross-examination, for example, he identified that there were points arising from his recent trip to New York (from which he had returned on 6 June) which were of interest to each of them:

i) Whilst in New York, an issue Mr Fletcher described as "*highly sensitive*" was discussed with a client that was "*particularly close to the work that Mr Dart does*" and which Mr Dart was keen to talk about with Mr Fletcher.

ii) In relation to Ms Hall, during his trip to New York Mr Fletcher had made a presentation with a big client on whose account he and Ms Hall worked. His evidence was that they discussed it in the days following his return.

It is also relevant that on 6-7 June Mr Morgan and Mr Boyce had been calling round various people to discuss the Willis Re approaches and, as Mr Fletcher recognised, this may have prompted Ms Hall to call him. In summary, as I have noted, no detailed factual case was advanced by Guy Carpenter in its closing submissions – it was little more than an assertion – but, in any event, I reject that the inference Guy Carpenter suggested can be drawn from the fact that some calls between these individuals took place over that weekend.

242. Guy Carpenter also said that Mr Fletcher must have discussed Willis Re's approach with Ms Wehmeyer because of some disputed evidence given by Mr Withers-Clarke. Mr Withers-Clarke said that on Friday 6 June, whilst he was working from home, he spoke on the phone to Ms Wehmeyer (who was in the Bermuda office at the time), who told him that some people in the office were clearing their desks, including Mr Fletcher, Mr Dart and Mr Keegan, and she asked Mr Withers-Clarke whether he "*was part of it*".

Mr Withers-Clarke said he told her he had received an offer. He said in his evidence that he was confident about the date of this episode because he then flew to London that evening (coincidentally on the same flight, he said, as Ms Wehmeyer and Ms Boonstra). It is difficult to know what to make of this, and it certainly does not support a case that Mr Fletcher must have discussed Willis Re's approach with Ms Wehmeyer. Mr Fletcher, in his supplemental statement, firmly denied that he had been clearing his desk on 6 June; he said he only made up his mind to leave over the weekend of 7-8 June. That was not challenged (in fact, the episode was not put to him at all in cross-examination). Nor was it put to him that he had told Ms Wehmeyer, before or on 6 June, that he had been approached, or that she might be approached, by Willis Re. It was put to Mr Withers-Clarke he may have been wrong about the date, but he was firm in his view that he was right about it. However, even if he was right on the date, it is unclear what was actually taking place. It may, for example, be that Ms Wehmeyer did not mean people were physically clearing their desks – she may have got wind of offers being made by Willis Re from one or more of the others in the office (not necessarily Mr Fletcher, perhaps more likely Ms Boonstra given they were both junior employees and the fact they were apparently flying to London together that evening) and that she had got the impression people might be leaving. But, in any event, none of this supports the suggestion that Mr Fletcher had, before or on 6 June, discussed the Willis Re approach with Ms Wehmeyer.

243. A similar point was made in respect of the suggestion that Mr Fletcher had assisted and encouraged the recruitment of London NMS employees, including Mr Goddard and Mr Ogilvie. Mr Ogilvie had worked with Mr Fletcher in Bermuda until the start of May 2025, and Mr Fletcher had given Ms Clarke his remuneration details (along with those of the Bermuda employees referred to above) on 21 April 2025. The names of both Mr Ogilvie and Mr Goddard had come up in the discussions between Mr Fletcher and Ms Clarke. In closing, Guy Carpenter said there were an unusually high number of calls between Mr Fletcher and Mr Ogilvie from 27 May 2025, and also noted they had a call shortly after Mr Ogilvie's meeting with Ms Clarke on 9 June. As in relation to the calls sought to be relied on that Mr Summers made, there is little that can be drawn from the mere fact that calls took place. Mr Ogilvie and Mr Fletcher were close friends, as well as having worked together for a number of years. Mr Fletcher had explained in his witness statement, for example, that not only were they friends, but their wives were friends, and his family shared a boat with the Ogilvie family and spent time together. Whether their call volume over this period was unusual is difficult to tell – until the start of May Mr Ogilvie had been in Bermuda where he would have seen and no doubt spoken to Mr Fletcher in the office regularly, so comparing call records to that period would not be a like-for-like comparison.

244. In relation to Mr Goddard, there were also calls between him and Mr Fletcher over the weekend 7-8 June, in particular two reasonably lengthy calls (of nearly 32 minutes and over 21 minutes respectively) on 8 June. Again, however, that itself is of limited assistance. The two were friends and had known each other for 25 years and regularly played and discussed sport together. Mr Fletcher recalled that he and Mr Goddard had spoken that day discussing the French Open tennis final that was taking place that day

– they had both happened to watch the previous year's final in Paris (though not together) and their discussion was about that as well as the 2025 match.[18]

245. That having been said, Mr Fletcher fairly recognised in his witness statement that each of Mr Ogilvie and Mr Goddard (and Mr Wagdin-Joannides, who he had also known for many years) contacted him around the first week of June 2025 telling him they had been approached by Ms Clarke and, whilst he could not recall the detail of the discussions, his evidence was that he would have been frank with them about his own thinking (including the risks of moving) and that they each needed to make their own decisions in their own best interests, and that he did not put any pressure on them or encourage them to move to Willis Re. I accept that evidence.

246. That the mere fact of such calls taking place does not mean that Mr Fletcher was seeking to persuade such employees to resign is also apparent from the fact that the call records showed Mr Fletcher was also speaking to others over a similar period, for example Mr Firmin, who Ms Clarke met on 5 June 2025, and who then received two offers from Willis Re. He was also a good friend of Mr Fletcher's, and spoke to him on a number of calls each day on 5, 6, and 7 June totalling about 15 minutes on 5 June, 25 minutes on 6 June and 12 minutes on (Saturday) 7 June. There was another call to Mr Fletcher's personal phone on 11 June. Mr Firmin still works for Guy Carpenter and, if Mr Fletcher had in those calls been seeking to persuade him to leave, one might have expected Mr Firmin to have been called to say so. But he was not.

247. It was also said that Mr Fletcher had failed to attempt to dissuade any of his Bermuda colleagues from leaving, to which similar points apply as I have already set out above relating to the same point being made in respect of Mr Summers.

248. Mr Fletcher admitted that he did not disclose his breaches of duty to Guy Carpenter. As to the allegation that he did not tell Guy Carpenter that Willis Re was a "nascent commercial threat", he had been at the Global Specialties leadership meeting on 25-26 March 2025, and knew that Guy Carpenter appreciated the threat from Willis Re. One of the presentations relating to NMS at that meeting had identified, under the heading "*Competition*": "*Willis Re – Staff up following Lucy Clarke's arrival to be seen.*" At one of the meetings, Mr Fletcher asked what the plan was to respond to the threat posed by other brokers, specifically mentioning Willis Re as an example. Mr Boyce had responded to the effect: "*in all honesty we don't really have a plan.*"

249. However, Mr Fletcher knew, and did not disclose, that Willis Re was seeking to recruit Guy Carpenter Bermuda employees in earnest, which he certainly knew by 23 May (when Ms Clarke told him she was hoping to travel to Bermuda shortly to try to see other potential recruits) and may well have realised at an earlier point (for example, in their 21 April meeting when he gave her the remuneration information). He also knew by mid-May that Mr Summers had been approached. He knew in the first week of June that Mr Ogilvie, Mr Goddard and Mr Wagdin-Joannides had been approached by Ms Clarke. He did not (as Mr Summers did) report any approach (even his own) to Mr Boyce, Ms Best or any more senior person. Even though his understanding was that it was likely Guy Carpenter would do nothing if he did report it (given the standard "threat to leave" approach) he was in breach of his duty in not reporting (either by reference to

[18] As the written closing submissions for Mr Fletcher noted, the 2025 men's French Open final was described as an "*all-time classic*" by the BBC.

the individuals he knew had been approached or at a general level) the recruitment efforts that he knew were underway by Ms Clarke.

250. Guy Carpenter also sought to make similar points in relation to Mr Fletcher as they made in relation to Mr Summers by way of inference from the fact of the 5 resignations by Bermudan employees on 10 June suggesting a "coordinated resignation" and knowledge by Mr Fletcher of "mass resignations". As with Mr Summers, that does not appear to me to be an inference that can properly be drawn. As I have already set out, there were substantial incentives for the Guy Carpenter employees to leave for Willis Re, as well as various degrees of unhappiness at Guy Carpenter, and the same points as set out above explain why the fact that people ended up resigning together is not a particular surprise. In fact, in relation to Bermuda the fact of numerous resignations on the same day has an additional explanatory factor because, by 10 June, it had already become known that a number of people (including Mr Summers) had resigned in London on 9 June.

251. Mr Fletcher was, therefore, in breach of his duties to Guy Carpenter in:

i) Identifying to Ms Clarke the names and attributes of certain members of his Bermuda team (plus Mr Ogilvie), as well as providing her with remuneration information about Guy Carpenter in Bermuda, in particular the remuneration details of the employees I have already identified (including Mr Ogilvie, who was no longer in Bermuda), and the contact details of certain of the Bermuda employees.

ii) Informing members of the Bermuda team that they would be approached by Ms Clarke and encouraging them to meet her.

iii) Not disclosing to Guy Carpenter any of the above, or the fact that he knew that Ms Clarke was approaching others in Bermuda or Mr Summers or, at least by early June, others in London (such as Mr Ogilvie and Mr Goddard). He did not disclose to Guy Carpenter the seriousness of the recruitment efforts he knew that Ms Clarke was making in relation to his Bermuda team (or more widely).

252. Mr Fletcher did not, however, encourage any of the Guy Carpenter employees to resign and join Willis Re nor did he "*coordinate the simultaneous resignation on 10 June 2025 and the days following*" (as Guy Carpenter alleged).

Liability of Ms Clarke / Willis Re

Inducing breach of contract

253. It was alleged that Ms Clarke, and Willis Re through Ms Clarke, was liable for inducing breaches of contract by Mr Summers and Mr Fletcher.

254. In *Kawasaki Kisen Kaisha Ltd v James Kemball Ltd* [2021] EWCA Civ 33, at paragraph 21 Popplewell LJ set out the five ingredients of the tort of inducing breach of contract as follows:

> "(1) there must be a breach of contract by B;

> (2) A must induce B to break his contract with C by persuading, encouraging or assisting him to do so;
>
> (3) A must know of the contract and know his conduct will have that effect;
>
> (4) A must intend to procure the breach of contract either as an end in itself or as the means by which he achieves some further end;
>
> (5) if A has a lawful justification for inducing B to break his contract with C, that may provide a defence against liability."

255. There was no real issue of principle between the parties in relation to this. The disputes largely related to what conduct on behalf of Mr Summers and Mr Fletcher constituted breach of contract (which I have dealt with above) and, in some instances, whether Ms Clarke induced those breaches.

256. As I have already noted, Ms Clarke and Willis Re admitted inducing breach of contract in relation to the various breaches of duty that were admitted by each of Mr Summers and Mr Fletcher (including in some cases going further than Mr Summers in admission of his breach of duty). In broad terms, and taking into account what Ms Clarke accepted in evidence, it was admitted that Ms Clarke/Willis Re induced the following breaches of contract:

i) The provision of contact details: i) by Mr Summers, Mr Devlin's telephone number; and ii) by Mr Fletcher, phone numbers for Mr Dart, Mr Keegan, Ms Estis and Ms Wehmeyer.

ii) Mr Fletcher's provision of remuneration information about Guy Carpenter Bermuda, in particular specific information in relation to Mr Keegan, Ms Hall, Ms Boonstra, Mr Hornett, Mr Dart, Mr Withers-Clarke, Ms Estis and Mr Ogilvie.[19]

iii) The identification by Mr Summers and Mr Fletcher of various Guy Carpenter employees and a discussion of their attributes. This was not, as I have already explained above, in the context of provision of a recruitment list or other structured plan, but rather informal discussions about various people, partly in which each of Mr Summers and Mr Fletcher were seeking to sell themselves to Ms Clarke.

257. Guy Carpenter also alleged that Ms Clarke induced the following breaches:

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[19] The provision of Mr Ogilvie's information was not admitted in statements of case or by the witnesses before trial or when they were giving oral evidence. However, during the course of closing submissions, additional witness statements were served by Ms Clarke and Mr Fletcher (to which no objection was taken by Guy Carpenter). Ms Clarke there accepted that she had asked for and received from Mr Fletcher remuneration information in relation to Mr Ogilvie (in the meeting on 21 April 2025). Mr Fletcher said that he could not recall providing those details to Ms Clarke, but said he had no reason to question the accuracy of Ms Clarke's recollection that he had done so.

i) The failure by Mr Summers and Mr Fletcher to disclose Ms Clarke's approach and the recruitment operation. Guy Carpenter emphasised that the success of the exercise was dependent upon secrecy.

ii) The alleged role played by Mr Summers and Mr Fletcher in encouraging their teams to leave and recruiting them for Willis Re.

258. In relation to the first of these, it is clear that being discreet in her approaches to Guy Carpenter employees was important to Ms Clarke. She was keen, for example, to keep her trips to Bermuda to seek to recruit Mr Fletcher and other Guy Carpenter Bermuda employees under the radar. Similarly, she said that she approached Mr Devlin when she did because she trusted he would be discrete. This was partly because she wanted to control the process and the messaging to prospective recruitees (i.e. who found out what and when about the new Willis Re and what was on offer), and to reduce the prospect of having to deal with greater market rumours and chatter, but no doubt it was also because she appreciated that the more that the Guy Carpenter hierarchy above Mr Fletcher and Mr Summers knew about her plans, the more likely they were to try to do something to spike her guns. However, that is not the same as asking, either expressly or by an implied suggestion, Mr Summers and Mr Fletcher not to reveal anything to Guy Carpenter in breach of their duties. It was not directly put to Ms Clarke that she had asked, or otherwise procured or induced, Mr Summers and/or Mr Fletcher not to disclose matters to Guy Carpenter, and there was no evidence that she had done. In her witness statement she explained that she had said to Mr Summers at their first meeting that it was entirely up to him whether he decided to tell Guy Carpenter (or anyone else) about her approach. Consistently, her account of her meetings with other potential recruitees was that she said they could tell Guy Carpenter about her approach if they wished. Mr Withers-Clarke made various comments about Ms Clarke's apparent desire to keep her presence in Bermuda quiet (describing it as "*all very cloak and dagger*") but did not suggest she had asked him not to tell Guy Carpenter about anything; indeed, when he was cross-examined, he agreed that, although he did not recall, Ms Clarke could have said to him that he could tell Guy Carpenter about her approach if he wanted to do so. Nor did Guy Carpenter produce any other witness who had been approached by Ms Clarke (but who decided not to leave Guy Carpenter) to say she made any such suggestion. Ms Clarke did not persuade, encourage or assist Mr Summers or Mr Fletcher to breach their duties in this respect.

259. In relation to the second additional allegation of inducing breach, namely assisting in the alleged encouragement of Guy Carpenter employees to leave, that largely fails on the basis that, as I have set out above, neither Mr Summers nor Mr Fletcher engaged in the level of encouragement that was alleged by Guy Carpenter. Moreover, even to the extent that I have found some encouragement above (for example, on the part of Mr Fletcher to his colleagues to meet Ms Clarke), that was not conduct that was induced by Ms Clarke. Her evidence was, and I accept, that she had always intended to conduct the recruitment exercise lawfully. She had said in her witness statement:

> "In my discussions with Mr Fletcher, neither of us ever suggested that he should be involved in persuading any of his colleagues to join Willis Re. I was adamant that he should "leave it all with me". As I said to everyone, I did not want anyone to "put themselves in harm's way" and that included Mr Fletcher. I told Mr Fletcher that I wanted to recruit for Willis Re in the right

> way, by contacting people myself and meeting with them personally. I told him that I would contact people via LinkedIn. I did not tell him who I was going to contact."

260. She remained consistent with that in her oral evidence, and I accept that evidence. For example, she said when cross-examined that "*I did not expect Jim [Summers] or John [Fletcher] to speak to anybody that worked for them*." This was also consistent with her reaction when she discovered that Mr Fletcher had told Ms Estis that Ms Clarke would be coming to Bermuda – in her witness statement Ms Clarke said:

> "This was not what I planned, so I was a bit worried when Mr Fletcher told me this because I had told him not to discuss anything with his people. I really did not want Mr Fletcher to put himself in a difficult position. I was clear with Mr Fletcher that I did not want him to be involved and to let me determine employees' interest independent of any input from him."

When cross-examined about Ms Estis knowing she was coming to Bermuda, Ms Clarke maintained this, stating that Mr Fletcher knew that she "*didn't want him to discuss … anything with anybody.*"

261. It was also consistent with what Mr Fletcher said in cross-examination:

> "Q…it's not realistic of you to suggest that you would have just been letting Lucy [Clarke] contact Mr Dart cold, and that you wouldn't have had anything to say about it to him?
>
> A. Well, Lucy was quite clear to me that she wanted it to work that way."

262. Her interactions with Mr Summers were similar. In her witness statement, when she explained that she asked Mr Summers for Mr Devlin's phone number, she said that she "*reminded him [Mr Summers] not to have any conversations with Devlin himself.*" That was not challenged when she was cross-examined. She explained that she did not tell Mr Summers who else had or had not been approached.

263. Whilst some points were put in cross-examination based on records of telephone calls that Ms Clarke was seeking to coordinate with, in particular, Mr Fletcher in terms of persuading people to leave Guy Carpenter, as I have already noted in the context of these, and other similar allegations, being put to Mr Fletcher and Mr Summers, the records did not show or assist in showing those sort of alleged efforts at persuasion or encouragement. The addition of calls to or from Ms Clarke into the mix does not assist. It is not surprising that she was discussing matters with each of Mr Summers and Mr Fletcher over the period leading up to their resignations, given that they were leaving their long-held employment with Guy Carpenter to join the new Willis Re. There was no clear and consistent pattern of calls between Ms Clarke and Mr Summers/ Mr Fletcher and then calls with others that suggested the sort of co-ordinated effort to recruit others that Guy Carpenter suggested in their submissions.

264. Accordingly, I find that Ms Clarke did not persuade, encourage or assist Mr Summers or Mr Fletcher to breach their contracts in this respect.

265. Neither of those points advanced by Guy Carpenter were, therefore, good ones.

Dishonest assistance

266. Guy Carpenter's case in relation to this claim was based on the same facts and matters as the inducing breach of contract claim, insofar as the duties in question mirrored or replicated fiduciary duties owed by Mr Summers and/or Mr Fletcher, with the added requirement that it had to be proved that Ms Clarke had been dishonest when providing her assistance. It was not suggested that the incidences of assistance went further than those I have already dealt with in the context of the inducing breach of contract claim.

267. There was no dispute about the elements of the claim for dishonest assistance. Guy Carpenter and Willis Re/Ms Clarke agreed that they comprise: (1) a breach of fiduciary duty or trust; (2) procurement of or assistance in that breach by the defendant; and (3) dishonesty on the part of the defendant. The parties also agreed that the test for dishonesty is objective and falls to be judged against "ordinary standards", as explained in *Barlow Clowes International v Eurotrust* [2006] 1 WLR 1476 (PC) at paragraph 10:

> "Although a dishonest state of mind is a subjective mental state, the standard by which the law determines whether it is dishonest is objective. If by ordinary standards a defendant's mental state would be characterised as dishonest, it is irrelevant that the defendant judges by different standards."

Put another way, the defendant's conduct is assessed by reference to (a) the facts he actually knew, and (b) the ordinary standards of honesty (rather than his own private value system).

268. It is not necessary for the claimant to show that the defendant knew of the existence of the fiduciary relationship. It is sufficient if the assister knows or suspects that the transaction is not one in which he can honestly participate: see Civil Fraud, Grant & Mumford at paragraphs 13-037 to -040, and the cases there cited. As summarised by Freedman J in *Akkurate Limited (in liquidation) v Richmond* [2023] EWHC 2392 (Ch):

> "A dishonest participant in a transaction takes the risk that it turns out to be a breach of trust or fiduciary duty. It is not necessary for the assistant to know, or even suspect, that the transaction is a breach of trust, or the facts which make it a breach of trust, or even what a trust means; it is sufficient if he knows or suspects that the transaction is such as to render his participation dishonest…".

