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# England and Wales High Court (Queen's Bench Division) Decisions

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**Neutral Citation Number: [2020] EWHC 1008 (QB)**

Case No: QB-2019-004330

**IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL  
28/04/2020

**Before:**

**JON TURNER Q.C. SITTING AS A DEPUTY HIGH COURT JUDGE**

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**Between:**

**SQUARE GLOBAL LIMITED**

**Claimant**

**- and -**

**JULIEN LEONARD**

**Defendant**

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**Mr. James Laddie Q.C. and Mr. Nathan Roberts (instructed by Mishcon de Reya LLP) for the Claimant**

**Mr. Thomas Croxford Q.C. and Ms Kerenza Davis (instructed by Wallace LLP) for the Defendant**  
**Hearing dates: 12, 13 and 16 March 2020**

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**HTML VERSION OF JUDGMENT APPROVED**

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**Jon Turner Q.C. sitting as a Deputy High Court Judge:**

1. This is an employment law dispute in the financial services field. The main issues between the parties concern whether the employee was constructively dismissed, and if not, the enforceability of post-termination restrictive covenants ("**PTRs**").
2. The employer is the Claimant, Square Global Limited ("**Square**"). It is a relatively young business established in 2012, which focuses on providing inter-dealer and agency broking services. The Defendant, Mr. Leonard, was recruited by Square in February 2015 as a broker. He resigned summarily on 11 November 2019. At that time, he had been in advanced discussions for over 7 months with a rival financial services business called Market Securities, about leaving Square to join them instead.
3. This claim was issued by Square on 4 December 2019. Square contends that Mr. Leonard has breached various terms of his contract of employment, including a clause requiring Mr. Leonard to give six months' written notice of termination. It treats Mr. Leonard's actions on 11 November 2019 as amounting to notice of an intention to end his employment in 6 months. It now sues, first, for a declaration that Mr. Leonard remains an employee of Square's until 11 May 2020, coupled with an order prohibiting Mr. Leonard from undertaking competitive employment or any other form of work with a third party while he remains an employee of Square. Secondly, Square asks for injunctive relief to enforce certain PTRs in the contract of employment. Those PTRs are in essence intended to prevent Mr. Leonard from involvement in competitive activity against Square for 6 months following 11 May 2020, that is, until 11 November 2020. (One of the PTRs sought to be enforced by the claim form and particulars of claim concerned a 12-month prohibition on poaching employees from Square, but Square's counsel confirmed subsequent to the hearing that this element of the relief was no longer pursued). Thirdly, Square also seeks damages resulting from Mr. Leonard's refusal to perform his duties as a broker, estimated in the region of £396,000 as lost net profits (before interest).
4. Finally, in a round of post-hearing written submissions, Square has also indicated that if it is successful in this claim, it intends to apply (should it prove necessary) for a "third party independent forensic examination" of Mr. Leonard's electronic devices to search for any confidential information belonging to it that has been taken and retained by him, together with an order for it to be delivered up.
5. Mr. Leonard served a Defence and Counterclaim on 20 December 2019. In it, he contends that his resignation on 11 November 2019 was not wrongful. He asserts that it was effective in law by reason of a constructive dismissal. He says in the "Summary of Defence" section that he resigned from his employment with immediate effect following a course of conduct by Square over several years that destroyed or seriously damaged the necessary relationship of trust and confidence between the parties, in breach of the implied term in the contract of employment. Mr. Leonard says in the "Summary of Defence" that the course of conduct culminated in certain behaviour by Mr. Uzan, Square's CEO and compliance officer, when Mr. Uzan brushed off Mr. Leonard's attempts to raise a grievance in October 2019.
6. It is fair to say that Mr. Leonard's case was developed further in the later parts of his pleading, and it has been clarified in the course of written and oral submissions at the trial. It is most succinctly summarised in written closing submissions lodged on the final day of the trial, and in supplementary written submissions served afterwards. Essentially, Mr. Leonard relies on a series of individual events spanning the period when he was working at Square. His primary position is that each of them individually constituted a repudiatory breach of contract by Square, but in the alternative they constituted a course of conduct that cumulatively breached the implied term of trust and confidence. This conduct continued throughout Mr. Leonard's employment, and it consisted of broadly three categories of behaviour: (i) bullying / aggressive environment; (ii) unfairness over the allocation of remuneration; and (iii) a failure and/or refusal to deal with complaints and grievances.
7. Mr. Leonard contends that the "operative final straw" was certain messages sent by Mr. Uzan to him on 15 and 22 October 2019, dismissing in a belittling and insulting manner Mr. Leonard's attempts to raise a grievance, and refusing even to respond to him. Alternatively, the final straw was two "discoveries" that were made later by Mr. Leonard, on 7 November 2019. The first of these discoveries was his noticing an unprotected electronic document containing employees' personal data in the workplace that day. This revealed to him that Square was failing to ensure that employees' personal data was kept securely. The second discovery was information which Mr. Leonard obtained that same day after going

for a coffee near Holborn station for a general catch-up with a former colleague at Square, at around 11am. The former colleague told Mr. Leonard that another former colleague at Square, called Tidiane Diallo, had executed trades on the instruction of the senior management while he was prohibited by the Financial Conduct Authority ("FCA") from doing so. Mr. Leonard says that this put him personally at risk from a professional and reputational perspective.