269. Part of the context here is the admission of inducement of breach of contract by Ms Clarke. As I have set out above, one of the ingredients of that tort is that the defendant knows of the contract and knows that their conduct will have the effect of the induced party breaching their contract. As set out above, the fourth of the elements set out by Popplewell LJ in *Kawasaki* is that the defendant must intend to procure the breach of contract either as an end in itself or as the means by which the defendant achieves some further end. Popplewell LJ went on, at paragraph 34, to emphasise that "*the mental element of the tort requires that there must be an intention that the breach of the contract must at least be the means to an end, rather than simply the foreseen or*

intended consequence of the tortious conduct." This was, therefore, admitted by Ms Clarke and Willis Re in relation to those breaches of contract which it was admitted Ms Clarke induced. Whilst the mental element for the tort of inducing breach of contract is not the same as that for dishonest assistance, in determining whether Ms Clarke acted dishonestly for the purposes of the latter, it is relevant that she has admitted liability to a tort which required her to know that her conduct would have the effect of Mr Summers/Mr Fletcher breaching their contract, and to intend to procure that breach of contract (either as an end in itself or as the means by which she achieved some further end).

270. It was in any event clear from Ms Clarke's evidence at trial that she knew that Mr Summers and Mr Fletcher were very senior employees at Guy Carpenter who occupied positions of trust, and she knew that such individuals had obligations of loyalty and fidelity to their employer and that they should not assist a competitor to recruit their teams. She knew such people should not disclose to a competitor remuneration or salary details of members of their teams.

271. When she was cross-examined, it was put to her that she knew that receipt of remuneration information for Guy Carpenter employees from Mr Fletcher was dishonest, and she agreed:

> "Q. … And so you have asked him to hold on so that you can write this down and the reason that you have asked him to hold on so you can write this down is because you understand that this will be useful information to assist in your recruitment operation for Willis Re?
>
> A. Yes.
>
> Q. You also understood that he should not have been giving you that information?
>
> A. Yes.
>
> Q. You understood that it was a breach of his obligation of loyalty to Guy Carpenter?
>
> A. Yes.
>
> Q. And notwithstanding that, you wrote it down and ultimately you used the information, didn't you?
>
> A. Yes, I did.
>
> Q. And you knew that by the standards of commercial morality, that was a dishonest thing to do?
>
> A. For me?
>
> Q. Yes.
>
> A. Yes."

272. The assistance she gave to Mr Fletcher in relation to the remuneration information was dishonest. It was clearly information he should not have been giving her, and she should not have been receiving, still less writing down to use in the future. She understood (as she accepted) that was the case at the time and admitted it was dishonest. (I should note in passing that Ms Clarke had accepted in her witness statement that she knew she was not supposed to get other people's salary information from Mr Fletcher and, as is evident from the passage of her cross-examination set out above, readily accepted her wrongful conduct and dishonesty in relation to it when asked.)

273. There was no admission of dishonesty in relation to the other aspects of assistance which Ms Clarke had admitted. However, given what she knew about each of Mr Summers' and Mr Fletcher's position and duties, including that she knew they should not be assisting her to recruit members of their teams, and that she knew that her conduct would induce Mr Summers or Mr Fletcher (as the case may be) to breach their contracts (and intended to procure a breach), and given the context in which the breaches and her inducement of them took place (including that it was in an attempt to recruit a number of people from Guy Carpenter in circumstances where she knew discretion and speed were important) it appears to me that her conduct was, by ordinary standards, dishonest. She knew, in requesting phone numbers, for example, that she was asking Mr Fletcher and Mr Summers to help her in the recruitment of those whose numbers she was requesting, and she knew that their supply of those numbers would put them in breach of their duties. The same is the case in relation to Mr Summers and Mr Fletcher giving her names of their valued colleagues. Even if some of that was done by Mr Summers and Mr Fletcher as part of selling themselves to Ms Clarke, from her point of view it was information that she was receiving, and knew she would use, in her recruitment exercise; for example, in her witness statement she accepted that at her second meeting with Mr Summers, when Mr Summers was mentioning various people, she listened with great interest to the names and tried to remember as many as she could because she knew that, if Mr Summers was interested in joining, she would approach people in his team. I find that she knew that what she was doing in giving the assistance in each case was wrong.

274. Accordingly, Ms Clarke was dishonest in the assistance she gave to Mr Summers and Mr Fletcher in their breaches of their fiduciary duties. The breaches of contract which Ms Clarke admitted to inducing were also breaches of Mr Summers' and Mr Fletcher's fiduciary duties. Ms Clarke and Willis Re are also liable for dishonestly assisting in those breaches of fiduciary duty.

Conspiracy

275. As I have already noted, Willis Re/Ms Clarke and Mr Fletcher admitted to a limited conspiracy. It was admitted that there was a tacit understanding between Mr Fletcher and Ms Clarke that the information he provided (in summary, names, attributes, remuneration information and contact details) might be used by Ms Clarke for recruitment purposes, and admitted there was a common design to that effect between Mr Fletcher and Ms Clarke (and therefore Willis Re) and that this involved unlawful means (being the breaches of duty that were admitted). Mr Summers and Willis Re/Ms Clarke denied that Mr Summers was part of any conspiracy.

276. Guy Carpenter alleged that the conspiracy went much wider than was admitted, being an alleged conspiracy to use unlawful means (being the breaches of duty admitted and

alleged) (a) to launch and/or develop a reinsurance business for Willis Re, (b) to recruit a substantial number of Guy Carpenter employees, and (c) therefore to divert client business and/or business opportunities from Guy Carpenter to Willis Re.

277. The basic tenets of a claim of unlawful means conspiracy were set out by Nourse LJ in *Kuwait Oil Tanker Co SAK v Al Bader* [2000] 2 All ER (Comm) 271 at paragraph 108:

> "A conspiracy to injure by unlawful means is actionable where the claimant proves that he has suffered loss or damage as a result of unlawful action taken pursuant to a combination or agreement between the defendant and another person or persons to injure him by unlawful means, whether or not it is the predominant purpose of the defendant to do so."

278. It is not necessary that the agreement be express, see *Kuwait Oil Tanker* at paragraph 111:

> "…it is not necessary to show that there is anything in the nature of an express agreement, whether formal or informal. It is sufficient if two or more persons combine with a common intention, or, in other words, that they deliberately combine, albeit tacitly, to achieve a common end."

279. So long as each individual conspirator knows the central facts and entertains the same object it is not necessary that all conspirators join the agreement at the same time: *Kuwait Oil Tanker* at paragraph 132. The requirement for knowledge includes "blind eye" knowledge: *Ivy Technology v Martin & Bell* [2022] EWHC 1218 (Comm) Henshaw J at paragraph 589:

> ""Blind-eye" knowledge will be sufficient: *The Racing Partnership* § 159. Blind-eye knowledge requires a suspicion that certain facts may exist, and a conscious decision to refrain from taking any step to confirm their existence: *Group Seven & Ors v Nasir* [2019] EWCA Civ 614; [2020] Ch 129 §§ 59-60."

280. In relation to what is required for the combination, Henshaw J set out the following in *Ivy Technology* at paragraphs 582-583:

> "582. The following principles were set out in *Lakatamia*[20] in relation to the nature of the combination required for a claim in conspiracy:
>
> i) The combination must be to the effect that at least one of the conspirators will use unlawful means (§ 830).
>
> ii) It is unnecessary, in order for a combination to exist, that it be contractual in nature or that it be an express or formal agreement (§ 83).

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20 *Lakatamia Shipping Co Limited v Su* [2021] EWHC 1907 (Comm).

> iii) It is enough for liability to arise that a defendant be sufficiently aware of the surrounding circumstances and share the same object for it properly to be said that they were acting in concert at the time of the acts complained of. However, the conspirators do not need to have exactly the same aim in mind (§ 85).
>
> iv) Direct evidence of the combination is not essential. It is also unnecessary for the claimant to pinpoint precisely when or where it was formed (§ 86).
>
> v) Participation in a conspiracy is infinitely variable and may be active or passive. The courts recognise that it will be rare for there to be evidence of the agreement itself (§§ 86-87).
>
> 583. It is necessary to look at all the particular facts of the case to establish whether there was a combination and whether someone participated, actively or passively, in the conspiracy. Being aware that someone was committing a potentially unlawful act, but (simply) not taking steps to stop it, may not suffice to demonstrate a combination, but it all depends on the circumstances, and in particular the position of the individual concerned: *Lakatamia* § 96."

281. The defendants must intend to injure the claimant. However, as Haddon-Cave J put it in *QBE Management Services (UK) Ltd v Dymoke and others* [2012] IRLR 458 at paragraph 199 (and citing *OBG Ltd v Allan* [2008] 1 AC 1 at paragraph 167):

> "the 'intention' element of the tort is satisfied if injury to the claimant is the inevitable consequence of the benefit to the defendant."

(See to similar effect *Ivy Technology* at paragraph 585).

282. As to unlawful means, the position was summarised in *Alesco Risk Management Services Ltd v Bishopsgate Insurance Brokers* [2019] EWHC 2839 (QB) by Freedman J at paragraph 372 as follows (omitting internal citations):

> "Breaches of contract, breaches of fiduciary duty and inducing breaches of contract may all amount to 'unlawful means' for the purposes of the tort. … The claimant must prove each unlawful act relied upon as a freestanding wrong and that it was carried out pursuant to the conspiracy. ... The unlawful acts must be the means by which the relevant loss is inflicted on the claimant and must therefore be causative of the loss in the sense of being "the instrument for the intentional infliction of harm"…"

283. A conspirator is only liable for the loss flowing from the unlawful means used by another conspirator if the unlawful means fall within the scope of the combination: see *Magomedov v TPG Group Holdings (SBS) LP* [2025] EWHC 59 (Comm), Bright J at paragraph 166:

> "If A knew that someone within the overall conspiracy would use unlawful means such as were in fact used, that will suffice, on the basis that the unlawful means were within the scope of the combination: see *Kuwait Oil Tanker* at [133]. However, the corollary is that, if one of the conspirators has ended up using unlawful means that were not in A's contemplation and were outside the scope of the relevant combination, those unlawful means will not suffice as against A (although they may as regards some other alleged conspirators)."

284. Here, the unlawful means are the breaches of contractual and fiduciary duty by Mr Summers and Mr Fletcher, and the inducement of those breaches by Ms Clarke. I have already addressed each of those above. Loss recoverable in unlawful means conspiracy is the loss caused by the unlawful means used (see e.g. *Kuwait Oil Tanker* at paragraph 108 and *Alesco* at paragraph 372, both set out above). Success by Guy Carpenter in their conspiracy claim does not, therefore, enlarge the total amount of any damages that they might ultimately be entitled to (assuming proof of loss) but may, subject to the scope of the conspiracy and the participants in it, mean more of the Defendants are liable for elements of any loss suffered. The issues at trial in relation to conspiracy were as to the scope of any conspiracy, and the participants in it.

285. There were three general issues at the trial between the parties concerning the scope of, and the participants in, any conspiracy. The first related to Ms Clarke and Mr Fletcher. As I have noted, it is admitted that there was a conspiracy between them, in relatively narrow terms. The issue at trial was whether it was wider than admitted.

286. There was nothing in the evidence to suggest that there was any express agreement between Ms Clarke and Mr Fletcher constituting the conspiracy. The most that can be said, on the evidence, was that there was a tacit understanding and common design between the two of them that the information Mr Fletcher provided to Ms Clarke (names, attributes, remuneration information, and contact details) would be used by Ms Clarke for the purposes of her recruitment exercise for Willis Re. I do not consider that the conspiracy went any further than that. There was no tacit agreement or understanding that Mr Fletcher would, whilst still employed by Guy Carpenter, assist Ms Clarke to "*launch and/or develop a reinsurance business for Willis Re*" or to "*recruit a substantial number of Guy Carpenter employees*" beyond the provision of the information identified above for the purposes of Ms Clarke's recruitment exercise, or that unlawful means would be used by either of them for any such expanded purpose. There was no tacit agreement or understanding between them at all to use unlawful means to "*divert client business and/or business opportunities from Guy Carpenter to Willis Re*". They no doubt had in mind that, once Mr Fletcher was working at Willis Re, and once his post termination restrictions had expired, he might be able to bring to Willis Re some of his clients from Guy Carpenter, but there was no contemplation that he would use unlawful means to seek to do so.

287. Moreover, the unlawful acts which fall within the scope of the conspiracy are those that I have summarised in the previous paragraph. The one question might be whether Mr Fletcher's breach of duty in encouraging members of his team to meet Ms Clarke (which I have held was not induced by Ms Clarke) fell within the scope of the conspiracy, thus attaching any liability for it to Willis Re. However, Ms Clarke did not have those unlawful means within her contemplation. In fact, it is clear that she had not

wanted him to speak to other members of his team. She wanted to do it herself. The scope of the conspiracy related to Mr Fletcher's providing information to Ms Clarke. Therefore, as Mr Fletcher had ended up using unlawful means that were not in Ms Clarke's contemplation and were outside the scope of the relevant combination, those unlawful means will not suffice as against Ms Clarke/Willis Re: se *Magomedov* paragraph 166 (above).

288. The second issue relating to conspiracy was whether there was a conspiracy between Ms Clarke and Mr Summers. There was, again, no evidential support for there being an express agreement. However, based on what I have set out above in relation to Mr Summers' breaches of duty, and Ms Clarke's inducing his breaches of duty, it is likely that, at least from their second meeting, there was a tacit understanding between them that the information Mr Summers provided to Ms Clarke (by way of names of Guy Carpenter employees and their attributes, and (in relation to Mr Devlin) contact details) could be used by Ms Clarke for the purposes of her recruitment exercise for Willis Re. However, any tacit understanding went no further than that. There was no tacit agreement or understanding that Mr Summers would, whilst still employed by Guy Carpenter, assist Ms Clarke to "*launch and/or develop a reinsurance business for Willis Re*" or to "*recruit a substantial number of Guy Carpenter employees*" beyond the provision of the information I have mentioned was provided for the purposes of Ms Clarke's recruitment exercise, or that unlawful means would be used by either of them for any such expanded purpose. There was no tacit agreement or understanding between them at all to use unlawful means to "*divert client business and/or business opportunities from Guy Carpenter to Willis Re*". Mr Summers is liable for his breaches of duty, and Ms Clarke/Willis Re for the inducing of those breaches of duty, as I have held above. The limited conspiracy does not go beyond that.

289. The third issue is whether, as alleged by Guy Carpenter, there was a conspiracy involving Ms Clarke along with both Mr Fletcher and Mr Summers. There was no substantial evidence to suggest any such conspiracy, no developed argument that there was any agreement or understanding between the three of them, and I find there was not. (It is notable that the allegation was barely put to Ms Clarke or Mr Fletcher, and it was not put to Mr Summers at all). The only contact there was between Mr Fletcher and Mr Summers relating to Willis Re was the short exchange they had in the Bermuda office in the week commencing 12 May 2025 in which it could not be suggested that any agreement or even tacit understanding between the two of them was reached along the lines alleged. The fact that each knew the other had been approached by Willis Re is not sufficient to establish a conspiracy to use unlawful means, still less one of the breadth alleged by Guy Carpenter. Ms Clarke did, as I have set out above, reach tacit understandings with each of Mr Fletcher and Mr Summers, but at no point was either understanding extended to include the third individual.

Breach of confidence

290. Guy Carpenter contended that the information that each of Mr Summers and Mr Fletcher passed to Ms Clarke constituted information that was confidential to Guy Carpenter and in relation to which they owed Guy Carpenter a duty of confidence. It was not made clear at the trial what Guy Carpenter said this added to their other allegations of breach of duty (both in contract and fiduciary duty), and it received relatively little attention in the parties' submissions.

291. It was admitted by Willis Re and Mr Fletcher that the remuneration information provided by Mr Fletcher to Ms Clarke was confidential and was thereafter misused by Willis Re, such that both Mr Fletcher and Willis Re acted in breach of confidence in relation to the remuneration information. The parties disagreed, however, whether any of the other information passed by Mr Fletcher, or any of the information provided by Mr Summers, to Ms Clarke was confidential such as to be protected by a duty of confidence.

292. In relation to Mr Summers, Guy Carpenter relied upon clause 22 of his contract of employment, which acknowledged that he would "*have access to and be entrusted with confidential information and trade secrets relating to the business of the Group or in respect of which the Group may be bound by an obligation of confidence to any third party ("Confidential Information")*" which "*included but is not limited to information and secrets relating to … (g) employees and other personnel; and (h) financial information.*"

293. In relation to Mr Fletcher, Guy Carpenter relied upon restrictive covenants which had been entered into by Mr Fletcher as part of his contract of employment, which included a clause by which Mr Fletcher agreed he would not use or disclose to another person "Confidential Information" which was said to include but not be limited to (among other things) "*(iv) personnel information, such as the identity and number of the Company's other employees and officers, their salaries, bonuses, benefits, skills, qualifications and abilities.*" There was a specific carve out for information that came into the public domain otherwise than by reason of an unauthorised disclosure.

294. In respect of neither of those clauses was it suggested that it would necessarily catch or include every piece of information relating to another employee – it still needed to be confidential information. In its written closing submissions, for example, Guy Carpenter accepted that an individual's name "*might not, in some circumstances, be confidential to an employer.*"

295. In terms of the equitable duty of confidence, there was no dispute that the requirements of a claim for breach of confidence were those set out by Megarry J in *Coco v AN Clark (Engineering) Ltd* [1968] FSR 415 at 419: (1) that the information has the necessary quality of confidence; (2) that the information in question must have been imparted in circumstances importing an obligation of confidence; and (3) that there has been an unauthorised use of the information in question to the detriment of the party who communicated it.

296. Guy Carpenter also relied upon Toulson & Phipps on Confidentiality (4th ed.) at paragraph 4-005:

> "…it is suggested that the following elements characterise information that is confidential:
>
> (a) There must be some value to the party claiming confidentiality (not necessarily commercial) in the information being treated as confidential;
>
> (b) The information must be such that a reasonable person in the position of the parties would regard it as confidential; and

> reasonableness, usage and practices in the relevant sector (for example, industrial or professional) are to be taken into account."

297. As I have already noted, there was no dispute that the remuneration information Mr Fletcher provided to Ms Clarke was confidential information. The other information that Guy Carpenter contended was provided to Ms Clarke in breach of Mr Fletcher's or Mr Summers' duties of confidence (whether contractual or equitable) was: information as to the identities of Guy Carpenter employees, as to their attributes, and their contact details. Guy Carpenter accepted, as I have noted above, that an individual employee's name might not always be confidential to an employer, but contended that a collection of names in a team, where such names represented those which the senior member of that team rated and wished to continue working with, had the necessary quality of confidence.

298. As to the names of those working for Guy Carpenter, and their positions and roles at Guy Carpenter, that was not itself confidential information. The fact that someone worked at Guy Carpenter was not confidential, and there was no suggestion that Guy Carpenter regarded it as such. Most, if not all, of the employees in question had LinkedIn profiles advertising that they worked at Guy Carpenter. Moreover, almost all of the employees in question were brokers, whose job included being "public facing" and being contactable by clients, and prospective clients (as well as by reinsurers with whom they placed business). Mr Morgan stated in his witness statement, having recounted that he had been called in late 2024 to be told that a recruitment company had managed to put together an entire organisational chart on the NMS team across London and Bermuda, that it "*would not be too difficult to piece together an organisational chart from sounding out the market and sources like LinkedIn.*" The fact that people could, and did, undertake such tasks suggests this sort of information did not have the necessary quality of confidence.

299. Similarly, the contact details of the Guy Carpenter employees were not confidential. As I say, the employees in question were brokers, who often advertised their contact details on their communications e.g. emails, and their contact details were known generally in the market. Part of being good at their job was being known, and being contactable. Mr Fletcher gave evidence in his statement, for example, which was not directly challenged (and which I accept) that:

> "… contact details of brokers are easily obtainable in the market, even if not publicly listed on sites such as LinkedIn. To my mind they are not confidential – indeed, it's a vital part of building relationships and a profile in the industry that you can be and are easily identifiable and contactable. For example, Guy Carpenter's NMS team had a broker sheet with everyone's contact details on it which was freely distributed at conferences to clients and markets (there were several copies of this in the Bermuda office for people to take and use)."

300. As to employee "attributes", I can see that there may be circumstances in which certain information as to precisely what a particular employee did, how they were rated by their employer and particular skills they had, might be capable of constituting confidential information. However, there was nothing here that could be said to fall into such a

category of confidential information. The comments made about employees by Mr Summers and Mr Fletcher were largely general (along the lines of "*she/he's good at her/his job*") and/or explained what their roles at Guy Carpenter were, and there was no evidence that anything was said that could realistically be regarded as containing information that was confidential to Guy Carpenter. The fact that Mr Fletcher or Mr Summers might have rated particular employees also does not strike me as information confidential to Guy Carpenter. It is not realistic to think that Guy Carpenter would want to keep confidential that their team leaders thought members of their team were good at their jobs, or that any reasonable person in the position of the parties would have supposed that such information would be treated as confidential.

301. Mr Summers also told Ms Clarke about the fact Ms McIntosh was trying to start a family and her likely desire for maternity benefits. That was Ms McIntosh's personal information, and not in any event Guy Carpenter confidential information.

302. Lastly, it was said that the Guy Carpenter METL "structure", which included Technical Lines along with Marine and Energy in the same team, was information confidential to Guy Carpenter. However, there was nothing to suggest that this was something Guy Carpenter sought to treat as confidential, and no explanation was provided by any Guy Carpenter witness as to why it would want to keep such a matter confidential. Mr Summers explained in his evidence that Technical Lines included construction and engineering risks connected into operational phases, feeding into downstream energy. Including such lines alongside Marine and Energy had provided horizontal expansion in his group. In other words, it made sense to include these lines of business together in the METL team. It is difficult to see how the inclusion of Technical Lines within METL would be something Guy Carpenter would want to keep confidential – it would be clear to anyone placing Technical Lines business through the METL team that this is how Guy Carpenter had structured itself (and it may even have been a selling point). It was the public-facing description of the team in Guy Carpenter employee's emails, for example Mr Jay's email footer described his position as "*Chairman – Marine, Energy & Technical Lines Specialty*" (immediately above his mobile phone number). No witness gave evidence for Guy Carpenter suggesting that this structure was confidential to it, or that it was regarded as such. No reasonable person in the position of the parties would have supposed it was.

303. There was no developed argument advanced that the definitions of confidential information in the employment contracts which I have referred to above made information "confidential" that would not otherwise be confidential. But, in any event, even if that was the case such that the provision of such information would have constituted a breach of the employment contract even if not otherwise confidential, that takes matters no further in circumstances where I have already held, even absent consideration of the question of confidentiality, that the provision of the information in question was a breach of both contract and fiduciary duty on the part of Mr Summers or Mr Fletcher (as appropriate).

304. As a result, the remuneration information provided by Mr Fletcher to Ms Clarke was (as was admitted by Willis Re and Mr Fletcher) confidential information and was thereafter misused by Willis Re, such that both Mr Fletcher and Willis Re/Ms Clarke acted in breach of confidence in relation to the remuneration information. However, there is no claim for breach of confidence in relation to the provision to Ms Clarke of any of the other information.

305. I should also add that Guy Carpenter also pleaded a claim under the Trade Secrets (Enforcement) Regulations 2018, although there was no pleading of any particular information said to amount to a trade secret as defined by the regulations, and no developed argument that any of the information said to be confidential constituted a trade secret within the regulations. Similarly, there was no attempt to prove that any such information had been subject to reasonable steps to keep it secret (see the definition of "trade secret" under regulation 2). There was, in short, no real attempt to advance this as a separate claim. Little attention was paid to this in the parties' submissions, and Mr Oudkerk in his oral closing submissions said nothing about it except (when I asked about it) to say that it added nothing to his claim for breach of confidence. In the circumstances, I do not add to the length of this judgment by dealing with that claim any further.

Consequences of the breaches of duty and other wrongful conduct

306. A large part of the trial was taken up with evidence and argument about what would have happened in the counterfactual situation where there had been no breaches of contract or fiduciary duty (or other wrongful conduct). This would be an essential part of the analysis for a damages claim (although quantification of damages is beyond the scope of this trial) and all parties also proceeded on the basis that it was an important (if not key) factor in the assessment and determination of what injunctive relief ought to be granted. In particular, as dealt with further below, in determining the appropriate scope of any "springboard" relief, it is necessary to identify (i) the effect of the unlawful acts upon the claimant and (ii) the extent to which the defendant has gained an illegitimate competitive advantage from its unlawful acts. As Haddon-Cave J put it in *QBE* at paragraph 244, springboard relief has "*the aim simply of restoring the parties to the competitive position they each set out to occupy and would have occupied but for the defendant's misconduct.*"[21]

307. It is important to look closely at what would have happened, absent the unlawful conduct. It is not correct simply to say that because Ms Clarke's recruitment efforts involved elements of unlawful conduct (on her part, and also on the part of Mr Summers and Mr Fletcher) it should be assumed that, without that unlawful conduct, no recruitment efforts would have taken place or, if they had done, none would have been successful. That may turn out to be the position on an analysis of the counterfactual, but it is not to be taken as read.

308. It is fair to say that the approach from Guy Carpenter as to what, in detail, they said would have happened absent any breaches was unclear for much of the trial, including in their written closing submission. Apart from general statements to the effect that there would not have been departures as there were (and/or not on the scale that there were), there was some lack of analysis, and it was difficult to detect how it was said that end point would have been reached. Ultimately, in his oral closing submissions, Mr Oudkerk explained that there were broadly two counterfactuals being proposed. The first focussed on those breaches of duty of Mr Summers and Mr Fletcher that were not failures to inform, i.e. the giving of information (names, attributes, remuneration, contact details, etc) to Ms Clarke, and the alleged encouragement of other employees to resign, etc, with a view to identifying what would have happened had those breaches

[21] A test which Guy Carpenter said in opening was consistent with the approach to causation for a damages claim.

not taken place. The second focussed on the failures to inform Guy Carpenter, including on the assumption that there had been the earlier breaches of duty, which would (on this hypothesis) form part of what it was alleged Mr Summers and Mr Fletcher ought to have told Guy Carpenter. The reasons for that approach appeared to be to head off a potential argument that, if all the breaches were dealt with as part of one counterfactual, there would be little content to the duties to inform (because in the counterfactual where there are no breaches at all, much of what it was alleged should have been notified to Guy Carpenter would not have taken place).

309. Before looking in more detail at what the parties contend would have taken place in the counterfactual, two general points can be addressed.

310. The first of these is the question whether Mr Summers and Mr Fletcher would have left Guy Carpenter for Willis Re even if nobody else from their respective teams had left. In other words, whether they would (as Guy Carpenter put it) have left to work in what would potentially have been an "empty room".

311. It was contended by Guy Carpenter in their written closing submissions that it was "fanciful" that Mr Summers and Mr Fletcher would have joined Willis Re in the absence of their teams. In short it was said that Willis Re was an "empty room", that they had both found leaving Guy Carpenter a difficult decision (having worked there a long time, in Mr Fletcher's case since 1988, and Mr Summers having described Mr Boyce as the "*best boss*" he ever had), that they were undecided until late in the day, and that they both wanted to move with their teams. In oral closing the point was repeated, although not developed to any great extent, and to the extent it was addressed the focus was more on the question (which I deal with below) whether Guy Carpenter had put in cross-examination to either of Mr Summers or Mr Fletcher that they would not have left on their own.

312. In terms of the substance of the point, whether Mr Summers and Mr Fletcher would have left for Willis Re even if their teams had not, it is clear that they both would have done.

313. First, both Mr Summers and Mr Fletcher gave clear evidence, both in writing and in their oral evidence, that they would have left. As to Mr Summers:

    i) In his witness statement, Mr Summers explained that he made clear to Ms Clarke that he was prepared and intended to move on his own (consistent with his career history, including when he moved from Cooper Gay, where he had had 280 employees under his remit, to Guy Carpenter), and that it was entirely wrong to suggest that he would not have taken the job at Willis Re unless he knew he had a team coming with him. Although points were put to him related to this topic (e.g. that it was important to him to continue to work with Ms McIntosh and Mr Devlin) this clear statement was not itself directly challenged.

    ii) In cross-examination when asked about what he might have discussed with Ms Clarke about it being important to continue to work with Mr Devlin and Ms McIntosh, Mr Summers said: "*I was absolutely prepared and happy to leave and join on my own.*" In his oral closing submissions, Mr Oudkerk confirmed that he accepted that Mr Summers' clear evidence was that he would have been happy to leave Guy Carpenter, and join Willis Re, on his own.

iii) Consistently, Ms Clarke recounted in her statement (and was not challenged on it on cross-examination) that Mr Summers told her during one of their conversations (probably in mid-May) that "*he would be happy to be the only person at Willis Re and that there was lots of talent in the Marine and Energy market and plenty of time to build the business.*"

iv) Also consistently, there was nothing in Mr Summers' messages to his family member, which were otherwise relied upon by Guy Carpenter as evidencing Mr Summers' private thought process at the time, to suggest that his leaving Guy Carpenter would be dependent to any extent on others also leaving.

v) It was undoubtedly true that it was important to Mr Summers to continue to work with Ms McIntosh and Mr Devlin, but that does not mean that he would not have left on his own. He also said in evidence that he would have expected them to follow him in due course anyway. But far from suggesting that he was, as a result, unhappy to walk out of Guy Carpenter without the two of him at his side, that confirms that he was content to leave to go to the "empty room", anticipating that at some point down the line Ms McIntosh and Mr Devlin were likely to follow him in any event.

314. As to Mr Fletcher, in his witness statement he explained:

> "I did not need, or want, to persuade my colleagues to follow me to Willis Re in order to decide whether I should move. I am aware that in these proceedings, Guy Carpenter alleges that I recruited or sought to recruit Guy Carpenter employees whom I managed or worked with closely, but that is simply not true. My decision to move was not in any way dependent upon members of my team coming with me. As I have explained above, I had my own personal reasons for being interested in the opportunity given I was dissatisfied with Guy Carpenter, was embarking on the final stage of my career and saw Willis Re as a unique opportunity to build something new. I can say with total confidence that I would have accepted the offer even if I knew that nobody else at Guy Carpenter had been approached by Lucy. I have said above that I was impressed with Lucy – given her drive and abilities to sell the Willis Re concept, I thought it was very likely that she would be able to recruit top quality people from across the market." [underlining added]

As with Mr Summers, whilst some points were put in cross-examination to Mr Fletcher relating to this, there was no direct challenge to those clear statements that Mr Fletcher would have moved even if nobody else had been approached.

315. Second, both Mr Summers and Mr Fletcher were made extremely competitive offers by Willis Re. That included an uplift to their basic salaries as well as a generous bonus, guaranteed for five years. Both were offered the opportunity to benefit from the Willis Re MIP and to invest their own money. When Mr Jay learned that Mr Summers had been offered a five year guaranteed bonus, he said to him (as Mr Jay confirmed in cross-examination) that it was a "*no brainer*". Mr Boyce accepted in cross-examination that

an offer which included five years guaranteed bonus would be "*an extremely attractive thing for someone in their late 50s.*"

316. Guy Carpenter pointed out that the value of a significant part of their financial package, namely the MIP, depended on the EBITDA of the new Willis Re from 2028 onwards. Thus, it was said they would want to build up the book of business quickly, which would mean needing to take their Guy Carpenter team with them when they left, such that it was contended that Mr Summers and Mr Fletcher had little incentive to leave on their own. However, that misses the point that they anticipated others would join in any event, whether from Guy Carpenter or elsewhere. As far as Mr Summers goes, this is clear from Ms Clarke's evidence of what Mr Summers told her, quoted above, that there was "*lots of talent in the Marine and Energy Market*". A similar point was made by Mr Fletcher in his witness statement at the end of the extract set out above. They were not concerned about Willis Re being able to recruit good people. Moreover, whilst the MIP was undoubtedly a pull, there was also the remainder of the financial package which was itself generous.

317. Third, it was not only the financial package that was attractive. Willis Re had been announced to the market in December 2024, and the market had since then been abuzz with speculation as to who might be recruited. It was a new and exciting opportunity, bound to appeal to people like Mr Summers and Mr Fletcher at the stage of their careers that they were. Moreover, Willis Re was not a start-up with no backing. It had the financial backing of Bain (allowing among other things the five years of guaranteed bonus) and the industry backing and connections of Willis.

318. Mr Summers' and Mr Fletcher's excitement about the prospect of moving to Willis Re was clear from the outset. For example, in a WhatsApp message to his family shortly after meeting Ms Clarke, Mr Summers said of the opportunity:

> "It is really a once in a lifetime opportunity … Financially it is a no brainer…."

319. Fourth, both Mr Summers and Mr Fletcher had grown seriously dissatisfied at Guy Carpenter. For Mr Summers, there were longstanding gripes about pay for his team, and frustration at Guy Carpenter's reactive strategy in terms of seeking to retain talent (some of which is referred to at paragraphs 23 ff. above). Moreover, even once Mr Summers had told Mr Boyce and Ms Best (around 31 March 2025) that he had been approached by Willis Re and was going to listen to what Ms Clarke had to say, there was no proactive step from Guy Carpenter in terms of seeking to shore him up as a Guy Carpenter employee. Mr Boyce, for example, did not revert to Mr Summers to ask him how any discussion had gone or whether there were things Guy Carpenter could do in order to persuade him away from talking to her. Rather, the approach seems to have been entirely consistent with the attitude that had so infuriated Mr Summers for so long, that nothing would be done until an employee had an offer and was on the verge of walking out. In cross-examination, having run through some of his frustrations at the time concerning the lack of reaction and progress in relation to his requests for more remuneration for his team, Mr Summers summarised his position thus:

> "You've got to weigh all these things up and you've got to say: your time's run, Jim, it's over for you at Guy Carpenter. People aren't listening."

It is right that he said that Mr Boyce was the best boss he had ever had, and also that he did not entirely make up his mind until late in the day, which is perhaps not surprising given the sort of move he was making, but that does not mean he was not dissatisfied in the ways set out above.

320. Mr Fletcher was dissatisfied at Guy Carpenter on a number of fronts. He felt dissatisfied with the poor leadership provided by Mr Klisura. Mr Fletcher felt, and complained, that the business was too "*growth focussed*" and had longstanding concerns that the company was putting "*the shareholder over people.*" He thought there was too much micromanagement, particularly in relation to hiring freezes and caps on travel and expenses budgets. He felt that Guy Carpenter did not remunerate his team appropriately, and frequently complained about it. (Some examples of his dissatisfaction are set out at paragraphs 38 ff. above). None of this was really disputed and Mr Boyce confirmed much of it in his cross-examination. Indeed, as I have already noted, he had accepted in his witness statement that:

> "Mr Fletcher was dissatisfied with certain aspects of life at Guy carpenter in 2025, and the period running up to it. Mr Fletcher was critical of the leadership of Guy Carpenter and in particular Mr Klisura. He felt the business was too "growth focussed". He wanted more money for his team. He was also dissatisfied with the policy surrounding travel and entertainment expenses."

321. The powerful pull factors of money and excitement at being involved in the new Willis Re, and the push factor of their respective dissatisfaction at Guy Carpenter, obviously support the clear and consistent evidence given by both Mr Summers and Mr Fletcher that they would each have left Guy Carpenter for the Willis Re offer whether others had been approached or not. As I have noted, that evidence was not directly challenged and, in any event, there is no reason to doubt it. I accept that that is what each of them would have done.

322. The Defendants also contended that it was not open to Guy Carpenter to argue the point to the contrary, given that (as they said) the evidence given about this by Mr Summers and Mr Fletcher in their witness statements had not been challenged in cross-examination. They placed reliance upon the statement set out by Lord Hodge in *Griffiths v TUI (UK) Ltd* [2023] UKSC 48; [2025] AC 374 at paragraph 87 that the general rule in civil cases is that a party is required to challenge by cross-examination the evidence of any witness of the opposing party on a material point which he or she wishes to submit to the court should not be accepted. This (the question whether Mr Summers and Mr Fletcher would have left without others) was clearly a material point, and is key to an analysis of the counterfactual. It is right to say, as I have already noted, that Guy Carpenter did not directly challenge the evidence of Mr Summers and Mr Fletcher about this. That is not to say that they did not challenge points that related to it (and I have referred to one or two of them above), and in closing Guy Carpenter produced a supplemental note containing various references, as well as subsequently identifying further references, which they said showed that they had put the case sufficiently. Whilst none of those references showed that they had directly challenged this evidence, undertaking an analysis to identify what Guy Carpenter had, and had not, challenged in terms of some of the supporting and constituent points, and whether that meant I should or should not permit Guy Carpenter to run the substantive argument, would add an undue length to this judgment, particularly in circumstances where I have,

in any event, concluded that on the evidence it is entirely clear that the Defendants are right on the substantive point. As a result, I do not say any more about the "case not put" point on this issue.

323. The second general point follows on from and relates to the first. It is the extent to which the fact of Mr Summers and Mr Fletcher leaving would always have been a "pull" factor for others in their respective teams. I have already set out that they were both respected leaders, and were both very close to many in their respective teams. Guy Carpenter's own evidence generally supported that. For example, Mr Morgan said in his witness statement that those who resigned in Bermuda were close to Mr Fletcher, and that some of them "*had worked with him for a long time, especially Richard Hornett, Mr Dart and Mr Keegan.*" In addition, some of the London NMS team who resigned were said by Mr Morgan to be close to Mr Fletcher, having worked with or for him for many years and were good friends, including Mr Goddard, Mr Wagdin-Joannides and Mr Ogilvie (the last of whom had only recently returned to London after spending 13 years in Bermuda).

324. Mr Jay recognised in his witness statement that those in Mr Summers' team who resigned were close knit, and that "*Ms McIntosh, Mr Devlin and Mr Stocker were particularly close to him.*" Mr Morgan also gave evidence in his statement that Mr Summers had a number of colleagues who were very close to him: "*I think that Nicola McIntosh, Graham Devlin, Andrew Hitchings, Jonathan Bryan and Robert Stocker were all close to Mr Summers, as well as Freddie Vaughan and Paula Danes.*" Mr Klisura also understood the loyalty of Mr Summers' team – in a message to Mr Doyle on 6 June, reporting on the approaches he understood were being made by Willis Re to Mr Summers and others, he explained "*I am conflicted on Jim but his team will follow him.*"

325. There were some for whom it was in practice inevitable that they would leave if Mr Summers left.

i) Mr Devlin: Mr Boyce recognised he would probably always want to work with Mr Summers:

> "Q. … let's look at Mr Devlin. If Mr Summers had told you, on 27 May, that Mr Devlin was going to be approached by Ms Clarke, is it really your position that you would have been able to have convinced Mr Devlin to stay?
>
> A. I think -- I think Mr Devlin probably would have always looked to work with Mr Summers."

Mr Boyce later said that if there was any prospect in his mind of retaining Mr Devlin, he would have spoken to him, but that he thought it was "*very unlikely that Mr Devlin would stay.*"

ii) Mr Whyte: Mr Boyce accepted that Mr Whyte had followed Mr Summers to Guy Carpenter, that he would want to follow Mr Summers, and that if he had been told on 9 June that Mr Whyte had been approached there would probably have been nothing Guy Carpenter could have done to keep him.

iii) Ms McIntosh: Mr Boyce was not willing to go quite as far in relation to Ms McIntosh, saying he thought there would have been a *chance* of retaining her, but accepting that Ms McIntosh had a particularly close working relationship with Mr Summers, and she viewed him as a mentor. But he did not speak to her in any attempt to retain her, nor was he able to say whether any retention offer was made to her. The true position was that the position in relation to Ms McIntosh was very similar to that relating to Mr Devlin.

326. Mr Jay, in more general terms, accepted in his evidence that Mr Summers and Mr Fletcher were each so respected that they "*would have a natural pull on less senior people*" and also, in his oral evidence:

> "I think if you're a junior person and you can see that the senior people above you are going, it does create a bigger incentive, it gives you the familiarity; and then of course if you're paid more money, well, then, you know, that starts to become a more plausible -- a more attractive proposition."

Similarly Mrs Fowler accepted that the combination of higher pay and the departure of a respected leader could be a "*pretty intoxicating mix of incentives*".

327. Some care must be taken with this – it does not extend to saying that all those who left would inevitably have left to follow Mr Summers and Mr Fletcher come what may. Guy Carpenter fairly drew attention to the fact that none of the other resigning employees had been called to give evidence about this, which I take into account as a matter to be weighed with the evidence, but it does not seem to me to be sufficient (particularly against the other evidence, including that from Guy Carpenter witnesses, set out above) to lead to the drawing of an inference that none would have resigned. There were some employees, as I have noted above, who would most likely have left to follow Mr Summers in almost any circumstances (most obviously Mr Devlin and Ms McIntosh), and others who were close but for whom other factors would also have been important. It is right to say, however, that Mr Summers and Mr Fletcher would have been a "pull" factor on everyone in their respective teams who ultimately decided to leave, to some extent or other.