8. Mr. Leonard's case is that he was therefore entitled to give summary notice of termination in acceptance of Square's repudiatory breach of the employment contract, and he says that he is consequently also freed from his obligations under the PTRs, which he contends were unenforceable in any event.
9. Mr. Leonard puts forward a counterclaim seeking pecuniary relief in two forms: 2 months' salary in lieu of notice, and unpaid accrued bonus. On analysis, this counterclaim raises no distinct issues of liability. Thus: (a) the fate of the counterclaim for the unpaid salary depends on the outcome of the dispute over whether there was constructive dismissal: in other words, if Mr. Leonard was constructively dismissed, he is prima facie entitled to the amount claimed, but not otherwise; (b) Mr. Leonard has confirmed that there is no remaining live issue on the second point about unpaid bonus payments either: the parties agree that Mr. Leonard is entitled to the bonus he had accrued at the time of his resignation. Square has paid some of this and has confirmed that it intends to pay the rest.
10. On 9 December 2019, an order was made by consent, directing there to be an expedited trial of the issues of liability, including any counterclaim by Mr. Leonard, and of the claim for a non-pecuniary remedy, including the declaratory and injunctive relief sought by Square. Any remaining issues of damages and interest were to be the subject of directions to be given at the conclusion of this expedited trial.
11. On the first day of the trial, I heard and dealt with a late application on behalf of Mr. Leonard, to amend the Defence and Counterclaim to add a new head of loss and damage. This new head of loss was to be a claim for additional bonus payments that it is alleged Mr. Leonard would have received had Square acted as it should have done in accordance with the employment contract, and/or pursuant to the proper exercise of any discretion in calculating Mr. Leonard's bonus. I gave an extempore ruling refusing the amendment application, essentially on the grounds that (a) this was not (as contended for on behalf of Mr. Leonard) a matter that was in effect already adequately set out in the existing Defence and Counterclaim: on the contrary, it was an attempt to introduce a significant new head of damage; (b) Square had not prepared to deal with the amendment, and it would suffer prejudice from the addition; (c) the probable result of allowing the amendment would be to derail the trial, which was on a very tight timetable to be completed within the allotted 3 hearing-days. The amendment ruling can be found under neutral citation number [2020] EWHC 903 (QB).
12. At the trial, Square led evidence from five witnesses, three of whom were called for cross-examination. These were:
  - i) Harold Uzan: a co-founder of Square in 2012 and its Chief Executive Officer since 2016. Mr. Uzan also became the line manager of Mr. Leonard from early 2017. He was the main witness on the Claimant's side, and was cross-examined extensively during the first two days of the trial.
  - ii) Jeremy Louis: a "junior broker" at Square, who joined in October 2018. Mr. Leonard's pleaded case was that he became concerned during the course of his employment at Square that Mr. Louis was performing regulatory tasks on behalf of Square in London and Hong Kong, despite lacking the necessary qualifications. As clarified in submissions at the trial, however, Mr. Leonard's case was put differently: it was that he had been alarmed when working with Mr. Louis by his lack of basic financial knowledge, in a context where Mr. Louis was carrying out regulatory activities on behalf of Square; then, after leaving Square, Mr. Leonard checked Mr. Louis' FCA status, which revealed that he was not authorised to perform regulated tasks out of London. Mr. Louis was cross-examined relatively briefly at the trial.
  - iii) Guy Belot: now a "senior broker" at Square, who joined the company as a "junior broker" straight from secondary school, when he was 18-years old. He left at the end of July 2019 to take up a job at

Glencore plc, but he returned to Square in the autumn after only a few weeks. Mr. Belot was also cross-examined only briefly on behalf of Mr. Leonard.

iv) Konstantinos Evangelou: an IT consultant at Square who was not cross-examined on his written statement. The gist of his statement concerned approaches made to him by Mr. Leonard in late November 2019, after Mr. Leonard's resignation, asking among other things whether he had had any "*bad experiences*" during his time at Square, and if he knew of "*any bad things [he] can use against Square?*". Mr. Evangelou was not cross-examined on this statement. Mr. Leonard's own witness statement - which was exchanged and served simultaneously on 28 February 2020 - in fact confirmed some of the contents of Mr. Evangelou's written evidence. It stated among other things: "*I asked him [Mr. Evangelou] about what 'bad things the Claimant had done to him or that he would be aware of'*". However, when Mr. Leonard took the stand at trial, he said in brief examination-in-chief that in fact he had not said the final words "*or that he would be aware of*", and that his written evidence should be corrected to that extent.

v) Cyril Berdugo: an equity derivative broker at Square since January 2015, who started as a "junior broker". Mr. Berdugo gave written evidence in support of Square about the office environment and "culture", which he described as pressurised with occasional swearing, but nonetheless very friendly and supportive. He also gave written evidence specifically about the management style of Mr. Uzan. He described him as approachable, non-aggressive, and his style as friendly but focussed. Mr. Berdugo was not called for cross-examination either.