328. Before I leave this point I should note that in relation to it Guy Carpenter placed weight on what was said about the similar point made in the *QBE* case at paragraphs 276 to 279 (where it was termed in that judgment the "Pied Piper" defence). There, Haddon-Cave J referred to the argument that the relevant leaders in that case were held in such respect and esteem that, if they had resigned to form a new venture, a substantial number of their colleagues would inevitably have followed, and dismissed it. He found there was no inevitability about it, and pointed out various points on the facts of that case (some of which have parallels here). He also noted that the contention has to be tested on the basis that "*entirely lawful music is being sounded by those playing the pipes*". Whilst the defence failed in that case it is, of course, primarily a factual argument, where it is the facts of the individual case which are likely to be decisive. I have had well in mind, when considering those facts and setting out above the position as I see it that, in assessing what other employees would have done, it is important to assume that the "pipers" are playing "lawful music". Moreover, in this case, if Mr Summers and Mr Fletcher had acted entirely lawfully, they would have left to join an enterprise with substantial financial backing as well as the existing brand of Willis,

rather than being on their own with nothing other than their own skill and aptitude and no financial backing (as was posited towards the end of paragraph 278 in *QBE*). Also, as I have noted above, whilst there was no inevitability to all of the Guy Carpenter employees who resigned following Mr Summers or Mr Fletcher, that does not seem to me to rid the point of any merit, but rather it is one of the points to be borne in mind when considering what the Guy Carpenter employees would have done had there been no unlawful conduct.

What would have happened absent the breaches of duty?

329. When considering the breaches of duty that have been established, it is important not to consider the points only in silos, or to lose sight of the cumulative picture. As it was put by Haddon-Cave J, in *QBE* at paragraph 273, in response to the submission that the claimant there was unable to show that any particular individual breaches of duty had caused it any particular loss, damage or disadvantage:

> "In my judgment, however, the correct approach is not to look simply at the individual breaches seriatim or in isolation, but to have regard to the totality of conduct complained of and ask whether the cumulative effect thereof is such as to have caused loss, damage or disadvantage to the claimant."

330. However, there is an extent to which looking at individual points is necessary, at least as a starting point, in order to identify what would have taken place and to start to build up the cumulative picture. Moreover, as I have noted above, in their oral closing submissions, Guy Carpenter pointed out that the counterfactual relating to the breaches in terms of failures to notify Guy Carpenter might need to be considered separately to the other breaches. I will start with those other breaches, and then look at the failures to notify, before returning to look at the points cumulatively and in the round.

Identification of names and attributes

331. In their respective discussions with Ms Clarke, both Mr Summers and Mr Fletcher identified a number of individuals who worked for Guy Carpenter, including identifying their roles and often discussing their attributes. This was not an express and deliberate provision of a "target list" to Ms Clarke, but it nonetheless provided her with helpful information in the circumstances of her recruitment exercise. However, there are a number of matters of context which relate to this:

i) It was relatively easy for someone outside Guy Carpenter to work out who worked in which teams. As I have already noted, Mr Morgan gave evidence that he had been told at the end of 2024 that a recruitment company had managed to put together an entire organisation chart on Guy Carpenter's NMS team across London and Bermuda. He said in his witness statement: "*It would not be too difficult to piece together an organisational chart from sounding out the market and sources like LinkedIn…*". People operating in the market tended to know who at another broker is good at their job – Mr Morgan said, for example, he would very quickly be able to identify who in his field was good, and not good, at Aon. Mrs Fowler confirmed that external recruitment agencies were able to obtain market soundings about the quality of potential recruits from other firms (and no doubt the same was the case of other firms looking at Guy Carpenter

employees to recruit). Various documents in evidence at trial showed the relatively porous nature of the market in terms of who did what role at another broker and whether they were generally regarded as good at their job.

ii) Ms Clarke already had the inside track to some extent because (i) she knew of a number of people from her time working at JLT and Marsh, and (ii) she was very well plugged in to the market more widely, and had conversations with her contacts about potential targets. In particular, she had spent most of her career focussed on the Marine and Energy segments of the insurance market, so had many carrier/underwriter contacts who use or have used brokers in the Guy Carpenter METL team. She was also talking to Mr Fisher, who had wide knowledge of the market, and of Guy Carpenter in particular, having been Chairman of Global Specialties before he left, and also having previously worked for Guy Carpenter in Bermuda for 7 years (essentially doing Mr Fletcher's role). In addition, she had access to her WTW colleagues and their knowledge of the market and personnel from their position on the insurance side (for example, it was from Mr Rooley of WTW that Ms Clarke obtained contact details for the Guy Carpenter aviation brokers that she approached towards the end of June 2025).

iii) Having identified Mr Summers and Mr Fletcher as targets, and having become confident they were going to accept Willis Re's offers, Ms Clarke was always likely to seek to approach their respective teams as well, which in any event were highly regarded in the market. As she had explained in her witness statement:

> "Mr Fletcher's and Mr Summers' teams each had outstanding reputations. Mr Summers ran one of the most successful Marine and Energy (and Technical Lines) reinsurance teams in the London market, and Mr Fletcher ran the most successful reinsurance team in Bermuda. It is a little hard to generalise about all the people I approached but, broadly, I took a bet that if they worked for Mr Summers or Mr Fletcher, then they would be highly talented people given the teams' reputations and my faith in Mr Summers' and Mr Fletcher's judgment. I thought that if the potential recruit worked for them, then that must mean that Mr Summers or Mr Fletcher rated them. For me, the fact that someone was part of either of those teams was recommendation enough."

332. Ms Clarke gave detailed evidence, which was not challenged, in relation to each of those whom she approached as to how she had come to know of them independently of Mr Summers/Mr Fletcher, e.g. through her time at JLT, or through a market contact. So, for example, of the METL employees who left, she knew Mr Vaughan from their time at JLT, and she had heard of and knew by reputation Mr Bryan, Mr Stocker and Ms Danes. Of those whose names had been mentioned by Mr Summers, Ms Clarke did not previously know of, nor did her network of contacts mention to her, Mr Devlin, Mr Hitchings, Mr Pepper and Mr Whyte. She gave evidence (which, as I say, was not challenged) as to how she thought it would have been likely that she would have come to know of them or to make an approach to them if Mr Summers had not mentioned their name (for example, simply because someone was a member of Mr Summers'

team), though there is of course a level of uncertainty in hypothesising about who, in those circumstances, she might have ended up approaching as well as how it might have affected timing.

333. Ms McIntosh was someone who Ms Clarke did not know, but whose name she had previously heard. Mr Summers brought up Ms McIntosh's name at the first dinner he had with Ms Clarke, thinking that Ms Clarke would already know her through a common friend. In the event, another market contact and friend of Ms Clarke's did tell her about Ms McIntosh at a dinner they had in March 2025, saying they were very impressed with her. It is likely that Ms Clarke would have identified Ms McIntosh as someone to approach, even if Mr Summers had not mentioned her, and even if that were not the case it is likely that Ms McIntosh would have sought to leave to follow Mr Summers once she had learnt he had resigned.

334. Of course, in relation to a number of employees who Mr Summers or Mr Fletcher had mentioned to Ms Clarke (for example, Mr Liley and Mr Mirfenderesky, who Mr Summers had mentioned in the context of explaining that his role as head of METL encompassed Technical Lines) they did not, despite being approached by Ms Clarke, decide to leave Guy Carpenter, such that any breaches of duty in relation to them go nowhere.

335. In relation to Ms McIntosh, Mr Summers was also in breach of duty in two other ways, neither of which materially changed things:

    i) First, Mr Summers mentioned to Ms Clarke that Ms McIntosh was trying to start a family and would need to be provided with maternity benefits from the start of her employment. However, if he had not said that, it would have made no difference to Ms Clarke approaching Ms McIntosh. Ms Clarke gave evidence that Ms McIntosh in any event messaged her early on the morning of 9 June to raise this, and they then discussed in a follow up call Ms McIntosh's concern that she might be pregnant or on maternity leave by the time she started.

    ii) Second, Mr Summers told Ms McIntosh (around April 2025) that it was likely she would be approached by Ms Clarke. However, even if he had not done this, it is highly likely that Ms McIntosh would have responded positively to an invitation from Ms Clarke to have a meeting – as I refer to further below, Ms Clarke was regarded as an "*A-lister*" (and, as Mr Withers-Clarke said in his oral evidence: "*you definitely want to meet with Lucy Clarke*"). But even if that had not been the case, once she had learnt Mr Summers had resigned, Ms McIntosh would have sought to follow him.

336. The London NMS people who left (Messrs Ogilvie, Goddard, Rothstein and Wagdin-Joannides) were generally people Ms Clarke already knew of (from her time at Marsh). The exception was Mr Wagdin-Joannides, whose name she was given by Mr Goddard, Mr Ogilvie and Mr Rothstein (and there is no allegation of breach of duty or other wrongdoing made by Guy Carpenter in relation to those individuals giving Ms Clarke such details).

337. The overall position in relation to the Bermuda employees who left was similar. Ms Clarke explained that she already knew of Mr Dart, Ms Hall (who was also friends with Mr Fisher) and Mr Keegan. She did not know of Ms Boonstra, Mr Hornett or Ms

Wehmeyer. Her evidence was however (and, again, this was not challenged in cross-examination) that without the identification of any individuals by Mr Fletcher, she would have sought to approach the whole Guy Carpenter Bermuda team, which was relatively small.

338. On balance, absent the identification of names and discussion of attributes by Mr Summers and Mr Fletcher, it is likely that Ms Clarke would have sought to approach very largely the same people who she did end up approaching. There may have been a small number – those of whom she had not previously heard – who she would have not approached, or who would have been approached later than they were. I will consider below, in the context of the other points I now deal with, what the likely outcome would have been.

Provision of contact details

339. This relates to:

i) Mr Summers giving Ms Clarke Mr Devlin's phone number on 27 May; and

ii) Mr Fletcher giving Ms Clarke the phone numbers of (on 29 May) Mr Dart, Mr Keegan, and Ms Estis, and later (on 7 June) Ms Wehmeyer.

340. It was reasonably clear that the information, or similar contact details, could have been obtained lawfully in another way. After all, the individuals in question are brokers, part of whose role it is to be visible. Moreover, Ms Clarke had decades of industry experience and contacts. One of her contacts was Mr Fisher, who had provided her with contact details for Mr Summers and Mr Fletcher at the outset. He appears to have been immensely well connected in the reinsurance market, and had previously worked at Guy Carpenter.

341. Moreover, Mrs Fowler accepted that Guy Carpenter never had a problem getting contact details for potential recruits. When asked whether there had ever been a situation where Guy Carpenter had been unable to get contact details for an individual working for another broker, she said she thought it would be unlikely: "*We have used our talent acquisition team to make approaches, via LinkedIn, in a reasonably cold way; equally, if those people are known in the market, it would not be difficult to - - to gain someone's contact details.*" There is no reason to suppose the position would be materially different for the well-connected and resourced Ms Clarke.

342. In particular in relation to Bermuda, as Ms Clarke noted, it is a small place, and many of the insurance and reinsurance professionals know each other. She said in her statement that it is likely that Ms Beasley (of Willis in Bermuda) could have provided her with the relevant contact information for the Bermuda people, either from her own information or by asking someone else that she knew.

343. In summary, this was information that it was likely could have been obtained by Ms Clarke via another (lawful) route, or even if phone numbers could not have been obtained other contact details that would have led to Ms Clarke being able to contact the employees in question. Obtaining them from Mr Summers and Mr Fletcher was, however, a shortcut, which no doubt saved some time.

Provision of remuneration information by Mr Fletcher

344. Ms Clarke obtained remuneration information from Mr Fletcher on 21 April 2025 for Mr Hornett, Mr Dart, Ms Wehmeyer, Ms Hall, Ms Boonstra, Mr Keegan and Mr Ogilvie (as well as Ms Estis and Mr Withers-Clarke, who did not leave). This information allowed Willis Re to start formulating potential offers.

345. However, there is no dispute that Ms Clarke could have asked each of the Guy Carpenter employees what their current remuneration package was, and they could have told her. (Indeed, Mrs Fowler confirmed that when Guy Carpenter was seeking to recruit they would typically ask the potential candidate for their current remuneration package.) Ms Clarke's evidence was that she did not do this at her meetings in Bermuda on 30 May because she was labouring under a misapprehension that she was not permitted to ask a potential recruitment target what they earned. She had picked up (not in the context of her Willis Re recruitment) from a WTW meeting, around late March/early April 2025, that a recruiter should not ask such a question of a target, but should instead ask something along the lines of "*what sort of package were you hoping for?*" She says she was disabused of this misunderstanding when her HR team told her on 2 June 2025 that she could ask targets what they currently earned. Absent obtaining remuneration from Mr Fletcher, therefore, Ms Clarke no doubt would have asked the Guy Carpenter employees that she met on 30 May what sort of package they were hoping for (which they no doubt would have answered), and if she wanted to pursue the point further, once she had been disabused of her misunderstanding, she no doubt would have asked them on or after 2 June what their current package was.

346. Ultimately, therefore, Ms Clarke is likely to have ended up in the same position so far as information is concerned, and able to formulate her offers in the way she did. That is not to say that obtaining the information from Mr Fletcher before she met the individuals did not give her some assistance – it may well have given her a steer as to how to pitch things in her discussions on 30 May and to plan likely offer levels a little earlier than otherwise.

Encouragement by Mr Fletcher to his team to speak to Ms Clarke

347. As I have already noted, the two direct examples in the evidence of Mr Fletcher doing something approaching encouragement to members of his team to speak to Ms Clarke are those of Mr Withers-Clarke and Ms Estis, neither of whom ended up resigning to move to Willis Re. As I have found above, Mr Fletcher also encouraged other members of the Bermuda team to meet Ms Clarke. However, that does not seem to me likely to have been of any material consequence. Ms Clarke was a big name, and it was well-known that Willis Re were seeking to recruit. It is highly likely that most people who received a message from Ms Clarke suggesting they meet would have agreed to do so, if only out of curiosity.[22] It may be that the more junior individuals (Ms Boonstra and Ms Wehmeyer) might have been more circumspect about taking such a meeting without any encouragement from Mr Fletcher, but it is unlikely that others would not have accepted the invitation to meet.

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[22] Mr Withers-Clarke's oral evidence was that he would advise colleagues that if another potential employer wanted to speak to them, they should speak to them: "*we are in finance, you have to be somewhat mercenary out there…*".

348. I should also note that any consequences flowing from this particular breach of duty would not be ones that could be laid at the door of Ms Clarke/Willis Re, given that I have held there was no inducement of this breach.

Failures by Mr Summers and Mr Fletcher to inform Guy Carpenter

349. There were, in addition to the above breaches, those breaches by Mr Summers and Mr Fletcher consisting of a failure to inform Guy Carpenter about their own breaches of contract and, to a certain extent, of the threat posed by Willis Re. As I have noted, to an extent, this part of the counterfactual proceeds on the basis that those other breaches had taken place.

350. Guy Carpenter's position is that, had it known more about the recruitment exercise being undertaken by Ms Clarke, and known it sooner than it did, it would have acted differently; it would have taken steps to protect its employees from approaches, and they would not have left.

351. However, Guy Carpenter's evidence about what it says it would have done was not particularly clear, and as I have said the proposed counterfactual was not particularly well developed in submissions. There were, however, a number of pointers in the evidence which bear upon what is likely to have happened.

i) Guy Carpenter had known of the threat of Willis Re for some time. For example:

a) The announcement in December 2024 of Willis's proposed re-entry into the treaty reinsurance market in partnership with Bain had been big news in the market. Mrs Fowler accepted in her oral evidence (based on a message she had had with Ms Best) that from January 2025 Guy Carpenter thought that Willis Re was going to be looking at NMS and was targeting specific individuals within that team. There had been discussions about Willis Re at the Guy Carpenter Global Specialties leadership off-site meetings on 25-26 March 2025 with Mr Boyce accepting they thought NMS could be a target for Willis Re. At the "town hall" meeting in April 2025, there had been an anonymous question asking whether low pay rises at Guy Carpenter would lead to "*a big walkout to Willis*" (as Mr Moody reported it to Mr Klisura). Mr Moody confirmed in his oral evidence that Mr Boyce was worried, at this point in time, that for financial reasons a large number of brokers might move to Willis Re (and that he had expressed that view to Mr Moody).

b) Mr Summers had told Mr Boyce and Ms Best at the end of March 2025 that he had been approached. Mr Boyce mentioned this to Mrs Fowler and, according to Mrs Fowler in her oral evidence, he was worried about it. She was concerned about it not just because Mr Summers might leave but (as she accepted in cross-examination) because she appreciated there might be something of an "*avalanche*" effect where others loyal to Mr Summers then also left.

c) On 8 April, Mrs Fowler sent an email noting various items of information for a Marsh board report, including stating "*we have reports of Willis Re approaching colleagues.*"

d) Mr Summers had a further conversation with Ms Best on 28 April identifying the threats from Willis Re including noting that 20% of METL might leave. In that conversation, Mr Summers identified three particular brokers he was concerned might move, namely Ms McIntosh, Mr Beer and Mr Pepper, which Ms Best passed on to Mrs Fowler, who in turn told Ms Magnussen (who likely told Mr Klisura).

ii) Despite all that, Guy Carpenter did not have a plan for responding to any Willis Re approaches (as Mr Boyce confirmed to Mr Fletcher at the off-site meeting on 25-26 March 2025, and there was nothing to suggest the position changed thereafter), and chose not to take any proactive steps to safeguard their position. It is likely that Mr Klisura, who was aware of these matters and ultimately held the purse strings, was not prepared to authorise any activity by way of retention efforts until he knew someone was resigning or threatening to do so.

iii) There was no particularly clear case in its evidence about what Guy Carpenter would have done, had Mr Summers or Mr Fletcher informed them of what they had done in breach of duty or otherwise informed them of what they knew about the approaches to other individuals. The evidence that was put forward by Guy Carpenter was, on its face, not particularly strong. For example, Mr Boyce's view in his witness statement was that if he had been given warning by Mr Summers and Mr Fletcher of the Willis Re approach, Guy Carpenter would have "*had a fighting chance to retain those who resigned.*" That was not a particularly compelling statement that Guy Carpenter thinks it *would have* retained those employees, but just that it would have had a chance to do so.

iv) However, as set out above, once Mr Boyce did learn that offers were being made, from 4 June onwards, they did seek to retain employees. Senior individuals (Mr Boyce and Mr Morgan) sought to speak to the employees in question, seeking to persuade them to stay, and counter-offers were made as Guy Carpenter thought appropriate (although there appear to have been disagreements between Mr Boyce and Mr Klisura about what should be done). Although the evidence was in part vague, there was no real indication that Guy Carpenter was not able to make the retention offers that it wanted to make. It was not suggested in any evidence that, given earlier notice, Guy Carpenter would have taken any other step, although it is fair to recognise that it was suggested those steps that were taken could have been taken in a less panicked and time-constrained manner.

v) It has to be recalled that the ultimate decision maker about these matters at Guy Carpenter was Mr Klisura. He did not provide any evidence for the trial, but his attitude was apparent from other evidence. He held the purse strings tight, was generally unwilling to engage in any proactivity in this regard – preferring to wait until someone had an offer and was threatening to leave before considering whether to make a retention offer – and seems to have considered that Guy Carpenter (at least in the UK) had too many people at Managing Director level in any event (see paragraph 36 above). There is certainly nothing to suggest that Mr Klisura would have authorised or approved any retention offers beyond those that were in fact made, or before the recipient was actually holding an offer from Willis Re.

352. A valuable insight into the Guy Carpenter process is obtained by looking at what actually did happen in the case of Mr Summers. He was a senior person with a great track record, and the leader of a very successful team within Guy Carpenter. It was known to Mr Boyce and Mr Klisura, as well as to the relevant HR management (Ms Magnussen, Mrs Fowler and Ms Best) that he had been approached by Willis Re and was taking it seriously. There was even a discussion between Ms Best and Mr Boyce on 1 May 2025, in the context of an email from Mr Summers regarding pay for his team, the note of which included "*Succession planning for Jim?*" and tendering the idea that they might "*build around Nick Jay and Simon Lily [sic]*." Despite knowing about the approach from Willis Re to Mr Summers, and despite the apparent contemplation Mr Summers might leave, at no point after they knew about this did the Guy Carpenter hierarchy approach Mr Summers, through any channel, and seek to find out whether he was still in contact with Willis Re or whether there was anything they could do to try and keep him at Guy Carpenter. There seems to have been no interest at all in it. That was entirely consistent with the reactive strategy favoured by Mr Klisura of waiting to see whether any offer is actually made and whether the employee is threatening to leave – only in those circumstances is it likely that efforts would be made to retain. Given that Guy Carpenter was unwilling to mobilise any "reactive strategy" in response to an approach by Willis Re to Mr Summers, one of their most senior leaders, it is not realistic to suggest that they would have acted any differently in relation to any other employee who they learnt had been approached, or that they would have taken any step other than wait to see what, if any, offer was made by Willis Re.

353. One of the reasons that Mr Klisura appears to have been relatively sanguine about potential departures was that Guy Carpenter had weathered similar storms before without substantial loss. For example, as I have previously mentioned, in early 2023 some 37 employees had left Guy Carpenter for Howden (which also generated litigation), which internal Guy Carpenter messages suggested had, after 2 years, resulted in only 2 clients moving.[23] Mr Klisura seems to have been much less worried about people leaving than was Mr Boyce (who Mr Klisura had described as going into "*meltdown*" during the stage when he was attempting to retain those considering leaving for Willis Re) and it was, ultimately, Mr Klisura who was in charge.

354. If, therefore, Mr Summers, or Mr Fletcher, having discovered that some of his colleagues had been approached by Willis Re, would have disclosed the same to Guy Carpenter (e.g. Mr Boyce and/or Ms Best) it is not realistic to suppose that Guy Carpenter would have done anything different to what it actually did. The general Guy Carpenter position was not to react when an employee was approached by a competitor, but to wait for an offer to be made. Moreover, given that Guy Carpenter did not react to Mr Summers informing them that he had been approached and was taking it seriously, there is no reason to believe that Guy Carpenter would have reacted to being told that, for example, Ms McIntosh and/or Mr Fletcher had been approached. Indeed, Mr Summers had specifically identified Ms McIntosh as someone at risk (in the context of potential efforts by Willis Re to recruit) in his call with Ms Best on 28 April 2025, but that did not cause Guy Carpenter to take any step in relation to Ms McIntosh.

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[23] This was also one of the points Mr Klisura employed in seeking to persuade Mr Summers not to resign, when they spoke on the afternoon of 8 June 2025. Mr Summers gave (unchallenged) evidence that Mr Klisura reminded him that only around US$ 2 million worth of business had moved to Howden after that move.

355. Given that the Guy Carpenter reactive strategy seems to have been focussed on offers being made to employees, and then reacting, one might ask what would have happened if Mr Summers had informed Guy Carpenter of the offers that he learnt had been received by Ms McIntosh and Mr Hitchings. However, the difficulty from Guy Carpenter's point of view with that is that the offers were made, and Mr Summers only learnt of them (to the extent that he did) late in the day. Mr Summers only discovered that Ms McIntosh had received an offer from Willis Re on Friday 6 June, and only discovered that Mr Hitchings was intending to resign over the weekend of 7-8 June. Even if Mr Summers had informed Guy Carpenter as soon as he knew about these offers having been made, and even if Guy Carpenter had any interest in seeking to retain these individuals (which is far from clear given that no witness could say whether anyone actually sought to persuade Ms McIntosh to stay or offered her a retention package at all), there was little Guy Carpenter could have done in the time available beyond that which it actually did. It is also fair to say that there was nothing to stop Guy Carpenter seeking to retain these individuals after their resignations (as they have successfully done in the case of Mr Beer)[24], but they did not do so, and no witness gave evidence that the Guy Carpenter approach would have been different in relation to them had Guy Carpenter had 2 or 3 days' advance notice.

356. The position is similar with Mr Fletcher and his knowledge of the approaches to Guy Carpenter employees in Bermuda. If he had told Guy Carpenter on or around 29 or 30 May that Ms Clarke was in Bermuda and was approaching and meeting members of the team, there would have been no instant reaction, because no offers had been made. The fact of Ms Clarke having flown out, and the number of people she was meeting, may well have triggered discussions between, for example, Mr Boyce and Mr Klisura, but there is nothing to suggest that Mr Klisura, given his usual approach, would have suggested or authorised any form of retention package at that stage. He or Mr Boyce may have thought it a good idea to speak further to Mr Fletcher, or to get Mr Morgan (or Mr Boyce) to speak to the Bermuda employees to see if they could find out more as to what was happening, which may have advanced their knowledge over the course of the days of the following week. But by then offers were being made anyway, and by 4 June Mr Boyce had become aware of offers being made by Willis Re to others (though the names of the individuals he first became aware had received offers were not Bermuda people, his evidence was that he suspected many others must have also been approached). So even if Mr Fletcher had passed on such information on, say, 29 May, it would have advanced Guy Carpenter's reaction by, at the most, a few days, and would not have made any difference to any offers of retention packages.

357. It was suggested by Mr Oudkerk in his closing submissions, that had Guy Carpenter known about the Willis Re conduct earlier, they could and would have applied earlier for an injunction and brought matters to a halt. However, no witness gave evidence suggesting this. Mr Boyce addressed, in his witness statement, what he would have done if he had "*known what Mr Summers was really doing*". The steps he described, to "*protect employees and our book of business*," were informing Mr Klisura and making retention offers to key members of the team, and also speaking to any employees he deemed to be at risk of an approach and impressing upon them the risk of leaving to

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[24] And also in the case of Mr Eaton and Mr Morritt from the Aviation team, who Mr Boyce explained he spoke to after they had resigned. The evidence was that Guy Carpenter also continued to make efforts, after their resignations, to retain Mr Keegan (who Mr Morgan said he continued to speak to for months seeking to persuade him to stay) and Mr Dart, but in neither case successfully.

join a start up (and he gave no further detail in considering what he would have done had he known earlier about Mr Fletcher's actions). There was no mention of seeking an injunction or even considering doing so. Nor did he (or any other witness) make any such suggestion in his oral evidence. Without any evidence about this, it is not possible to do more than speculate what level of perceived wrongdoing might have triggered Guy Carpenter to apply for some form of injunction,[25] even assuming that Mr Summers' and/or Mr Fletcher's information would have given them grounds for doing so. The fact that, ultimately, Guy Carpenter did take proceedings and seek an interim injunction is of limited, if any, assistance in this exercise. Proceedings were commenced on 3 July 2025 in the wake not only of Guy Carpenter's view that an unlawful recruitment exercise had been taking place, but also against the background of over 20 employees having by then resigned. There was no evidence to suggest that the relevant decision-maker(s) at Guy Carpenter would have decided to press the trigger on litigation at an earlier stage or before anyone had resigned. (Moreover, even against the background of the resignations on and following 9 June, litigation did not follow immediately, but only over three weeks later. The first steps taken were to make retention offers and seek to discuss matters with employees.) There was, therefore, no evidential basis for this suggestion and, in fact, the evidence from Mr Boyce was about other steps that would have been taken, not litigation. In the circumstances, I cannot find that this is something that would have happened.

358. Mr Oudkerk also at one point in his oral closing submissions suggested that if Mr Summers and Mr Fletcher had admitted their breaches of duty to Guy Carpenter when they occurred, Guy Carpenter could have put them on garden leave or summarily dismissed them. Again, the problem with that was that no witness had suggested that is what might have taken place, or otherwise gave evidence in support of such a possibility. There was no analysis of the contractual provisions about putting Mr Fletcher or Mr Summers on garden leave in such circumstances (and, when the point was made orally, the Defendants reacted by pointing out that the contracts did not entitle Guy Carpenter to place them on garden leave in such circumstances). Moreover, the suggestion that one or both might have been dismissed would only have driven them into the waiting arms of Willis Re.

359. The upshot is that, even if Mr Summers and Mr Fletcher had made disclosure of their breaches of duty, and of what they knew about the Willis Re approach, at an earlier stage, very little if anything would have been done differently by Guy Carpenter. It may well be that retention offers could have been made sooner, and that Mr Boyce and Mr Morgan would have had a little more time to have conversations with potentially departing employees, but there is nothing to suggest that different offers would have been made or that offers would have been made to additional people.

360. That leads to the next question, which is what the resigning employees would have done if Guy Carpenter had had more time to make offers to them and to have conversations with them about staying. Would they then have chosen not to go to Willis Re but to stay at Guy Carpenter? In very large part, the answer is that nothing different would have happened.

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[25] There would also be a question of what type and scope of injunction could and would have been successfully applied for at an earlier stage, and what effect that would have had on the recruitment process, which was not the subject of any developed submission, let alone evidence.

i) As I have said above, Guy Carpenter made those retention offers that they wanted to make. The employees who were made those offers were able to consider them. Some decided to accept and stay at Guy Carpenter, some decided to go, no doubt either unimpressed with the Guy Carpenter counter-offer or keen to move in any event to Willis Re. It is difficult to see that those who decided to go would have acted any differently if Guy Carpenter had been given more time to make their offers and have conversations.

ii) This is not a case where everyone resigned on one day. There were a number who clearly considered things carefully, over a period of time, and still decided to leave. Mr Whyte, for example, had not even met Ms Clarke before the resignations started. They met on 10 June, and he was sent an offer the same day. He was made counteroffers by Guy Carpenter, and in turn negotiated upwards the package he had been offered by Willis Re. On 27 June he told Ms Clarke he intended to resign and then did so on 4 July. There is nothing to suggest Mr Whyte's position would have been any different if, for example, Guy Carpenter had been told earlier that he might be approached.

iii) Mr Morgan gave evidence that he had had the opportunity to speak to six of those who resigned from NMS before they handed in their resignations (namely, Mr Ogilvie, Ms Hall, Mr Wagdin-Joannides, Mr Rothstein, Mr Goddard and Mr Keegan). He also sent detailed emails to Mr Keegan and Mr Goddard seeking to persuade them to stay (and, notably, Mr Boyce also spoke to Mr Goddard). Notwithstanding those efforts, they all chose to leave Guy Carpenter. Further, Mr Morgan continued to try to persuade Mr Keegan to stay at Guy Carpenter for months after he resigned, accepting when he gave evidence that he had every chance to persuade Mr Keegan to stay if he had wanted to stay. Mr Morgan was not able to say what more he could or would have done to seek to persuade any of these individuals to stay, even if he had been afforded more time.

iv) Importantly, as I have noted above, Mr Summers and Mr Fletcher each had a strong pull on those who had worked with or for them at Guy Carpenter. Once the more junior employees had become aware that Mr Summers or Mr Fletcher was resigning, that would, though no doubt to a different extent depending on the individual, have been an attraction to their taking the same step. That is no doubt why no-one at Guy Carpenter appears to have tried to get Mr Devlin to stay, for example – he was always going to follow Mr Summers.

v) Willis Re was, in general terms, an exciting prospect and an attractive proposition. Many of the leavers made reference to this in their exit interviews at Guy Carpenter.[26] The financial offers being made were attractive – generally around 20% salary uplift, with a sign-on payment and minimum guaranteed bonus for 5 years – in particular given the history of unhappiness with remuneration at Guy Carpenter for many of those who ended up resigning. There was also the excitement of joining a start-up at ground level, and the additional pull of having been courted directly by Ms Clarke, who was described

[26] E.g. Mr Dart: "*This feels like a really good opportunity. Bain, lots of money, can build quickly, which is compelling"*; Mr Hornett: "*Good opportunity. 20 years with GC. Trying something new, nearly 60.*"

by Mr Withers-Clarke as "*a genuine A-lister*", and by Mr Moody in his oral evidence as a very persuasive salesperson when it came to people.[27]

361. This is not to say that if Guy Carpenter had known in more detail what was coming, and had had (and had taken) the opportunity to make its counter-offers in a more organised manner, with more time for discussions with potential leavers and in particular potentially getting their own pitch in before heads started to be turned by Ms Clarke, they might not have had a better chance to retain some of the leavers. They may have done. But it is unlikely that more than one or two would have ended up making a different decision. Any suggestion that they would have persuaded (through counter-offers, discussions, or otherwise) all those who left to stay is entirely unrealistic.

Pulling the strings together on the counterfactuals

362. It is clear from the matters I have set out above that the case that Guy Carpenter focussed on at trial as to counterfactual, namely that in the absence of any breaches of duty or other wrongdoing, none of the resigning employees would have left for Willis Re, is not realistic. Mr Summers and Mr Fletcher would have left even if they knew of no other Guy Carpenter employee who was being approached or was going to leave. It is likely that a number of those who left would, once they had learned of Mr Summers' or Mr Fletcher's leaving, also have been easily persuaded by Ms Clarke to join them.

363. The breaches of duty by Mr Summers and Mr Fletcher relating to the providing of names, information about individuals, contact details, financial information, and (in Mr Fletcher's case) encouraging his team to meet Ms Clarke, made little difference to the ultimate outcome, even when considering the cumulative effect of those breaches. If none of that had taken place, Ms Clarke would have had to work harder to get some or all of that information from other sources (although in respect of the remuneration information she just would have ended up asking the Guy Carpenter employees themselves for it). It may have taken her a little longer (potentially affording Guy Carpenter a slightly better opportunity with some people to seek to retain them), and there may then have been one or two people who she might have missed, but largely things would have turned out the same.

364. The position is similar when considering the consequences of the failures of Mr Fletcher and Mr Summers to disclose matters to Guy Carpenter that they should have done. There was little that Guy Carpenter would have done differently and, in any event, most of those who resigned would have resigned even if Guy Carpenter had had (and had taken) a greater opportunity to make counter-offers and to seek to persuade people to stay.

365. As I have already noted, Guy Carpenter did not advance one or more particular counterfactuals setting out what they say would have happened, apart from their broad case that nobody would have left absent the breaches of duty. As I have said above, I reject that. Guy Carpenter did not advance any alternative counterfactual contending, for example, that particular individuals would have stayed even if others had left. However, it appears to me it would not be appropriate in the circumstances of this case not to attempt to come to a view on what is likely to have taken place absent the

[27] See also, for example, what Mr Moody said about her in the text message from January 2025 referred to at fn 17 above.

breaches, particularly given the amount of evidence given at trial that goes to the point, and the relationship the question has to the issue of the appropriate (if any) injunctive relief.

366. Looking at the breaches apart from the failures to notify Guy Carpenter, it is likely that if they had not occurred most of the individuals who left would have left anyway. A few may have stayed, and the process is likely to have taken a little longer than it did. Whilst, given the hypothetical nature of the exercise, it cannot be said with certainty who might have stayed in such circumstances, there are sufficient indications from what is known to say what is on balance likely to have taken place:

i) From the METL team, all those who resigned would have left apart from perhaps two people. The most likely to have stayed would have been:

a) Mr Pepper: Ms Clarke only knew of him because of what Mr Summers had told her. Although she said she would have found out about him anyway from other contacts, it seems unlikely she would have done so (given the other people she was seeing and offers she was making in a relatively short period at the start of June) before Guy Carpenter had started make retention efforts. Also, although Mr Pepper ended up accepting the Willis Re offer, after spending some time considering the position (he did not resign until 19 June), he subsequently changed his mind and has moved instead to AJ Gallagher, suggesting that the pull of Willis Re for him was not as strong as for the others and that he is someone Guy Carpenter may have been able to retain.

b) Mr Hitchings: again, Mr Hitchings was someone that Ms Clarke only knew about because of what Mr Summers had told her. Ms Clarke said that, even if Mr Summers had not mentioned him, she would still have approached him because he was part of the METL team. However, the METL team was not small – there were about 108 people working in it shortly before the resignations. Ms Clarke was busy making offers to those who she did know or knew by reputation, and there is no reason to think she would have chanced upon Mr Hitchings' name in the period when she was making her offers.

ii) From the NMS team, including Bermuda:

a) All those who resigned would have left, apart from Ms Boonstra and Ms Wehmeyer. Ms Clarke did not know about either of these individuals before Mr Fletcher told her about them. Although Ms Clarke says that, absent Mr Fletcher having named people, she would have approached the entire Bermuda office, that still required her to know who the individuals were and to have contact details for them. Given their relatively junior position, it is less likely Ms Clarke would have learnt about them, or obtained their contact details, from her market contacts. Indeed, she had to ask Mr Fletcher for Ms Wehmeyer's phone number, and despite Mr Fletcher having previously mentioned her, Ms Clarke only did so on 7 June, suggesting she was not towards the top of Ms Clarke's priority list (perhaps not surprisingly). Indeed, the delay that would have been caused in her contacting Ms Wehmeyer if she had not

obtained her number from Mr Fletcher may have been something that allowed Guy Carpenter to speak to Ms Wehmeyer and persuade her to stay – she had worked partly for Mr Withers-Clarke but was in the process of moving across full-time to his part of the business in Bermuda, and told Mr Withers-Clarke on Friday 6 June that she would stay at Guy Carpenter if he stayed. In the event, of course, she did not, but it suggests that she may well have been amenable to persuasion, particularly if there had been a further delay before Ms Clarke had managed to contact her.[28]

b) It might be suggested that the same could be said of Mr Hornett who, again, Ms Clarke did not know of before Mr Fletcher mentioned him. Although, as I have noted, Ms Clarke said she would have approached the whole Bermuda office if Mr Fletcher had not mentioned certain people, identifying who they were, and what their roles were, would have taken a little time. However, Mr Hornett was more senior than Ms Boonstra and Ms Wehmeyer, and was likely to have come to Ms Clarke's attention sooner, and additionally was an acquaintance of another market contact of Ms Clarke's (as she later found out, after Mr Fletcher had mentioned him), such that she may have found out about him anyway. Moreover, he was very close to Mr Fletcher and (as Mr Morgan explained in his evidence set out above), along with Mr Dart and Mr Keegan had worked with Mr Fletcher for a long time, and is less likely than Ms Boonstra and Ms Wehmeyer to have been persuaded by Guy Carpenter to stay. Accordingly, whilst it would no doubt have taken Ms Clarke longer to "find" and make an offer to Mr Hornett absent any unlawfulness, she would ultimately have done so and made him an offer, which he is likely still to have accepted.

iii) In the case of both METL and NMS, the lack of the unlawful conduct is likely to have slowed down Ms Clarke's progress to an extent in respect of the recruitment of those other than Mr Summers and Mr Fletcher (who would in any event have left when they in fact did). I have given the example of Mr Hornett above. It would also have taken her longer to get the contact details for Mr Devlin in London and for Messrs Dart and Keegan in Bermuda, but probably not very much longer. Moreover, for the avoidance of doubt, whatever length of time it would have taken her to get Mr Devlin's number, he was always likely to leave. The position is similar with Mr Dart and Mr Keegan. They were, as I have said, close to Mr Fletcher, and had both had complaints about remuneration at Guy Carpenter. Guy Carpenter (through Mr Morgan) had a good effort at persuading Mr Keegan to stay, and he clearly weighed up the pros and cons, and decided to go. I do not think that the delay that might have been caused to Ms Clarke's approach to him in terms of finding a contact number would have ultimately made a difference to his decision.

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[28] It is also relevant to note, in this context, that it appears that Guy Carpenter (generally through Mr Morgan or Mr Boyce) had spoken to each of the leavers from the Bermuda office before they resigned, apart from Ms Boonstra and Ms Wehmeyer, such that similar points cannot be made in relation to Ms Boonstra and Ms Wehmeyer as they can for others that such a discussion did not, in the facts as they happened, persuade them to stay.

iv) These matters, along with Ms Clarke being slightly less set up to meet the Bermuda employees if she had not had their remuneration information in advance, and having to take time to identify and consider a number of the individuals from other sources (whether that be other market contacts she knew, or Mr Fisher, or WTW colleagues) would have made her progress slower. It may have ended up with her making offers to some or all (apart from Mr Summers and Mr Fletcher) a little later, or the offers ending up not being made in quite the same concentrated period of time as they in fact were allowing Guy Carpenter a bit more time to have sought to retain those made offers later (which, although I have found would not have made an ultimate difference to the employees' decisions to leave, may have also slowed up their leaving as they took more time to consider), or a combination of the two. These points are not, however, likely to have added a great deal of additional time to the whole process. Ms Clarke was always keen to make a move in June, and she would have been keen to do that if she could. It is likely that there may have been a delay of about a month in getting all of those signed up who I have found ultimately would have resigned, but no more than that.

367. In relation to Mr Summers' failures to notify Guy Carpenter, as I have noted above, I think it unlikely that things would have been any different for most of the individuals who left from the METL team, for the reasons I have set out. The exception seems likely to have been Mr Beer, who having first agreed to join Willis Re, following further communication with Guy Carpenter after he had resigned (and, presumably, an enhanced offer), decided to rejoin Guy Carpenter. Whilst little evidence was put before the court relating to the details, it is likely that if Mr Summers had not failed to notify Guy Carpenter of his breaches of duty Guy Carpenter would have moved sooner in relation at least to some individuals, and the fact that they continued to seek to get Mr Beer back, gives some indication that he is someone they would have put effort into retaining in the first place if they had had a greater opportunity to do so. The fact that he ultimately accepted terms to return suggests that if he had been offered those terms before leaving, he is unlikely to have left. However, the impact of this on the relief sought is likely to be relatively small given that he has now returned to Guy Carpenter in any event. To an extent, something similar may be said about Mr Pepper (given his subsequent choice not to join Willis Re but to go elsewhere), but given my conclusions about him above, I do not need to go into this further.