13. On Mr. Leonard's side, evidence was led from three witnesses. These were:

i) Mr. Leonard himself: like Mr. Uzan, he was cross-examined extensively at the trial over much of two days.

ii) Mr. Cheickh Tidiane Diallo: he worked at Square between early 2014 and December 2017. Mr. Diallo says in his statement that he was "*subject to an FCA prohibition on trading*" from the time he joined Square, although "*there was a provision in the Tribunal decision placing [him] under the prohibition allowing [him] to return to work in finance*". He was permitted to take up a research job, with a view to establishing a track record which would allow him to "*address all previous concerns of the FCA so that Square could opt to sponsor [his] application [for the prohibition to be lifted]*". In his statement, Mr. Diallo refers to having nonetheless been asked to carry out the execution of trades at Square on numerous occasions. He says that, in September 2015, he met with a well-respected solicitor and former prosecutor for the FCA to ask about the process for regaining his licence, but it never crossed his mind to ask her about the appropriateness of the equity instructions he had received at Square, since he had been assured that there was no need to worry and that it was the company's responsibility, and all the executions were logged transparently in the trading platform of Bloomberg. His statement concludes: "*With hindsight, I realise that there might have been something questionable with regard to the trades I was instructed to execute*". Mr. Diallo was called to attend the hearing with a view to cross-examination by Square's leading counsel, Mr. Laddie Q.C. Ultimately, however, Mr. Laddie Q.C. chose to use the limited time at trial to extend the cross-examination of Mr. Leonard himself, and did not question Mr. Diallo on his statement.

iii) Mr. Ryan Dann: he is a former broker on the Equity Index Derivatives Desk at Square, who worked there between November 2016 and October 2017. He gave written evidence covering some of the same ground as Mr. Berdugo, but to precisely the opposite effect. He was not called for cross-examination. Mr. Dann described the overall environment at Square as "*unpleasant, intimidating and toxic*", and as the "*worst work environment I have ever worked in*". He described one of the shareholders in Square called Mr. Ari Boublil, who was also a director and a senior broker acting as the head of desk in charge of Mr. Dann (as well as related by marriage to Mr. Uzan), as verbally and - on one occasion - physically aggressive. Mr. Dann also described Mr. Boublil as taking an approach to management decisions that was unfair to him in various ways.

14. The trial hearing was duly concluded within the allotted three days, although only at the cost of starting early and sitting late, and with the parties' counsel submitting substantial post-hearing written submissions to supplement their oral closing arguments. I should pay tribute at the outset to the skill with which the case for each side was presented, and to the diligence, professionalism and sheer

stamina with which the solicitors and counsel undertook the trial. I should mention too that Mr. Croxford Q.C. suffered the bereavement of a close family member before the final day of the trial, yet chose to continue, and presented the case with impeccable clarity and focus on behalf of his client.

### **The issues for determination**

15. The issues for the Court's determination can be broken down as follows:

i) Was the Defendant constructively dismissed on 11 November 2019?

a) Did the Claimant repudiate the contract of employment?

b) If so, did the Defendant affirm the contract prior to resignation?

c) If not, did the Defendant resign in response (or partly in response) to the repudiation?

ii) If the Defendant was not constructively dismissed:

a) Did the Claimant affirm the contract and if so, should the Court enforce the contract for the remainder of the Defendant's notice period until 11 May 2020?

b) Should the PTRs be enforced? In this regard:

(1) Does the Claimant have legitimate business interests capable of requiring protection via PTRs?

(2) If so, do these PTRs go no further than is reasonably necessary to protect the legitimate business interests?

(3) If so, should the Court exercise its discretion to enforce the PTRs and, if so, to what extent?

iii) Did the Defendant breach a clause in the employment contract requiring him to notify the Claimant of the acceptance of a new job?

16. The issues listed at paragraph 15 above in large part reflect a list provided by Square's counsel in their skeleton argument for the trial, on which I asked Mr. Leonard's counsel to comment. The only real point of difference between the parties is in relation to the issue outlined at paragraph 15(15.i)c) above, i.e. the question whether or not Mr. Leonard resigned in response to a repudiatory breach by Square. This is because Mr. Leonard contends that, as a matter of law:

"an employee claiming to have been constructively wrongfully dismissed is entitled to rely on a repudiatory breach by his employer even if that was not the reason he left his employment at the time."

17. That point of law is potentially of significance in the present case, because Mr. Leonard places reliance on certain matters that were not mentioned in his letter of resignation, and which it is common ground were not part of the reason for his decision to resign at that time. However, as explained below, I have ultimately reached the conclusion that Square did not in fact repudiate the contract of employment, either (a) through an individual act or omission that was not followed by affirmation of the contract on Mr. Leonard's side, or (b) by reason of a course of conduct comprising a number of acts and/or omissions, which, viewed cumulatively, amounted to a breach of the implied term of trust and confidence, and which was not followed by affirmation of the contract on Mr. Leonard's side. As a result, the point of law concerning the relevance of the reasons for resignation does not strictly arise.

18. The issue at paragraph 15(15.iii) above (alleged breach of a clause in the contract of employment requiring the notification to the employer of acceptance of a job offer) technically does arise on the pleadings, but no separate relief is sought from the Court beyond a simple finding of a breach of contract. It is dealt with briefly below.

## **The facts**

19. This is a case where the claim of constructive dismissal turns, or may turn, on an assessment of Mr. Leonard's allegation that there was an overall "course of conduct" by Square amounting to a repudiatory breach. Given the intricacy of the facts of the case, it is appropriate to start by assessing the main facts with care. I adopt a broadly chronological approach.

### ***The nature of Square's business***

20. As mentioned above, Square was founded in 2012. The two founders were Mr. Uzan, previously a broker at Sunrise Brokers, and Mr. Elie Scemama. In his oral evidence, Mr. Uzan described the challenges of setting up the business from scratch:

"We have to deal with everything in the same time, compliance, IT, accountant, and different, you know, approach -- I'm sorry, part of the -- of the compliance. It does not mean [because] it was a start-up, that we were, you know, having scant regards to compliance. Actually, if anything, we were trying at that time to structure more and more the company and to tick all the boxes that were sometimes missing, just because it was an organic growth, it grows very fast. We have to deal with thousands of things and I've personally slept something like 4 to 5 hours a day during these first three years."

21. The company has enjoyed significant success and has grown approximately 20% each year since it was set up. Square has grown from a small broking firm with 4 members of staff to a business employing or engaging roughly 40 members of staff in three different countries in 2019/2020.

22. The business activity involves facilitating trades in financial products, on behalf of clients who are usually large investment banks and hedge funds. Most of the clients are based in the UK, but Square also has clients across continental Europe and Asia, as well as in Canada and the USA. Square's client contacts are typically individual traders in the large investment banks and hedge funds.

23. Brokers stay in close daily contact with clients to identify opportunities for trades, and then facilitate the introduction of buyers to sellers, and vice versa. The transaction process can extend over a matter of hours, days, or even weeks.

24. Mr. Uzan gave evidence that, as part of their work, the brokers use private information about such matters as particular market trading interests, the prices and volumes of products traded in the marketplace, relevant deal structures, client contact details, and market knowledge.

25. Square's workforce is organised into teams called "desks". Each desk focuses on a particular financial product. One of these desks was the exotics desk.

26. Mr. Uzan explained in his written statement that "exotics" are a form of derivative instrument. Derivative instruments are financial products that derive their value from an underlying asset. Such assets include:

i) Single stocks: these are typically shares in an individual company.

ii) Indices: these are typically a bundle of shares in a range of companies across a market index (such as the FTSE 100).

iii) Sectoral indices: these are typically a bundle of shares in a range of companies across a particular industrial sector (such as companies in the telecommunications sector).

27. The "exotic" derivative products fall to be distinguished from "vanilla" derivative products. Vanilla products are commonly traded, and uncomplex, derivative products. Examples include forwards, futures, options, and swaps.

28. By contrast, exotic products are defined by the fact that they are more complex forms of derivative products. There are several types of exotics available to trade on different types of underlying assets.

Examples include:

- i) "Call vs Call" ("Correlation") Products: these are derivative instruments that allow the buyer and seller to trade on the correlation between two or more underlying products. This could mean, for example, trading on the correlation between indices (such as between the FTSE 100 and the Nikkei), or between a basket of single stocks (such as between Vodafone and AT&T), or between sectoral indices.
- ii) "Worst of"/"Best of" Products: these are derivative instruments that allow the buyer and seller to have exposure on the best or worst performers within a selected basket of underlying assets.
- iii) "Quanto" Products: these instruments arise where the underlying asset is denominated in one currency, but the instrument itself is settled in another currency.

29. Exotics are "over-the-counter" or "OTC" products, meaning that the trading is carried out directly between the parties, without an exchange being the counterparty. This is different from "listed" trading, which involves exchanges such as a stock exchange. It has the consequence that the exotics market is "opaque", in the sense that it is difficult to see what is trading in the market, and at what price, both before and after it has traded, in comparison with trades on a public exchange such as the FTSE 100. In his oral evidence, Mr. Leonard readily accepted that the exotics market, and in particular the single stocks exotic market, is more opaque than trading on exchanges.

30. Depending on the circumstances, OTC products may or may not be traded on a trading venue (referred to as an "Organised Trading Facility" or "OTF"):

i) Mr. Uzan explained that OTFs will only be used if the trade is multilateral (i.e. it involves more than two parties). OTFs were introduced by the regulators following the 2008 financial crisis to obtain greater visibility over OTC trades. Most broking houses that trade in equity derivative OTC products will have their own OTF, including Square. Brokers are required to publish details of their multilateral trades on their OTF within 15 minutes of the trade. Trading data on OTFs is published on an "Authorised Publication Arrangement", or "APA", and is principally available for the regulator, although it can be accessed by third parties. Third parties who access an APA can see limited details of trades which have been published, including the price, volume and type of product. Third parties cannot see details of the parties involved in the trade.

ii) If the trade is bilateral (involving two parties only) no OTF is involved at all. When a product has been traded in this way, it is almost impossible for any third party to know about the existence of the trade, or relevant details such as the structure, the price, the size, or the parties.

31. Mr. Leonard's written evidence was that the opacity of the market should not be overstated. He said that the vast majority of single stock exotic trades are in fact reported to the market, via virtual venues. These reports can then be checked by the market participants and/or sent by brokers by email and/or Bloomberg chat to all market participants in the hopes of generating further interest. By contrast, Mr. Uzan in his oral evidence denied that most of the exotics trades are reported on virtual venues: he estimated that it was well under one-third. (Mr. Leonard was not sure, when it was put to him orally, whether the broad estimate given by Mr. Uzan was correct.) Even in relation to trades on virtual venues, Mr. Uzan stressed that it was extremely difficult to ascertain relevant information about the trades.

32. Mr. Uzan stated that the exotics market is not only opaque, but also "illiquid". The term "liquidity" was used in this context to describe how easy or difficult it is to find buyers and sellers who are willing to trade in significant volumes in the market. He stated that the exotics market is illiquid, in that buyers and sellers are not readily available or identifiable to someone who is not active in that market on a daily basis, and who therefore does not have a good working knowledge of what price, structure or size of products traders are interested in.

### ***The recruitment of Mr. Leonard and his contract of employment***

33. Mr. Uzan stated that in the second half of 2014, he and Mr. Scemama decided to hire additional resource on the exotics desk as a result of the business expanding. Their aim was to be able to provide

a full-service exotics broking desk, across the full range of exotics. In particular, Mr. Uzan and Mr. Scemama wanted to develop their single stocks exotics business. They were both aware of Mr. Leonard prior to considering recruiting him, and they knew he had been in charge of the single stocks exotics desk at Merrill Lynch before transitioning (in 2012) to working as a broker at ICAP, one of the biggest brokerage companies in the world.