368. It does not seem to me that the failures to notify, by Mr Summers and Mr Fletcher, otherwise add to the counterfactual analysis in a way that benefits Guy Carpenter.[29] As I have said above, even if Guy Carpenter had been told about Mr Summers' and Mr Fletcher's other breaches of duty when they were committed, and the other facts about the Willis Re approaches and Ms Clarke's conduct that may have alerted them (e.g. her flying to Bermuda to meet a number of Bermuda employees on 30 May), it would have made no ultimate difference to the outcome in terms of who left to join Willis Re. Nor do I think it would have materially delayed Ms Clarke's process. Indeed, on one view,

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[29] It may be that an earlier process of engagement with discussions with employees (if indeed Guy Carpenter had reacted in such a way) might have led, for example, to Ms Wehmeyer and Ms Boonstra being persuaded to stay, for similar reasons to those I have identified above when considering the other breaches. But given the conclusion I have reached about them in relation to the other breaches, i.e. that they would not have left, reaching the same conclusion in the second counterfactual does not assist Guy Carpenter further in the ultimate outcome.

if notifying Guy Carpenter of such matters had caused them to jump into action sooner with retention offers, that may itself have prompted Ms Clarke herself to move more quickly.

369. Before leaving the issue of the counterfactual, I should also mention two points made by Guy Carpenter that were said to relate to causation and counterfactuals, neither of which change the analysis.

370. First, Guy Carpenter pointed out that Willis Re deliberately elected not to conduct the recruitment exercise using recruitment consultants, because it needed to be "discrete", which Guy Carpenter said meant that it knew it needed to keep the recruitment exercise secret if it were to succeed. However, a desire to keep something discrete, or secret, is not itself unlawful, and there may be a number of reasons why a company seeking to recruit a number of new employees might want their efforts not to be disseminated more widely that necessary. Requiring or procuring a fiduciary to stay silent if he has a duty to inform his employer of certain matters would, of course, be unlawful, and I have dealt above with those allegations, and considered in that context Ms Clarke's motive to keep things discrete. However, there is no wider point that the wish for secrecy, or indeed the decision not to use a recruitment consultant, indicates unlawful conduct.

371. Second, Guy Carpenter pointed out that the Willis Re recruitment operation was premised on the recruitment of teams, as a number of the planning documents disclosed by Willis Re and Bain indicated. It is right that Willis Re were looking to recruit teams of people – they needed to staff the start-up with a team and it would clearly be efficient if the individuals making up the team already worked together, and the commercial advantages to recruiting a team (with the potential that, in due course, clients may follow) are obvious. However, seeking to recruit a team does not have to be unlawful. It is lawful for a would-be employer to make multiple offers of employment at once. Of course, how it is done may be unlawful, or include unlawful conduct, requiring an examination of the relevant matters. But the repeated refrain from Guy Carpenter that Willis Re was seeking to recruit a team, or similar, does not itself appear to me to advance matters. It certainly cannot be assumed that the only way in which Willis Re would have been able to recruit those who it did from Guy Carpenter was by unlawful conduct.

Injunctive relief

Springboard relief - authorities

372. The first type of injunctive relief sought is relief to neutralise an unlawfully obtained "head start" advantage – commonly referred to as "springboard" relief. As described by Haddon-Cave J in *QBE* at paragraph 240:

> "… where a person has obtained a 'head start' as a result of unlawful acts, the court has the power to grant an injunction which restrains the wrongdoer, so as to deprive him of the fruits of his unlawful acts. This is often known as 'springboard' relief."

373. The purpose of such relief is to prevent defendants from taking unfair advantage of the "springboard" they built up by their unlawful conduct, including breaches of contractual and fiduciary duties. In a passage cited by Haddon-Cave J in *QBE* (at

paragraph 242), Openshaw J in *UBS Wealth Management (UK) Ltd v Vestra Wealth LLP* [2008] IRLR 965 explained as follows:

> "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 economic loss to a previous employer caused by former staff members taking an unfair advantage, and "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 retrained. I accept that injunctions are to protect against and to prevent future and further losses and must not be used merely to punish breaches of contract."

374. The position was similarly set out by Nourse LJ in *Bullivant (Roger) Ltd v Ellis* [1987] ICR 464 at 496:

> "The purpose of [the judge] in granting the injunction was to prevent the defendants from taking unfair advantage of the springboard which he considered they must have built up by their misuse of the information in the card index. Granted, first, that such an advantage cannot last forever, secondly, that the law does not restrain lawful competition and, thirdly that in restraining unlawful competition it seeks to protect the injured and not to punish the guilty, I cannot see that it is right for the term of the injunction to extend beyond the period for which the advantage may reasonably be expected to continue."

375. The focus is on the unfair advantage derived from the unlawful conduct. Insofar as conduct was lawful, that cannot found an application for springboard relief. (That is a different point from saying that, in granting springboard relief, the court may restrain otherwise lawful activities taking place on unlawful foundations, which it can: see the Supplemental Judgment in *QBE* at paragraph 8(3)). For example, in *Sun Valley Foods v John Philip Vincent* [2000] FSR 825 Jonathan Parker J said (at 834) in a case about alleged misuse of confidential information:

> "I must bear in mind that there was nothing unlawful in the individual defendants making use of their own expertise and experience in setting up in competition with [the Claimants] immediately following their resignations. In those respects, a "seamless transition" from Fields to Fusion was a legitimate aim which cannot found an application for "springboard" relief."

The facts are not on all fours with the present case, not least because of the post termination restrictions in the employment contracts of those who resigned from Guy Carpenter, but the principle is relevant – that the unfair advantage to be restrained is one that has to have been derived from unlawful, and not lawful, conduct.

376. Thus in an earlier case on springboard relief dealing with misuse of confidential information, *Universal Thermosensors Ltd v Hibben* [1992] 1 WLR 840, Sir Donald Nicholls V-C considered what would have happened if the defendant had not wrongfully taken the confidential information. He found (at 854) that, had there been no use of confidential information by the defendants in their new business, the defendants would have undertaken research, and taken time and expended some cost in putting themselves in the same position as in fact they had reached. In other words, they would have ultimately arrived lawfully at the same position they had done (through the use of confidential information), with the result that it was held (in the circumstances of the case) that springboard relief was inappropriate. Assessing what would have happened absent the unlawful conduct was an important part of the exercise.

377. In *Devere Holding Company Limited v Belgravia Wealth Management Europe KFT* [2014] EWHC 3189 (QB), Simler J (as she then was) explained at paragraph 39 that caution was required:

> "Even if I am satisfied that the defendants, or some of them, have made unlawful use of material belonging to the claimants, that is not enough to found a claim for springboard relief. The claimants must show that the defendants have gained an unfair competitive advantage over the claimants and that that advantage still exists and will continue to have effect unless the relief sought is granted. It is clear from the authorities that the court should exercise considerable caution both as to whether to grant such an injunction at all and, if so, as to its form and duration. In particular, the duration of such an injunction should not extend beyond the period for which the defendants' illegitimate advantage may be expected to continue because such injunctions are granted to protect against and to prevent further loss, rather than being used to punish for past breaches of contract."

378. The following further principles were also articulated by Haddon-Cave J in *QBE* (at paragraphs 243 to 247):

i) Springboard relief must be sought and obtained at a time when any unlawful advantage is still being enjoyed by the wrongdoer. Here, therefore, the unlawful advantage must still be extant at the time of judgment.

ii) It should have the aim simply of restoring the parties to the competitive position they each set out to occupy and would have occupied but for the defendant's misconduct. It is not fair and just if it has a much more far-reaching effect than this, such as driving the defendant out of business.

iii) Such relief will not be granted where a monetary award would have provided an adequate remedy to the claimant for the wrong done to it.

iv) Springboard relief is not intended to punish the defendant for wrongdoing. It is to provide fair and just protection for unlawful harm. 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. The seriousness or egregiousness of the

particular breach has no bearing on the period for which the injunction should be granted.

v) The burden is on the claimant to spell out the precise nature and period of the competitive advantage. An "ephemeral" and "short-term" advantage will not be sufficient.

379. Whilst springboard injunctions are often granted on an interim basis (and some of Haddon-Cave J's language in *QBE* is focussed on that), there is no doubt – and it was accepted by the Defendants in this case – that they can also be granted as a form of final relief.

380. As to the question of the width and duration of any injunction, Haddon-Cave J in *QBE* (at paragraph 284) explained that the court must assess the actual advantage gained by the wrongdoers as a result of their unlawful activities and went on to identify what were, in his view, the principles to be applied:

> "(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, ie 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."

Further facts relating to springboard relief

381. Before considering what, if any, springboard relief is appropriate in this case, it is necessary to deal with the evidence and submissions advanced relating to the effect of the resignations on Guy Carpenter, both in terms of its workforce and its clients.

382. The position advanced by Guy Carpenter in its evidence was very much to focus on the impact that all of the departures had had, pointing out the size of the hole that had been left, consistent with the position it advanced that absent unlawful conduct nobody would have left. As I have already found, most of those who left would have resigned even if all Willis Re's, and Mr Summers' and Mr Fletcher's, conduct had been lawful, albeit perhaps some of them slightly later than in fact they did. I will, however, sketch out the evidence relating to the Guy Carpenter teams and clients.

383. The identification of those who left, and those who stayed, can be seen on the organisation charts that were prepared and handed up by Guy Carpenter during the course of the trial. I attach those at Appendix 1 to this judgment. METL lost its leader (Mr Summers), its chief operating officer (Mr Devlin) and other senior leaders. Others remain, including its Chairman (Mr Jay) and the Deputy Head (Mr Liley), as well as the new Head (Mr Hakes) and other senior leaders. Bermuda lost its leader (Mr Fletcher) and his most likely replacement (Mr Dart) as well as two other MDs. In terms of proportion of the team leaving, as well as the seniority of those who left, the impact was probably felt most strongly in Bermuda. In terms of the NMS team in London, although 3 out of the 4 who left were at MD level, the key leadership of the NMS team remained in place.

384. Since the resignations, Guy Carpenter has sought to recruit into these teams to plug the gaps. First, METL (giving the position as it stood at the time of the trial):

    i) Miles Burton has been recruited as a Senior Broker (SVP), starting on 1 April 2026. He is a like for like replacement for someone of similar seniority. Before hiring him, Mr Jay noted that he would be an "*Upgrade on Vaughan or Beer.*"

    ii) Simon Jones, a former actuary who previously worked as an underwriter (giving him what was referred to in an internal Guy Carpenter document as "*a skillset that far exceeds any of the recent departures*"), accepted an offer in September 2025 and joined as an SVP on 10 November 2025.

    iii) Adam Ford joined on 22 December 2025 as a VP (junior level broker) and is a construction broker, rather than a like for like replacement of any of the leavers.

    iv) Matt Lovett joined at the start of December 2025, also as a VP, and was said by Guy Carpenter to have primarily been a replacement for someone expected to retire on the international side of Guy Carpenter's business.

    v) Sam Alexander was an internal transfer from Marsh, and was expected to start with METL on 1 January 2026 as an AVP (the lowest rung of the relevant titles).

    vi) David Yellop joined on 6 October 2025, also as an AVP, having worked for Willis Raber in Ipswich.

385. As to NMS, Nick Fallon has been recruited at MD level, and is a senior broker hire from Aon for the London NMS team. He will be starting at Guy Carpenter in August 2026 (due to his 12 month notice period). The following have been recruited for NMS in Bermuda:

i) Kevin Adams is joining as MD, due to start on 1 March 2026, having previously been a broker at Guy Carpenter, but more recently has been an underwriter (as Head of US Treaty Production for Fidelis). He is intended to be the replacement for Mr Dart (and was described by Mr Morgan in an internal message on 7 September as "*an excellent new Darty*").

ii) Brian Steinhoff started on 3 November 2025 as MD, and is expected to replace Ms Hall or Mr Keegan, and has recently been working as an underwriter rather than a broker.

iii) Alun Thomas started on 1 December 2025 at MD level, and was also previously an underwriter, though has worked as head of global property at a smaller ("challenger") broker for two years.

iv) Ben Lines joined on 10 November 2025 in a junior position as an AVP. Guy Carpenter emphasised he had little relevant experience, though an internal email from James Mitchell on 29 July explained that "*All Bermuda based MDs have met with him ... and are supporting the hire. Additionally there has been external endorsement from some very senior folk in the industry.*"

v) Aidan McPhail joined on 1 December 2025 at AVP level as a replacement for Ms Wehmeyer with experience in the marine and energy business – as Mr Withers-Clarke explained in an email to Ms Best on 15 July 2025, Mr McPhail has "*similar tenure in the business*" as Ms Wehmeyer but with marine reinsurance experience, and elsewhere described him as "*an upgrade on Nina [Wehmeyer]*".

386. Moreover, at least one other senior hiring option was available which Guy Carpenter had decided not to progress, at least in the period discussed at trial. Mr Morgan had spoken to the chief underwriting officer at a reinsurer, who had previously worked as a managing director at Aon, who had made it clear to Mr Morgan he would be keen to move to Guy Carpenter. Mr Morgan messaged Mr Boyce on 15 September 2025 explaining this. Mr Morgan accepted that Guy Carpenter had an option to hire this individual, but had no current plans to do so, because they wanted to look at who they had hired already and what the right balance of the team would be. He said they had not yet "*fully decided*" whether they needed another Managing Director. In other words, the cupboard was not bare, and Guy Carpenter were in a position to step back and assess how their reformulated team was working.

387. There has also been some internal redeployment, including Mr Morgan moving from London to be CEO in Bermuda from March 2026. Another relatively recent hire, Matthew Flynn, is also being redeployed to Bermuda (with the result that the role he was recruited for, in the global accounts team, will not be filled by him), as well as two others (an AVP from London and an SVP from the US) being temporarily deployed to Bermuda.

388. There have also been internal promotions, with Guy Carpenter having promoted 4 individuals to MD (including two in the METL team). Indeed, Guy Carpenter was always considering succession planning for its older employees (Mr Summers and Mr Whyte, for example, are in their late 50s, and Mr Devlin is 62). Following the departure of Mr Whyte, for example, Mr Demian Smith sent an email on 6 July 2025 to Mr Jay, Mr Boyce and others pointing out that Mr Whyte had discussed his thoughts about retirement on a number of occasions and "*we started to implement a succession plan 3 years ago*"; after running through Mr Whyte's contribution, he concluded: "*Whilst we will miss Matt's contribution to our team the business is not at risk and we can move forward with little interruption.*"

389. Whilst therefore not all the roles have (yet) been filled, Guy Carpenter has gone some way to filling them. There is obviously a time lag in some respects, as senior brokers moving from another broking job (like Mr Fallon) are likely to be on long notice periods.

390. Guy Carpenter also contended that a number of the clients of the Global Specialties team had been "destabilised" by the departures and were at risk of moving. Much of the evidence put forward in relation to this was by way of description of which of the leaving employees had covered which of the client accounts, how close the relationships were between many of the leaving brokers and various of the clients, and seeking to demonstrate how thinly each account remained covered, as well as witness evidence from Mr Boyce and Mr Morgan recounting concerns they had heard from some clients about Guy Carpenter's ability to continue to provide the service they expected. However, largely these concerns were not supported by any documents. Most of the documents relating to this contained messages of support from clients in the wake of the departures, and assurances of the continuation of their business. For example, on 11 June, one client – Antares – emailed Mr Boyce to state:

> "Whilst we understand there will be many moving parts with the recent news and departures, [we] would like to take the opportunity to reaffirm our support for GC as a key relationship for us in the future."

In another example, on 10 June, the CEO and Chairman of Fidelis, Richard Brindle, emailed Mr Doyle and Mr Klisura saying:

> "At a time when you are probably having to deal with a lot of crap around the Willis move I thought now would be a good time to state that you are our largest inwards and outwards brokers and whilst obviously we look forward to hearing from you who will handle the various outwards placements that may be affected we fully intend to keep you in pole position and look forward to taking our partnership to new heights."

391. In the wake of the departures, Guy Carpenter sought to get round their clients and ensure they were onside. The messages they got back (such as were recorded in internal emails, rather than simply asserted by a witness) were generally positive. For example, Mr Mike Pummell reported on meeting with David Mowat at Markel, saying "*DM not fased by current GC exits*". Jonathan Powell reported on the same meeting, where he

had chatted to Mr Mowat "*on the way to drinks after*", who thought it "*very odd that the new Willis Re can't get a CEO.*"

392. There was limited evidence of business, or potential business, being lost to Guy Carpenter. It was said at the trial that one of the Global Specialties' clients, Canopius, had said it wanted to appoint Willis Re as broker on a new top layer in its property aggregate retrocession programme, though Mr Boyce and Ms Clarke gave slightly differing accounts of what they understood the precise placement to be and whether it was a role co-broking with Guy Carpenter. Guy Carpenter contended that this was business that it might well otherwise have got, but given the lack of any documentary record about the conversations or other information as to the placement, it is difficult to know how likely that might have been.

393. The only pleaded example[30] given before the trial started of Guy Carpenter having lost business was an RFI response that Axis (a METL) client had "*already ceased dealing with Guy Carpenter.*" That turned out to be wrong. Mr Jay confirmed that Axis remained a Guy Carpenter client for some placements, but that it had been removed as a co-broker for its composite London Market Excess of Loss program. Although this removal took place after the resignations, an internal message from Mr Liley on 8 July 2025 recorded that "*this is not linked to exits – Axis just want one broker after a bumpy 1/1*" and Mr Boyce had sent an internal email on 4 July 2025 stating that Axis had told him "*they would be compensating GC with additional property revenue.*" The ultimate position was not clearly demonstrated at trial (e.g. what additional revenue had come through) but in any event there was nothing in the documents to suggest that this was anything to do with the resignations.

394. The evidence as to risk of Guy Carpenter losing clients was, though, largely looking to the future and the risk which Guy Carpenter's witnesses said they perceived once the new Willis Re employees were able to start work and when their post termination restrictions ceased. Whilst there is obviously a risk that clients will follow brokers with whom they had previous relationships, it is difficult to put it much higher than that, particularly given the protection that is given in any event by the notice periods and the post termination restrictions. Moreover, Guy Carpenter itself has an inherent attraction as a broker to its clients. These include the fact that it is an established heavyweight across the whole market, with tried and trusted structures and support functions, plus it is part of Marsh, and benefits from the fact of that relationship because insurers who obtain their (inwards) insurance business through Marsh are more likely to place their (outwards) reinsurance through Guy Carpenter.[31] In his oral evidence, Mr Morgan accepted that "*the fact that Marsh are there gives us an obvious advantage.*"[32]

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[30] Mr Morgan sought to give evidence of another example of lost business, from Ariel Re (to another broker), but there was no documentary support for this, or the reasons for the move of the business, and he accepted in cross-examination that it was quite possible that Ariel Re had been saying for a while that Guy Carpenter was overweight in terms of the amount of business it got compared to other brokers. It is difficult to put any weight on this as something happening as a consequence of the resignations.

[31] This is also one of the selling points Guy Carpenter has been using to reassure clients, for example in Mr Powell's discussion with Mr Mowat of Markel, referred to above, Mr Powell reported that he had "*waxed lyrical about the GC/Marsh machine having the perfect playbook, great comms, collaboration, etc.*"

[32] Mr Jay tendered a similar view: "*Q …It is right, isn't it, that for an insurer who depends upon Marsh referrals to be prised away from Guy Carpenter would be a very difficult thing to do? Do you accept that? A. Yes.*"

395. The reality is that, at least for a few years, Willis Re is more likely to be a competitor to the small ("challenger") brokers, than to the two big beasts of the reinsurance broking market, Guy Carpenter and Aon. The evidence was that most of the large reinsurance programmes would typically be led by a "flag" broker (often Aon or Guy Carpenter), with other brokers being given a small part of the programme to place. Mr Morgan recognised when cross-examined: "*For the first few years it would be more typical that they [Willis Re] would have a non-flag relationship.*" Consistently with that view, Mr Jay's perception in the aftermath of the departures was that the impact of Willis Re would be felt by the challenger brokers. In a note of a call he had with someone from Lancashire (a Guy Carpenter client) on 13 June, Mr Jay noted: "*the reinvention of Willis Re will be the end of the challenger broker model*", and in a text message he sent on 19 June he stated: "*I think Willis are is the death nail [sic] of those smaller challenger brokers now, back to the big 4.*"

396. Despite what the witnesses sought to say, there was little in the contemporaneous documents showing that Guy Carpenter was seriously concerned about losing business to Willis Re. The comments that were made were, in fact, largely dismissive of the Willis Re threat. For example, in an email of 14 June 2025 discussing why Mr Keegan and others had decided to leave, James Wackerman (an MD) said in an email to Mr Morgan: "*Biz isn't moving from GC to Willis or any other broker in ANY meaningful way regardless of their relationships*" (to which Mr Morgan replied, "*couldn't agree more*"). Similarly, as the resignations were starting and the very top level of Marsh and Guy Carpenter were seeking to assess what Willis Re were seeking to do, Mark McGivney (Marsh's Chief Financial Officer) emailed Mr Doyle and Mr Klisura saying: "*Any material impact is way off and I think they understand the challenges of building a reinsurance business given the steep barriers to entry (at least to build a business that could rival us or Aon).*" Many other similar comments were made, though one has to be slightly cautious about some of them which appear to have been suggestions for comments to the press (e.g. Mr Doyle's comment on 26 June 2025 that: "*It's a scale game and it will be a lifetime before they can compete effectively*") which were no doubt penned with the intention of seeking to run down the Willis Re operation.