34. Mr. Leonard joined Square in February 2015. As he puts it in his written statement: "*On index, I would join the existing team and on stocks/dispersion I was to be in charge of setting up the business. My past experience as a trader on those products meant that I had a deep understanding in that field, and also a good network of former colleagues*". It appears that Mr. Scemama in particular was delighted with the recruitment. He wrote in an email on 18 February 2015 to the other shareholders in the company (which included, as well as Mr. Uzan, Mr. Even, Mr. Sarfati, and Mr. Boublil):

"Julien Leonard is arriving this morning, we have a dream team on correl with him now, let's give him a proper welcome! :-)"

35. Mr. Uzan stated that Mr. Leonard negotiated the terms of his written contract of employment, before deciding to join Square. The contract contains a number of terms that are relevant to the present dispute. These include:

i) Remuneration (clauses 6 and 8): at the time of his hiring, Mr. Leonard was paid a base salary of £80,000 per annum. This increased during his employment. As at November 2019, his salary was £120,000 per annum. Mr. Leonard was also entitled to receive a bonus calculated in accordance with a formula contained in the Schedule to the Contract. The formula involved, as the main input, allocating an amount of revenue from Square's revenues, which was referred to as the employee's "Production". The term "Production" was not formally defined, and there was no specific formula given for calculating it. In practice, as a "Producing Broker", the bonus constituted the main form of remuneration.

ii) Notice of termination (clause 2.1): Mr. Leonard was required to give six months' written notice to Square in order to terminate the contract.

iii) Fidelity (clause 3.2): various obligations were imposed requiring Mr. Leonard to provide exclusive and loyal service to Square, including at clause 3.2(a) a duty to devote the whole of his time, attention, and abilities to the business of the employer unless prevented from doing so by incapacity.

iv) Garden leave (clause 15): after notice to terminate was given by either Mr. Leonard or Square, Square had the discretion to require him not to perform any services (or to perform only certain services).

v) The relevant PTRs (clause 17):

a) for six months after the termination of his employment, Mr. Leonard was prevented from being involved in any business concern which is (or intends to be) in competition with Square (clause 17.1(c)) (the "**Non-Compete**");

b) for six months after the termination of his employment, Mr. Leonard was prevented from: (i) soliciting the business of; (ii) endeavouring to entice away from Square; or (iii) having any business dealings with, certain of Square's customers or clients (clause 17.1(a) and (d)) (the "**Non-Deal**").

vi) Job notification (clause 17.4): whilst still employed by Square, and for the duration of the PTRs, Mr. Leonard was required to provide a copy of clause 17 to any person making him an offer to be involved in a business competitive to Square; if Mr. Leonard were to accept an offer from any person to be involved in a business competitive to Square, he was also required to notify Square of the identity of the person making that offer.

### ***The first period of employment: February 2015 to the end of 2016***



36. As mentioned above, the contract of employment laid down no particular methodology for determining Mr. Leonard's "Production" (or "Gross Production"). Mr. Leonard, however, had a firm idea of how this was to be approached. In his statement, he said:

"23. The word Production was not defined in the contract but in my understanding, and in market standard, it meant the business that I secured for the Claimant. In this litigation, the Claimant has pleaded that the Production to be allocated to me was a matter for its discretion. That was not my understanding and there was nothing to that effect in my contract.

24. Rather, I understood on the basis of conversations with the management and practice that from the time I joined until mid-2016/early 2017 Production should have been allocated according to an agreed rule, namely that if your client was involved in a trade (either as a buyer or a seller) the brokerage in respect of that client (i.e. the fee Square Global charged the client for brokering that trade) would be allocated to your Production.

25. Usually you would conduct trades on behalf of your own clients, so allocation of Production would match up with the work you were doing. However, the rule was supposed to apply irrespective of who actually conducted the trade (i.e. who spoke to the client during the trade). In conversations I had with management about the rule this was justified by the argument that it meant you could go on vacation or a business trip, or even step away from the desk if you needed to, for example to use the bathroom, without the risk of seeing your clients being "stolen" by a colleague who covered the trades you were working on in your absence. "Client" in this context would mean a specific individual at an entity rather than the entity itself as many of us would have our own contacts at any given bank."

37. It is not hard to see that Mr. Leonard's interpretation was capable of giving rise to disagreement and conflict in practice, if for example it were to turn out that there were cases where two or more brokers felt that it was they alone who had secured the same relevant business for the company, or that it was they alone who should be treated as the individual broker associated with one of the clients in question.

38. In fact, it appears that there was significant disagreement in the first year or so of Mr. Leonard's employment at Square. Mr. Uzan stated that, in that initial period, for the purposes of calculating Production, revenue generated from exotics products was indeed primarily allocated by reference to which clients were involved in the trade and which broker(s) was/were associated with those clients. He explained, however:

"The market in exotics products generally is relatively small. As such, Elie and I had already established a good presence in and coverage of the market. There was therefore naturally an overlap between what we were already doing and what Julien wanted to do. As a result of the way we calculated Gross Production, Julien wanted to generate revenue (and be allocated revenue) from as many sources and products as possible, regardless of whether anyone else at Square was already covering that client or that type of product. This naturally caused tensions over allocation of revenue for the purposes of Gross Production, in particular between Elie and Julien.

As a result, throughout the course of 2015 and 2016 there were regular discussions about the issues of revenue and work allocation and the best way of altering the structure to best suit the needs of the business and the brokers involved. I was already conscious then that, as the business continued to grow, it would not be feasible for "everyone to do a bit of everything", which would naturally lead to clashes between brokers wanting to do the same thing and would be an inefficient way of conducting business. This is not an issue unique to Square; it is the nature of broking as a result of the way in which brokers are typically remunerated, and disagreements in relation to this happen on broking floors across the world on a daily basis. In my experience, these disagreements happen relatively infrequently at Square (and certainly much less than at other broking houses)."

39. In other words, it was not practicable to operate an allocation rule on the simple basis referred to by Mr. Leonard without this giving rise to friction, or at least animated discussion. Issues of allocation of Production were therefore often resolved by the owners of the company, exercising judgement. In his oral evidence, Mr. Uzan described how this was done on a case-by-case basis, taking into account a range of fine-grained relevant considerations:

"...we were, as I said, in this period ... often on the case-by-case, you know, almost at every trade, okay, waiting, looking, does it make sense? No. Is it dangerous from a broking point of view? Did you make any -- any mistake? Is this client happy?"

40. In this connection, Mr. Leonard himself has drawn attention in his written statement to various examples of allocation of Production in 2015 and 2016 which he considers to have been wrongful. (These examples generally derive from a list of examples of alleged unfair allocation given at Appendix 1 of the Defence and Counterclaim.) It is striking that a number of those examples do not rely on there having been a departure from what Mr. Leonard viewed as the applicable contractual rule. Directly to the contrary, the gist of his complaint is precisely that the "agreed rule" was followed, although he felt that it should not have been, since this resulted in unfairness to him in the circumstances of the individual case. For instance, after describing various transactions in October and November 2015, in paragraph 29.6 of his statement, Mr. Leonard goes on to comment as follows, in paragraph 29.7:

"It is true to say this was not technically a breach of the agreed rule, since according to that I should have only been allocated the brokerage relating to my client, but in the circumstances - where I was pressured to offer my clients zero brokerage to make sure the trade got done - I feel it would have been fair to allocate me some of the brokerage from the other side. This is a good example of the senior managers manipulating things to their benefit and my detriment: I was made to sacrifice my chance of adding to my Production to make sure they added to theirs, but nothing was said about how allocation would be handled until after the trade was completed, when it was too late for me to insist that brokerage be charged on my client's side of the trade."

41. Moreover, I note that, very shortly after taking up his employment, Mr. Leonard discussed by email with Mr. Scemama on 27 February 2015 a proposed arrangement that he had himself devised for dealing with the allocation of remuneration in particular circumstances, which he intended to put forward to another of the brokers. In it, Mr. Leonard identified the need to ensure that the proposed set-up was "*most favourable for the team spirit*". Mr. Scemama replied:

"...1. It's great that you have found common ground. 2. We do a business review every week and a review of the line allocations every three months ...".

Mr. Leonard's response, which interpreted Mr. Scemama's comment as relating to the allocation as between himself and the other broker, was:

"Super. For the line review, can you leave it with me? Jamie and I were thinking that we would discuss this so that it would not be too formal. And if we could not come to an agreement you would be the referee."

42. In summary, I am satisfied that Mr. Uzan's account of the nature of the contractual arrangements for allocating Production which applied in the first year or so of Mr. Leonard's employment at Square, as well as how those arrangements operated in practice, is correct. In relation to the first of these issues, it is also relevant to observe that Mr. Leonard's new employment contract with Market Securities (the final version of which was disclosed in the course of this trial, at my request, and which was closely negotiated by Mr. Leonard) reveal that Market Securities similarly exercises a discretion in the allocation of remuneration, albeit that the contract expressly stipulates that this must be done by the employer "in good faith". Mr. Laddie Q.C. on behalf of Square cross-examined Mr. Leonard on this point:

"Q: So let's see if we can agree about this. Apart from the fact that ... we have the words "in good faith", is there any material difference between these two contracts, in terms of

how production is to be approached and attributed?

A: Well, if you take out for me which is a very relevant point about in good faith and the fact that it was not defined in my -- in my previous contract at Square, you could say that there's no -- not much difference. You're comparing nothing to something and in good faith."

43. Finally, in this connection, it is necessary to mention that Square's counsel placed emphasis in their submissions on the fact that Mr. Leonard was generally asked to confirm the accuracy of the Production allocated to him at the end of each quarter year, all the way from Q2 2016 until November 2019. He sometimes offered corrections, and these were made. They were otherwise accepted without demurrals. Mr. Laddie Q.C. asked Mr. Uzan about the purpose of this practice, in re-examination. Mr. Uzan responded:

"To make sure that there is no issue in terms of allocation, to make sure that no one is unhappy about any type of allocation and to make sure that he can start, you know, inputting his file with the right numbers for him to be paid, for employees to be paid properly, and for client to be charged properly."

44. Square's counsel sought to infer from Mr. Leonard's lack of any contemporaneous complaints about issues of unfairness, within this framework, that Mr. Leonard did not in fact have real and well-founded complaints about unfairness, along the lines that he now seeks to allege in these proceedings.
45. I do not find that this inference can be drawn, looking at the evidence as a whole. Mr. Laddie Q.C. put the point to Mr. Leonard directly, in the course of cross-examination. Mr. Leonard responded:

"My Lord, this process was purely an admin process and it was to say whether -- you know, what had been decided at the time of the trade, if it was correct or not. So it was more a matter of agreeing the number that could go into the bonus calculation.