397. However, there is no doubt that the overall sentiment at the senior level in Guy Carpenter was that Willis Re was not in a particularly good place. There was particular bemusement at the recruitment of "retro [retrocession] brokers", who often feed off the reinsurance business placed through the same broker, which was expressed by Mr Trace, Guy Carpenter's North America CEO to Mr Doyle, Mr Klisura and Mr Boyce on 12 June:

> "…this whole thing is hard to figure out the logic. Why would retro brokers be in the front end of building out the business? At best they should be a year or two out. We should consider releasing the retro brokers from gardening leave now so Bain can start running up expenses now with no revenue."

In other words, so confident was Mr Trace that the retro brokers would not be able to generate business for Willis Re that he was suggesting releasing them from their notice periods early (with the consequence that Willis Re would have to start paying them). Mr Morgan confirmed in his oral evidence that Mr Trace was serious in this comment, and indeed had been very confident about it, and also confirmed that, given that Willis

Re had not hired any property reinsurance brokers, it would be difficult for the property retro brokers they had hired to get business.

398. In short, in relation to the alleged client destabilisation, there was very little, if any, hard evidence that any client had already been "*destabilised*" to the extent that it would remove its business from Guy Carpenter (as opposed to the one or two examples of clients considering moving one piece of business away), and whilst the witnesses spoke of their concerns of the impact Willis Re might have, the contemporaneous evidence within Guy Carpenter was that there was no real concern about the Willis Re threat, at least in the near future.

Springboard relief in this case

399. As set out above, "springboard" relief is available to neutralise an unlawful advantage obtained by a defendant who has acted unlawfully. The relief granted should match the extent of the springboard unlawfully obtained by the defendant. That involves considering both the positive effect of the wrongful conduct on the defendant, as well as the harm caused to the claimant.

400. Guy Carpenter's pleaded case in the Amended Particulars of Claim (at paragraph 130(2)) is that the springboard advantage would "*persist for at least 12 months*" having regard to Guy Carpenter's "*weakened position caused by the destabilisation*" making recruitment and retention more difficult, and the difficulty in recruiting specialist staff, who are likely to be bound by lengthy periods of notice and post-termination restrictive covenants (of up to 12 months). The relief actually sought at trial is substantially longer than 12 months. What is sought by way of springboard relief is:

    i) Relief to restrain recruitment from Guy Carpenter – an injunction preventing the Defendants from recruiting further from Global Specialties until 1 April 2027 (which Guy Carpenter referred to as the "No Recruitment Injunction").

    ii) Relief in relation to clients, which fell into two parts:

        a) an injunction to prevent the Defendants inducing or permitting any resigning employee to solicit or deal with any client who was a client or prospective client of Global Specialties and with whom *any* resigning employee had had contact or had obtained any confidential information or trade secrets within the last 2 years of their Guy Carpenter employment; and

        b) an injunction to prevent the Defendants from bidding for or placing business for a list of 15 identified clients of Guy Carpenter, and preventing the Defendants from encouraging or procuring any of those clients from terminating their business with Guy Carpenter.

    In both cases, lasting until 1 April 2027.

401. Relevant to relief, particularly client relief, is the fact that there are already protections in place, by way of the various contractual provisions by which the leavers are bound, and which they have undertaken to abide by. Mr Summers and Mr Fletcher have both been, and continue to be, out of action for 2026 renewals on 1 January 2026 and 1 April

2026 because they are on garden leave, still working out their notice periods with Guy Carpenter. The same is the case for Mr Dart and Mr Ogilvie. Notice periods for most of the other leavers ended in mid December 2025 (Mr Whyte in early January 2026 due to his later resignation date), with the notice periods of the two junior Bermuda employees (Ms Boonstra and Ms Wehmeyer) having ended sooner (in mid September 2025). In addition to those periods, the leavers are bound by post termination restrictions that limit them from dealing with their former clients until (generally) 12 months after their resignations. The result is that by the time they are able to work for Willis Re unfettered by such restrictions, Guy Carpenter will have had almost a year to introduce clients to the reorganised broking teams (where there has been such reorganisation) and/or to new brokers, which will have included the 2026 renewals.

(i) No Recruitment Injunction

402. Guy Carpenter contended it was entitled to this relief on both a springboard and a *quia timet* basis.

403. In relation to springboard relief, Guy Carpenter contended that Willis Re had acquired a significant unlawful advantage in recruiting from Guy Carpenter for at least several years. It argued that Willis Re has gained a treaty reinsurance business by unlawful conduct and that, without that unlawful conduct, the Willis Re recruitment operation could not have been successful at all. It was said that the Defendants' unlawful conduct had made Willis Re a more attractive and enticing home for employees and had destabilised Guy Carpenter's existing staff. It would, therefore, be a highly attractive option for other Global Specialties staff to move to Willis Re.

404. Guy Carpenter sought to defend the length of the proposed injunction (until 1 April 2027), saying it would steady the ship amongst the existing staff base, allow it to recruit and bed in new hires, and enable Guy Carpenter to defend its client base up to and including the renewal seasons on 1 January and 1 April 2027 without further movement of staff to Willis Re. It contends that a lawful recruitment exercise by Willis Re would have taken far longer than it in fact did.

405. The seeking of such an injunction until 1 April 2027 – approaching 2 years since the resignations from Guy Carpenter – was always ambitious.[33] No-one at the trial identified any authority where such relief had been granted for such a period of time. Even if Guy Carpenter had succeeded in its entire case on liability and causation, such that absent the unlawful conduct, no employee would have left Guy Carpenter, this strikes me as likely to have been too long a length of time to represent the unlawful advantage that Willis Re would have, in such a scenario, obtained. Guy Carpenter has been able to recruit and promote, even if not to the extent of filling all the gaps by the time of trial, nonetheless to the extent that it felt able to pause recruitment and forgo the opportunity to recruit at least one further experienced and senior broker who was keen to join. This is against the background where Mr Klisura had previously expressed an opinion that there was overstaffing at the MD level, such that it is entirely possible

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[33] Bloch & Brearley on Employment Covenants and Confidential Information (4th ed.) at paragraph 15.127 suggests that springboard injunctions are often granted for much shorter periods than 12 months, and that "*nowadays*" (in 2018) a springboard period of 12 months is "*probably more the exception than the rule.*"

(though it cannot be known as he did not give evidence) that he is content with the level of recruitment (alongside internal promotions) that has been reached.

406. There is no evidence that remaining Guy Carpenter employees are "destabilised", given that many were given retention packages in the face of the Willis Re offers,[34] and recalling that a number of Guy Carpenter employees turned down Willis Re, preferring to stay at Guy Carpenter. Whilst all those who received offers, and the terms of all the offers, were not identified at trial, it appears likely that substantial sums of money were involved. Mr Withers-Clarke gave evidence of what he had been offered, and accepted, to stay at Guy Carpenter, which included a 23% salary increase matching what Willis Re had offered him, a guaranteed bonus for 3 years, a long-term incentive award, further cash which would vest in 3 years' time, and a 50% increase on his housing allowance.

407. As a result, even if Guy Carpenter had succeeded on its full case in terms of liability and causation, I cannot see how an injunction for the length of time requested, or even approaching it, could have been justified.

408. However, that is not the basis on which the question of relief is to be approached. I have found that the unlawful acts were narrower than was alleged by Guy Carpenter, and also that absent the unlawfulness, many of those who left would in any event have left for Willis Re (although perhaps over a slightly extended length of time). This is the basis upon which the unlawful advantage that Willis Re gained is to be assessed.

409. It needs to be recalled that springboard relief is not intended to punish a defendant for wrongdoing. It is to provide fair and just protection for unlawful harm. As noted by Haddon-Cave J in *QBE*, 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.

410. Haddon-Cave J in *QBE* at paragraph 284 identified five factors to be taken into account in considering the length of a springboard injunction, which appear to me to provide a reasonable framework for addressing matters.

411. First, in relation to the inquiry as to the length of the time that it would have taken Willis Re to achieve lawfully what it has in fact achieved unlawfully, that starts with the analysis I have set out above as to what the Willis Re recruitment would have achieved absent the unlawful conduct. As I have found above, it is likely that most of those who left would have done so, even absent unlawful conduct. A few would likely not have done – above I identified Mr Pepper, Mr Hitchings and Mr Beer from the METL team and Ms Boonstra and Ms Wehmeyer from the NMS team in Bermuda. Some may have taken longer to recruit than in fact was taken, such as Mr Hornett, perhaps also Mr Dart and Mr Keegan and others.

412. The fact that Mr Beer would not have left makes no difference to an analysis of the current position – he had returned to Guy Carpenter, such that Willis Re have obtained no advantage through his conduct. Mr Pepper is also not joining Willis Re, though neither has he gone back, such that there has been some downside to Guy Carpenter in relation to him, albeit not mirrored by a commensurate advantage to Willis Re. For

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[34] Mr Boyce said in his statement that 65 retention packages had been offered to Global Specialties employees, though some of those may have been to people who decided to resign anyway.

Willis Re to have reached the position in terms of ex-Guy Carpenter employees that they have done, acting lawfully, the recruitment of those who would have joined would have taken slightly longer (I have suggested above likely up to an additional month), and they would have had to recruit someone like Mr Hitchings as well as the two junior employees, Ms Boonstra and Ms Wehmeyer. Such additional recruitment is likely only to have taken up to two or three months – by way of comparison, the two junior brokers who have joined Global Specialties in Bermuda following the departures (Mr McPhail and Mr Lines, both joining at AVP level) accepted their offers on 3 September and 28 August 2025 (one starting on 1 December and the other on 10 November). Four individuals have been recruited at MD level (Mr Hitchings' level) by Guy Carpenter for NMS (though none for METL), with offers being accepted between 26 August and 6 October 2025, and METL recruited two senior brokers at SVP level, with offers accepted on 12 August and 4 September 2025.

413. Based on the material at trial, therefore, it is likely that it would have taken Willis Re up to about 4 months longer than it did to achieve lawfully what it has in fact achieved in terms of recruitment.

414. Second, the effect on Guy Carpenter of the unlawful recruitment has been relatively minimal. They have replaced the two junior employees in Bermuda, and have recruited several people into the METL team (albeit not at the MD level) including two SVPs (which was Mr Pepper's level). The METL team is, it is to be recalled, a large team (numbering some 108 people before the resignations in early June 2025), which is the context in considering the impact of the unlawful recruitment of two individuals. Whilst there has obviously been more disruption to METL, and to Guy Carpenter's Global Specialties business generally, than that, most of that is because of the recruitment that would have taken place even absent any unlawful conduct.

415. Third, Haddon-Cave J in *QBE* also referred to the period of time over which the unlawful activities had taken place, which was said to have a kinetic rather than linear relationship to the length of any springboard relief. Here, the first meeting between Ms Clarke and Mr Summers took place on 26 February 2025, which is when there was first discussion of other Guy Carpenter employees, such that the period of time in question was some 3 and a half months (until the resignations). This is at least an indicator which is consistent with the sort of periods of time already mentioned.

416. Fourth, there may be other factors at play during the period of unlawful activity materially affecting the advantage gained compared to similar assumed circumstances of purely lawful activity. One potential factor here might be what Haddon-Cave J referred to as "*stealth and secrecy, so that management are unaware and do not take defensive measures*". However, whilst Ms Clarke did hope to be discrete and fly under the radar as far as possible, as I have held she did not encourage or procure Mr Summers or Mr Fletcher not to tell Guy Carpenter. In fact, Mr Summers did tell Guy Carpenter that he had been approached and was taking it seriously, and also warned them that Willis Re was a threat to METL and identified specific employees. I have found above that, even if informed at an earlier stage, Guy Carpenter would not have taken any (or any sufficient) "defensive measures" at any early enough stage to make a material difference for most of the employees. Moreover, this is not a case where Ms Clarke sought to exploit the fact that she was recruiting people who were still employed, for example, by seeking to persuade them to provide client details, or to take client information with them when they left. There was nothing along those lines in this case.

417. Fifth, the nature and length of the springboard should be fair and just in all the circumstances.

418. Taking all the above points into account, it appears to me that the appropriate length of time for any springboard relief would be four months from the date of the first resignation on 9 June 2025. That fairly reflects the maximum length of additional time it would have taken Willis Re to complete a lawful recruitment exercise that ended up in materially the same position as it now is, and is also more than sufficient to reflect the difficulties that have been caused to Guy Carpenter through the loss of those who would not, in a lawful exercise, have left. It is consistent with the length of time over which the unlawful activities took place, and there do not appear to me to be any other particular factors which ought to lengthen, or reduce, that period. It is a period of time for relief which is fair and just in all the circumstances.

419. That period of time has, of course, long expired. As Haddon-Cave J noted in *QBE* at paragraph 243, springboard relief must be obtained at a time when any unlawful advantage is still being enjoyed by the wrongdoer. Here, it is not. There cannot, therefore, be any final relief on a springboard basis in this case.

(ii) Client Injunction

420. The points made in relation to the client injunctions, which were sought on a springboard basis, were similar to those made in relation to the non-recruitment injunction. Guy Carpenter contended that, by reason of the unlawful headstart which it said Willis Re had obtained, Willis Re was now a serious contender for major treaty insurance work in the Global Specialties area. Guy Carpenter pointed out that Willis Re hoped to grow its business with a target revenue of $440m within five years, which Mr Morgan thought would put Willis Re within the top ten reinsurance brokers in the market.

421. As with the non-recruitment injunction, even if Guy Carpenter had succeeded in all of its case on liability and causation, a client injunction of the breadth and length sought seems to me to have been ambitious. Among other points:

i) Under the first limb of Guy Carpenter's draft client relief, the injunction is not limited to clients with whom a particular resigning employee dealt during the last 12 months of their employment at Guy Carpenter, but instead would prevent all the resigning employees from dealing with any clients with whom any resigning employee dealt over such period. Given the number who resigned, this in effect seeks to protect the whole of the Global Specialties' client base from competition from Willis Re, and in turn, because of the size of Guy Carpenter's Global Specialties, there is a substantial risk that most of the market would be caught. There was nothing in the evidence justifying an injunction that wide. There was no attempt to justify why, for example, a junior broker in Bermuda should be prevented from working with a particular company because a junior broker in London (whom the Bermuda broker might never have spoken to) had had contact with or saw confidential information about that company two years earlier.

ii) Moreover, it is not just the breadth of that restriction which is problematic, it is the fact that it would be extremely difficult for Willis Re to know which people

or companies fell within the scope of the prohibition. It would require knowing the identity of every client or prospective client that each resigning employee had had a relevant contact with (or obtained confidential information about) over a 2 year period before their employment ended (aggravated by the wide proposed definition of "confidential information" which is set out later in this judgment). This is in circumstances where the proposed new contact may well be through a different employee (possibly who has never worked in the same office as the resigning employee whose previous contact triggers the prohibition). It is difficult to see how an injunction on that basis would fulfil the requirement to be sufficiently clear and precise that the persons enjoined knew what they were prevented from doing.

iii) The second limb is also problematic. First, it seeks to focus on particular clients, but there was no real evidence of any client destabilisation, as I have already noted above. The evidence that was adduced was mostly thin and general, and without documentary support. There are incentives for clients to stay with Guy Carpenter. Second, the second limb is also too broad. The relief would apply to Willis Re regardless of whether business was done by the resigning employees or by others recruited from elsewhere. It would also prevent Willis Re from transacting any business with each of the identified clients, even if it was a particular piece of business in which Guy Carpenter had no interest.

iv) There are already protections to some extent provided by the notice /garden leave periods and the post termination restrictions.

v) There is no potential justification for the proposed client relief based on client solicitation. There was no evidence of any.

vi) It is difficult to see how a springboard injunction of the length sought could be justified, in particular given the extent to which Guy Carpenter has already had the opportunity to recruit and promote (as above), and the protection it already has in relation to approaches to clients from the notice periods and post termination restrictions.

422. In any event, as I have noted above, the unlawful headstart obtained by Willis Re is based upon the unlawful conduct and its consequences. I have explained above the extent to which Willis Re obtained an unlawful advantage in terms of the assembling of the brokers who will be working for them. However, in relation to the client injunction, the following additional points arise:

i) There is no evidence that, in relation to clients, Willis Re has achieved anything unlawfully. There was very little evidence that any clients have decided to move any business from Guy Carpenter to Willis Re, and that which was given at trial was generally anecdotal and unsupported by documentation. But, importantly, there was no evidence at all that even that business, if it had indeed been moved and if that had been caused by the resignations from Guy Carpenter, had been caused or was related to those departures that I have found resulted from the unlawful conduct. In other words, given that in a lawful counterfactual, most of those who left would have done so, including the leaders (not only Mr Summers and Mr Fletcher, but other senior personnel as well), there is nothing to suggest that any movement of business that has taken place (if, as I say, there has been

any) would not have moved with them. The fact that a small number of employees might not have moved in the lawful counterfactual is unlikely to materially affect any movement of client business. There is no evidence that any client business has moved because, for example, of Mr Hitchings' move, or the moves of Ms Boonstra or Ms Wehmeyer, who are the individuals I have found most likely not to have moved to Willis Re in the lawful counterfactual.

ii) A similar point applies in relation to potential moving of business to Willis Re in the future, which was the real concern expressed by those who appeared at trial for Guy Carpenter. Most of the recruitment would have taken place in the lawful counterfactual (including the most senior leaders), and if there is going to be any business moving it is likely to be moving in any event. For example, in none of the evidence that was given relating to clients who Guy Carpenter were concerned about was particular weight placed upon Mr Hitchings, Ms Boonstra or Ms Wehmeyer.

iii) There has not, therefore, been any unlawful advantage accruing to Willis Re in terms of clients, nor has there been any harm (whether identified or potential with any degree of probability) in relation to client movement suffered by Guy Carpenter as a result of the unlawful conduct.

iv) I have borne in mind the period of time over which unlawful activities took place, and the other factors at play. Here, those include that there was no attempt to solicit clients for Willis Re whilst the employees remained at Guy Carpenter.

v) In all the circumstances, therefore, it is just and fair that there be no springboard relief in relation to clients. There is simply no real evidence that any unlawful advantage has been obtained in relation to clients.

Quia Timet injunctions

423. Guy Carpenter also contended it was entitled to the No Recruitment Injunction on a *quia timet* basis (although also saying that they had already suffered loss due to the breaches of duty), though it is fair to say that there was less emphasis placed on this basis than on the springboard basis at trial. It was said by Guy Carpenter that Willis Re had shown both propensity and intention to recruit unlawfully, and they should be precluded from doing so.

424. The difficulty with this is that the injunction sought prevents *any* recruitment, not just unlawful recruitment. It is very wide, and is in no sense targeted at recruitment that might be unlawful. This can be seen from the first of the five sub-paragraphs of paragraph 1 of the particulars of relief which are sought:

> "The Defendants MUST NOT, directly or indirectly: …
>
> 1.1. make an offer of employment to any person employed by any of the Claimants within the Guy Carpenter Global Specialties Business: (i) in the United Kingdom; or (ii) in Bermuda; in each case, who has not already received a written offer of employment as at 11 July 2025;…"

425. Guy Carpenter was not able to explain with any analysis how a *quia timet* injunction could properly be put in place, in terms of a final injunction, to prevent lawful conduct. The only authority on which reliance was placed for this proposition was *Tullett Prebon*, where Guy Carpenter contended that Jack J granted final relief preventing recruitment on a *quia timet* basis, relying on what he said at paragraph 250:

> "250. It seems to me that here the basis for the interim injunction is better put more simply. BGC was carrying on an unlawful course of conduct against Tullett and Tullett was entitled to an injunction to stop it. It is a kind of quia timet injunction. As BGC had shown an intention to recruit unlawfully it was not appropriate simply to injunct unlawful recruitment but all recruitment, because of the risk and likelihood of further unlawful means and the difficulty of detecting them."

426. However, the context for what was said in that paragraph is important. Jack J was, there, explaining the injunction that had been granted on an interim basis at an earlier stage. He had started that part of his judgment at paragraph 247, stating as follows:

> "247. When interim relief was granted on 2 April 2009 Tullett was facing an attack on its workforce in which desk heads were being used to recruit in breach of their duty to Tullett, and in which it was intended to call out recruits to leave Tullett regardless of whether the recruits were entitled to do so by reason of constructive dismissal. It was appropriate to injunct BGC to prevent this conduct from continuing, and the only way to achieve that was to bar BGC from recruiting from Tullett in any way."