...Mr. Herriger had no input whatsoever with regard to say whether it was fair enough, so I just only agreed the numbers as in what was -- what had been decided against me or not at the time of the trade".

On this point, Mr. Leonard's explanation was convincing, and I regard the matter as neutral.

46. For the first period of Mr. Leonard's employment, until the end of 2016, his line manager was the co-founder and co-owner of Square, Mr. Elie Scemama. According to Mr. Leonard, he was subject to persistent bullying by Mr. Scemama during this time. In written closing submissions, reference was made to the following matters:
- i) He was verbally abused (called a "pussy", "a woman", "a big shit") and accused of being "a liar" and "a whiner" when he needed to attend a medical appointment with his wife.
  - ii) He was accused of having a bad attitude, pressurised to give away clients, punished for minor mistakes, and criticised for activities others were not.
  - iii) His personal conversations were monitored, he was implicitly threatened that he was being watched via CCTV, he was sat with a colleague he was known not to get on with, and removed from chats with clients.
  - iv) He was subjected to repeated references to him leaving, with Mr. Scemama suggesting he would be happy about this.
47. Mr. Leonard also contends that Mr. Scemama repeatedly treated him unfairly in relation to the allocation of his bonus throughout this same period (2015-2016). He refers to alleged incidents that are detailed in his witness statement for trial (at paragraph 29), when he says Mr. Scemama - and on a few occasions, Mr. Uzan and another manager/shareholder, Mr. Boubilil - acted unfairly in their own personal interests, and/or inconsistently between one situation and another.

48. On one occasion, on 11 May 2016, Mr. Leonard sent an email to Mr. Scemama to express his feelings about the unfairness of the actions of Mr. Uzan and himself. He said, among other things, that it was "*impacting my sleep, my health and my mood outside of work like never before.*" In response to this, there was a change effected in Mr. Leonard's remit by the senior management. With some exceptions, it seems that the senior management effectively split the exotics desk into two. Mr. Scemama and Mr. Uzan headed up one desk – they would hold the mandate for, and would broke, index exotics. Mr. Leonard would be head of the other desk – he would hold the mandate for, and would broker trades for, single stocks exotics.

49. Mr. Leonard, in his evidence, interpreted this development as a "*punishment imposed on me for raising complaints in May 2016,*" and he says that it reduced his "*mandate*". By contrast, Mr. Uzan says that the reorganisation was not a punishment at all: it was a legitimate response to the multiple disagreements which had arisen in the previous months over the allocation of revenue, of which Mr. Leonard's email of 11 May 2016 was only the most recent. Mr. Uzan stated in his written evidence:

"This revised structure and method of determining Gross Production [of which the changes in around May 2016 were the first of two phases] was intended to provide much clearer delineation of mandate and revenue allocation, and to reduce significantly the disagreements regarding allocation of revenue arising from transactions. It was also intended to enable Julien to specialise even more in this product. This meant that client relationships that Elie and I had developed in the market were effectively passed to Julien to manage in relation to single stocks exotics.

This was a decision in Square's best commercial and business interest. However, this was also a structure intended to benefit Julien and to respond to his complaints about clarity and allocation of trade."

50. I have considered the series of individual instances outlined in paragraphs 29.1 to 29.15 of Mr. Leonard's witness statement, where he alleges that he was treated unfairly in the allocation of remuneration in 2015-2016, for one reason or another (or, in one case outlined in paragraph 29.4, for a reason he says he does not remember). I do not find that any of these allegations have been proved.

51. In many of these instances, the thrust of the complaint is that Mr. Scemama or other senior managers of Square unfairly manipulated the allocation of remuneration to their own benefit and to Mr. Leonard's detriment, but it is impossible safely to draw that conclusion from the very short account given in Mr. Leonard's witness statement and any disclosure document referred to alongside it. There was very limited development of these allegations at the trial, and very cursory cross-examination of Mr. Uzan directed to any of these individual instances. The main cross-examination that did take place (which focused on a trade in September 2015, outlined in paragraph 29.3 of Mr. Leonard's statement) illustrated the impossibility of concluding that there was unfairness in all the circumstances: Mr. Uzan emphasised in his answers to counsel that, during this period, allocation took place on a case-by-case basis and that it would be necessary to have much more information about the circumstances of the individual trade before one could properly infer that there was unfairness.

52. As respects the reasons why there was a reorganisation in the structure of broking exotics in around May 2016, I accept Mr. Uzan's account. I do not consider that this reorganisation was intended as a punishment to Mr. Leonard.

53. As respects the allegations of bullying on the part of Mr. Scemama, Mr. Uzan was cross-examined about his awareness of the verbal abuse referred to in paragraph 46(46.i) above, which had apparently happened on 5 December 2016, and which was then documented by Mr. Leonard in an email that he sent a few days later, on 9 December 2016, to Mr. Silvan Herriger (described as a senior adviser to the management of the company). Mr. Leonard's email on 9 December 2016 to Mr. Herriger outlined the events complained of a few days earlier, and concluded:

"I am sending this short and factual mail to you only on purpose in order not to put any more oil on the fire. However, I need to put things in written [sic] in order to draw a line in the sand."

54. Mr. Uzan said in oral evidence that he accepted the verbal abuse by Mr. Scemama occurred on 5 December 2016. He said that he did not find it acceptable at all. He took two measures in response. The first was that he arranged to discuss with Mr. Leonard his email of 9 December 2016, and generally his concerns about Mr. Scemama's management. To this end, he went for lunch at a good Italian restaurant called Cipriani with Mr. Leonard a few days later. At the lunch, Mr. Uzan reassured him that the reporting line would be changed, and that he would be reporting to him instead of Mr. Scemama.