427. Jack J then went on to explain why that interim injunction was better explained as "a kind of" *quia timet* injunction, rather than an injunction on the springboard basis, culminating in paragraph 250 set out above. The point he then went on to deal with was the submission that the same relief should be extended as final relief beyond the judgment, based on the contention that the defendant would try again to recruit using unlawful means and referring to destabilisation of the claimant's workforce. Jack J rejected that. At paragraph 253 he stated:

> "253. In my judgment it was appropriate that Tullett should have the protection it did until the delivery of this judgment. There is no justification for any further substantial extension of the relief. The court must assume that the exposure of BGC's conduct as set out in the judgment will curb unlawful recruitment in the future. BGC is a substantial and ostensibly responsible company. The relief against BGC will be continued for 14 days from the delivery of the judgment, so the judgment may be absorbed. It will then end."

428. There was, therefore, no final relief granted on a *quia timet* basis (the 14 days being in reality a pragmatic run-off of the interim relief),[35] and no suggestion that it might have been appropriate, once the facts had been found at trial, to continue an injunction against lawful recruitment.

429. Further, Guy Carpenter have not pointed to anything in particular that suggests a future threat of unlawful recruitment. What is relied upon is the fact that there has been unlawful recruitment in the past, such that it is submitted it can be anticipated it is likely to recur again unless there is an injunction in place.

430. However, on the facts and circumstances of this case, that is not borne out. No inference can here be drawn that the past unlawful conduct will continue or be repeated. There was, as I have found, unlawfulness in the recruitment, both in the breaches of duty by Mr Summers and Mr Fletcher and in the inducement of some of those breaches by Ms Clarke. However, this was not the widescale unlawfulness which was alleged by Guy Carpenter. The recruitment exercise was not planned as an "unlawful raid", as was sometimes suggested by Guy Carpenter. A more accurate characterisation would be that it was intended as a lawful recruitment exercise in which Ms Clarke, Mr Summers and Mr Fletcher from time to time got carried away and stepped over the line of what they ought not to have been doing. Most of the breaches of duty and unlawfulness were acknowledged and admitted by the Defendants, and personally by Ms Clarke, Mr Summers and Mr Fletcher, in their Defences and witness statements. Regret and apologies were expressed during the course of the trial by the witnesses. There is no reason to think that, in light of this judgment, similar unlawful conduct would be repeated.

431. The fact that Willis Re may want to recruit more people, even from Guy Carpenter, is not a sufficient basis to impose an injunction on a *quia timet* basis against all recruitment. It will be entitled to recruit lawfully, and it should not be prevented from doing so, in particular given the matters I have set out above about there being no basis to think they will attempt in the future to do so unlawfully. There is, in short, no basis for the No Recruitment Injunction on a *quia timet* basis.

432. Guy Carpenter also sought what it termed the "No Assist Injunction" – in summary, relief to restrain the Defendants from procuring or inducing any employee of Global Specialties to assist in recruiting any other such person. It was not clear whether this was pursued on the springboard basis or on a *quia timet* basis – the written closing submissions devoted a short paragraph to it saying that all the points relating to the No Recruitment Injunction applied *a fortiori*, described the "No Assist Injunction" as seeking to stop the Defendants using Guy Carpenters' employees to conduct unlawful recruitment, and then went on to make the point I have noted above by reference to *Tullett Prebon* and Willis Re having shown both propensity and intention to recruit unlawfully.

433. Those arguments resonate more clearly with the *quia timet* basis for an injunction. For the avoidance of doubt, to the extent that this was pursued on a springboard basis, it would fail for the same reasons as I have already set out in relation to the No Recruit

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[35] As described in Bloch & Brearley on Employment Covenants and Confidential Information (4th ed.) at paragraph 15.126: "*In effect, the court endorsed the grant of interim relief but held no further relief was necessary following trial.*"

Injunction on the springboard basis. As for the *quia timet* basis, it too fails for reasons similar to those identified above in relation to the No Recruit Injunction. The fact that Ms Clarke induced Mr Summers and Mr Fletcher to breach their duties in certain ways, in the circumstances of this case that I have already set out, does not provide a sound basis for apprehending the inducement by any of the Defendants of breaches of duty by other Guy Carpenter employees in the future.

Other Injunctive Relief

(i) The garden leave injunction

434. This was an injunction sought to enforce the terms of Mr Summers' and Mr Fletcher's garden leave provisions in their contracts with Guy Carpenter. However, I do not need to get into the details of this. Each of Mr Summers and Mr Fletcher confirmed at the trial that they were willing to abide by those provisions and to undertake to the court that they would do so. In those circumstances, Guy Carpenter indicated it did not need an injunction, and I need say no more about it. I anticipate that the undertakings will be recorded on the face of a court order made on or after handing down of this judgment.

(ii) The PTR injunction

435. Guy Carpenter sought an injunction to prevent the Defendants from inducing any resigning employee to act in breach of post-termination restrictions ("PTRs") which were said, in the draft particulars of relief, to be set out in Schedule 1 to the draft. However, Schedule 1 to the draft particulars of relief simply said that a table of the restrictions would be produced following judgment. That was not a promising basis to advance a case for an injunction, in particular where the terms of the post-termination restrictions for each of the resigning employees (apart from Messrs Summers and Fletcher) had not been pleaded. Moreover, Guy Carpenter did not advance any evidence justifying each of the post-termination restrictions or their reasonableness, as to length or scope or otherwise (for example, why 12 month restrictions were justified even in the case of the most junior brokers such as Ms Boonstra). Mr Fletcher, in particular, had contended in his Defence that several of his post-termination restrictions were unlawful restraints of trade and unenforceable, which Guy Carpenter did not deal with in their opening on the basis that Mr Fletcher's challenge to the enforceability of his post-termination provisions was academic given he is on garden leave and his post-termination restrictions will have expired by the end of his garden leave period. That may be right in relation to Mr Fletcher, but it misses the point that Guy Carpenter is seeking to enforce (via the PTR injunction) restrictions in numerous other employees' contracts.

436. In any event, there was no basis for the suggestion that the Defendants would induce any resigning employee to act in breach of their post-termination provisions. As I have already said, there was no attempt on behalf of the departing employees to solicit clients, and no suggestion that Ms Clarke had sought to persuade them to solicit clients, or to take client related information when they left Guy Carpenter. The only suggestion that approached a contention that a post-termination provision might have been breached was the suggestion made in respect of Ms Boonstra that I have referred to at paragraphs 161-162 above. But that was not a pleaded or particularised allegation, and there was no suggestion put to Ms Clarke that she had had anything to do with it (let alone induced it), or indeed to Mr Fletcher or to anyone else. As a result, given that no

attempt has been made to justify the restraints of trade which were the subject of the PTR injunction, and given that there is no evidence of any apprehended or threatened breach by the individuals, or of any inducement to breach by Willis Re (or any of the other Defendants), Guy Carpenter has not made out the basis for this injunction.

437. In relation to Mr Summers and Mr Fletcher's own positions, there was no basis to consider that either of them would or will breach their post contract restrictions (or that Willis Re would induce or encourage them to do so), and given their respective periods of garden leave (which covered the PTR periods) and their undertakings to comply with their garden leave provisions, this was something of a non-point (hence Guy Carpenter's position in its written submissions relating to Mr Fletcher that the matter was academic). There is no need, in those circumstances, even if there was otherwise a basis to do so, to provide any further relief, in respect of Mr Summers or Mr Fletcher's PTRs. (I note that, in any event, Mr Fletcher confirmed at trial that he undertook to comply with the PTRs in his contract of employment until 17 June 2026,[36] notwithstanding his primary position that his PTRs would expire on 10 June 2026 and that they were unenforceable in various respects).

(iii) The confidential information injunction

438. Guy Carpenter also sought relief preventing the use of, and for delivery up of (and deletion of copies of), what it defined as confidential information in its draft particulars of relief:

> "Confidential Information" shall mean any trade secret or other information which is confidential or commercially sensitive and which is not in the public domain (other than where such information comes into the public domain by reason of a breach by any Resigning Employee of the relevant Resigning Employee's obligations to any Guy Carpenter Group Entity) or part of their own stock in trade or readily ascertainable to persons not connected with a Guy Carpenter Group Entity without significant expenditure of labour, skill or money, relating or belonging to the relevant Guy Carpenter Group Entity or any of its or their customers or clients or Restricted Clients including, but not limited to, information relating to computer programs, source code, object code, technologies, products, product specifications, test data, prototypes, the business methods, corporate plans, management systems, finances, new business opportunities, pricing arrangements, trade agreements, profits, costs of investments, pricing and sales records, terms of business, marketing or sales of any products or services, secret formulae, processes, inventions, designs, applications, training presentations, promotional brochures, know-how, discoveries, and other technical information relating to the creation, production or supply of future products or services of the relevant Guy Carpenter Group Entity, or lists or details of clients, Restricted Clients, or other customers, potential clients or

[36] Guy Carpenter accepted in its written closing submissions that it would not seek to enforce a longer covenant period in Mr Fletcher's Restrictive Covenant Agreement.

> customers or suppliers, or the arrangements made with any Restricted Clients or other clients or customers or suppliers, lists or details of contacts, the curriculum vitae, remuneration details, work-related experience, attributes and other personal information concerning those employed or engaged by the relevant Guy Carpenter Group Entity, any information in respect of which the relevant Guy Carpenter Group Entity or any of its or their customers or clients owe an obligation of confidentiality to any third party and any information that is notified to the relevant Resigning Employee as being confidential."

439. "Restricted Client" in the above definition was separately defined in the draft particulars of relief as:

> "…any person, firm, company or other organisation who or which is or was a client or Prospective Client of the Guy Carpenter Global Specialties Business for the purposes of being provided with or sold reinsurance products or services (including retrocessional reinsurance or any other products or services of the type provided by any Resigning Employee during their employment with any Claimant) and with whom any Resigning Employee had Contact or about whom or which any Resigning Employee obtained Confidential Information or trade secrets during the last two (2) years of their employment with any Claimant."

440. It was not made clear whether this proposed definition had a basis in the contractual confidentiality obligations that had been undertaken by any of the resigning employees, or had another basis. It was, in any event, different from the two different definitions of "Confidential Information" that were pleaded in Guy Carpenter's Amended Particulars of Claim as said to be contained in each of Mr Summers' and Mr Fletcher's contracts of employment.

441. The definition of confidential information proposed is very broad, as well as unclear. For example, both "Restricted Clients" (a defined term) and "clients" (not a defined term) are often used in the same list, with no obvious explanation. "Guy Carpenter Group Entity" is also defined in the draft wording, in a broad manner (to include, for example, a company over which Marsh & McLennan Companies, Inc has control within the meaning of section 1124 of the Corporation Tax Act 2010) but it is unclear what "the relevant Guy Carpenter Group Entity" means, to which there are a number of references in the draft wording. There is also an element of circularity in the definitions of Confidential Information and Restricted Client in the proposed draft wording as each appears in the definition of the other. These points of breadth and lack of clarity are particularly important where the suggested order is, as I have said above, not only an injunction against use of, but also for delivery up of (and deletion of copies of) all information falling into the definition (as well as all information deriving from it) in the possession or control of a Defendant (and to use best endeavours to deliver up (and procure deletion of copies of) such information in the possession or control of any resigning employee).

442. This is not a case where any of the Defendants are in possession of any identified information which is said to be confidential which Guy Carpenter is requiring be returned to it. Mr Oudkerk confirmed in his oral closing submissions that there were no particular documents that Guy Carpenter was saying should not be used but should be delivered up. In other words, this was an attempt to obtain entirely general relief in the wide and unclear terms I have set out above.

443. An injunction must be framed with precision: see e.g. *Lawrence David Limited v Ashton* [1989] ICR 123 at 132D-E (Balcombe LJ); also Simler J in *Devere* (above) paragraph 37:

> "So far as the confidentiality injunction order is concerned, this must be framed with sufficient precision so as to ensure that those enjoined know what they are prevented from doing with clarity."

444. The above definition is not framed with precision, and would not allow those enjoined to know what they are prevented from doing with any clarity. It would not be appropriate to order an injunction in the terms sought.

445. In its written closing submissions, Guy Carpenter stated, possibly in acknowledgement of the difficulty of defending the above definition, that it was "*open to the parties and the Court to fashion the precise definition of confidential information and GC remains open to constructive suggestions as to the scope and formulation of the relief...*". However, this was relief that Guy Carpenter were seeking, and it was incumbent upon them to explain the scope of what it sought and the basis for it. Seeking simply to say that the court should order relief in principle and then that the wording could be dealt with at a later date does not, in the circumstances of this case, seem to me to be satisfactory and, in the circumstances, I will not grant the relief sought on this basis.

Declarations

446. The Amended Particulars of Claim stated that Guy Carpenter sought "*declarations as to the Defendants' unlawful conduct as set out in these Particulars of Claim*". However, no particulars have been given of any declarations which might be sought, and no explanation has been given as to what purpose might be served by any such declarations. No declaratory relief was pursued in the skeleton argument for trial, which in terms of relief referred only to Guy Carpenter's seeking relief in the form of the draft particulars of injunctive relief, and nor was any claim for declaratory relief articulated or explained in the written or oral closing submissions. In the circumstances, I do not deal any further with it.

Loss

447. This was set down as a speedy trial of all issues pertaining to liability and declaratory and injunctive relief. That was ordered at a hearing at which Willis Re/Ms Clarke had set out in their skeleton argument that they agreed there should be a split trial, with this trial dealing only with liability, injunctive relief and declaratory relief, and not financial remedies. It was accepted by Mr Cohen KC (acting for Willis Re and Ms Clarke) in his opening submissions that this trial was not intended to deal with the quantification of loss. However, it was said that, because loss is an essential ingredient of the claims in

tort (conspiracy and inducing breach of contract), the question whether any loss had been suffered was an essential part of this speedy trial, as it was an issue pertaining to liability.

448. At trial, the Defendants contended that no sufficient evidence had been led, or case presented, by Guy Carpenter to demonstrate that they had suffered loss. It was contended that there was no evidence that Guy Carpenter had lost any client revenue, that it must have made substantial savings on remuneration (given the level of salaries of those who had left), and had not led any evidence about the cost of replacement employees or retention packages such as to be able to demonstrate that the overall balance was a negative one. They contended that, net, Guy Carpenter may even have made a saving, such that it could not be appropriate to find tortious liability.

449. Guy Carpenter contended that it was obvious that damage was caused and that, in any event, the Court was entitled to presume loss had been suffered such that the tortious causes of action were complete, based on what was said by Neville J in *Goldsoll v Goldman* [1915] Ch 292 at 295: "*in a case where the breach which has been procured would in the ordinary course inflict damage on the plaintiff, the plaintiff may succeed without proof of particular damage.*" They said that it was never intended, in the context of a speedy trial of liability, that there should be a detailed inquiry as to the extent and nature of the loss suffered by Guy Carpenter. Some general evidence was put forward in Mrs Fowler's witness statement (which, on these points, was not challenged when she was cross-examined) as to retention payments that had been made and management time that had been lost, though that was at a fairly general level. Mr Morgan gave some evidence about lost, or potentially lost, business, which I have already commented upon above in relation to client destabilisation.

450. The reliance by Guy Carpenter on *Goldsoll v Goldman* was misplaced, at least in the context of the findings that I have made. The Defendants contended that it was no longer good law, an argument with which I do not need to engage because, on its own terms, the statement relied on is engaged in a case where the breach would, in the ordinary course, inflict damage. Here, it is not clear whether, in the ordinary course, the breaches that I have found would inflict damage, particularly given the findings I have made about the counterfactuals – it would all depend on the factual investigation of the particular circumstances.

451. I have dealt above with the evidence in relation to loss or potential loss of client business. As I have noted there, it was thin and not supported by documents but, in any event, there was nothing to suggest that any loss of business was caused by the unlawful conduct I have found (as opposed to, which was the basis on which it was put forward, by the departures of all of the resigning employees). The evidence given by Mrs Fowler about retention payments and wasted management time might, on the face of it, demonstrate at least some loss:

    i) She set out what the total figures were for retention awards (comprising a mixture of one-time bonuses, cash retention awards and deferred stock), for salary increases, for additional guaranteed bonuses to be paid in February 2026, and recommendations of an additional amount of shares in the LTI programme. She also said that it was anticipated that the salaries of those who left would have to be supplemented by a certain amount when recruitment efforts were

complete, such that Guy Carpenter would be paying more in salary costs for the people that join the business to replace those that left.

ii) She also gave evidence of wasted management time, though in terms of general descriptions of what was being done, rather than any attempt to identify figures. To different extents, Mr Boyce, Mr Jay and Mr Morgan gave some evidence about what they had had to do in order to respond to the departures, which might be prayed in aid in a claim for loss of management time.

However, this evidence was all given on a fairly general basis, and was dealing with the situation of all of the resigning employees having departed.

452. The difficulty with the current position is that the evidence of loss, such as it is, has not addressed the question of loss flowing from the breaches that I have found and the causation points that I have determined above (e.g. that most of the resigning employees would have left in the absence of any unlawful conduct). I do not see how, realistically, it could have dealt with that before or at the trial, when those findings were not known, and where it was common ground that the quantification of loss was not in issue. It would not have been realistic, in the context of the speedy trial, to have addressed loss in any greater detail than it was, or on multiple hypotheticals, both given the expedition of the trial and the time available at it.

453. Moreover, given that there may well be at least an argument from the Defendants in relation to loss that Guy Carpenter has gained as much as it has lost (and indeed such an argument was flagged in the Willis Re closing submissions), it is difficult to see how the loss question can be determined, even at a general level simply addressing the question whether there was any loss or not, without getting down into detailed figures in relation to all elements of loss – once the exercise involves netting off, the precise figures in both the plus and the minus column may well be important if not essential.

454. As a result, I do not see how I can sensibly come to a conclusion, at the end of this trial, whether Guy Carpenter has suffered any loss as a result of the tortious conduct that was committed. It may have done, it may not have done. Whilst it is right to say that Guy Carpenter bears the burden of proof on loss, given the nature of the split and speedy trial, as well as the fact that I have made findings relating to breach which represent neither party's primary case (going beyond those admitted by the Defendants, but not as far as those alleged by Guy Carpenter), I do not consider it would be appropriate to make a finding that Guy Carpenter has suffered no loss, or even to say that they have failed to prove they suffered some loss. Equally there is not a sufficient basis for me to find that loss was caused by the breaches I have found, such that the tortious causes of action are complete.

455. Rather, given the position now reached on my findings on breach of duty and causation, if any claim for loss is to be pursued, that can and should more efficiently be done at a separate stage. Appropriate directions can be set if such a claim is going to be pursued. In terms of where that leaves the question whether the Defendants are liable for the tortious causes of action, it means that I cannot, at this stage, find that they are so liable, because of the fact that the question whether loss has been suffered as a result of the conduct (which I have found is otherwise tortious) has not yet been determined.

Conclusion

456. For the reasons I have set out in this judgment, I find that the unlawful conduct of the Defendants went slightly further than was admitted by them at the trial, but not to the extent alleged by Guy Carpenter. Thus, Mr Summers and Mr Fletcher were in breach of their duties, to a slightly greater extent than they had admitted; Ms Clarke (and, through her, Willis Re) induced most of the breaches of contract committed by Mr Summers and Mr Fletcher, and dishonestly assisted most of their breaches of fiduciary duty; Ms Clarke and Mr Fletcher entered into a conspiracy to use unlawful means, but no wider than they had admitted, and Ms Clarke and Mr Summers entered into a narrow conspiracy to use unlawful means. There was a breach of confidence by Mr Fletcher and Ms Clarke (and Willis Re) in relation to the remuneration information (as they had admitted).

457. However, as I have explained, these relatively limited breaches of duty and other unlawful acts do not give rise to any continuing need, post this judgment, for injunctive relief. The period of time for which springboard relief would have been appropriate has already expired, and Guy Carpenter remains protected by the PTRs, and those of the garden leave provisions that have not yet expired, in the contracts of employment (bolstered, in the case of Mr Summers and Mr Fletcher, by undertakings to the court). There is no basis for the other relief sought. There will remain to be determined on a future occasion whether Guy Carpenter is entitled to any financial relief and, if so, in what amount.

458. Finally, I would like to pay tribute to the solicitors and counsel for all parties, in their conduct of and preparation for the trial. The pre-trial timetable was compressed, necessarily so given the decision that it be conducted on an expedited basis, and there was a very large amount of material to be marshalled and presented to the Court. I do not underestimate the work that was required, in particular by more junior members of solicitor and counsel teams. As well as the leaders, a number of the junior counsel also took on advocacy at the trial, and they all did so with commendable skill.