55. The second measure was that Mr. Uzan confronted Mr. Scemama, and asked him to step down as a director of the company. He stated:

"... we are Dec 16, so a few months after that and he ceased to be a director. We dealt with that -- I'm insisting on this because I've been the one taking the risk to explain to my partner that he has to -- to cease being a director, and as you may imagine, when you set up a company with someone, especially if this person have such a big personality, it is not an easy thing to deal with. You need to take your time, you need to spend a lot of energy, you need to put everything you have on the table to convince this person to do so because it was right for the company, not only for Julien Leonard but for the company itself and I really consider this has been dealt."

56. According to Mr. Leonard, the reality was that Mr. Uzan joined in with Mr. Scemama's bullying behaviour during this period, and Mr. Uzan basically failed to appreciate the objective unacceptability of the "*offensive environment*" in the workplace. I disagree. I do not find any convincing evidence to this effect, having carefully reviewed all the material relied on by Mr. Leonard. On the contrary, I find that throughout the entire period during which Mr. Leonard worked at Square, Mr. Uzan was a conscientious, supportive and sensitive manager.

57. Finally, during this first period of Mr. Leonard's employment at Square, he says that a pattern emerged whereby he repeatedly raised concerns with the senior management, and these were largely ignored or resulted in ridicule, criticism or punishment. I do not find that this is proven either. To take each of the last three such events in this period which are referred to in the written closing submissions on behalf of Mr. Leonard:

i) Mr. Leonard points to his email in May 2016 to Mr. Scemama, in which he complained about the inconsistent allocation of Production, indicating that this was affecting his health. Although Mr. Leonard contends that he was punished for raising this concern, as stated above, I find that the evidence shows the contrary: the senior managers of Square responded sensibly and appropriately to the fact that there had been considerable friction over the past months concerning the allocation of Production, culminating in Mr. Leonard's email.

ii) Mr. Leonard says that around 14 November 2016, he complained to Mr. Herriger about unfair allocation of Production. He says that Mr. Herriger passed the complaint on to Mr. Scemama without asking him first, and that Mr. Scemama responded: "*so you are leaving us*", "*you want quit Square*". On inspection of the relevant contemporaneous document showing the exchange between the two men, one actually sees that Mr. Scemama invited Mr. Leonard to a lunch in order to talk about his concerns. He expressed himself in constructive and conciliatory language, stating for example: "*Anyway, we're going to have to improve this set up on the singles correl side and really start working as a team to grow this business.*"

iii) Mr. Leonard refers to his email of 9 December 2016 complaining about Mr. Scemama's bullying. He says that Square failed to treat this as a formal grievance, and that no substantive action was taken. He says he was just moved to a different manager. I find that these allegations are misconceived. Mr. Leonard's email was framed so as not to raise a formal grievance, and robust substantive action was indeed taken to deal with Mr. Scemama. Mr. Scemama was asked to step down as a director, in view of his unacceptable management style and treatment of Mr. Leonard (although he remained in the company), and he was removed as Mr. Leonard's line manager.

### ***The second period of employment: January 2017 to December 2018***

58. The parties agree that, in January 2017, the reorganisation of the brokerage arrangements for exotics was completed. The new basic structure was that the starting point in allocating revenue (i.e. determining Gross Production) was that trades of single stocks exotics would normally be allocated to Mr. Leonard on the newly-created Single stocks exotics Desk. This has been referred to as the "Starting Principle". In the same vein, where a transaction was an index exotic, the Starting Principle would mean that revenue arising from that would normally be allocated to the index exotics desk.

59. Mr. Uzan explained:

"This revised structure and method of determining Gross Production was intended to provide much clearer delineation of mandate and revenue allocation, and to reduce significantly the disagreements regarding allocation of revenue arising from transactions. It was also intended to enable Julien to specialise even more in this product. This meant that client relationships that Elie and I had developed in the market were effectively passed to Julien to manage in relation to single stocks exotics.

This was a decision in Square's best commercial and business interest. However, this was also a structure intended to benefit Julien and to respond to his complaints about clarity and allocation of trade. It was certainly not a punishment. Indeed, the new system proved to be to Julien's significant benefit: he has made a huge success of this opportunity. In Q1 2016, before this change was made, Julien's quarterly bonus was £22,279.11. Less than three years later, in Q3 2019, the last full quarter Julien worked before he resigned, his quarterly bonus was more than 10 times greater: £277,227.86. Julien's bonuses have been consistently higher since he was given the single stock exotic mandate.

Since these changes, Square's business structure has become more and more organised by reference to product mandates. We believe the best way for Square to continue growing is for brokers to develop true expertise in certain product(s), rather than being stretched across a wide range of products. We want to encourage brokers to cross-refer their contacts to other individuals who have the specific expertise in a particular product."

60. Mr. Leonard was given the "mandate" for all single-stock exotics business. As far as the index lines were concerned, he was also given a mandate to cover Mitsubishi, Scotia and Deutsche Bank (but in the case of Deutsche Bank, the revenue generated was at least initially to be shared with the index exotics desk, rather than allocated in full to Mr. Leonard). According to Mr. Uzan, there was also an agreement for Mr. Leonard to work with Commerzbank on index exotics products, and to be allocated 100% of the revenue generated.

61. As respects the growth in his remuneration over this period, Mr. Leonard took issue in his oral evidence both with the proposition that it had grown as extensively as claimed by Mr. Uzan, and that the growth which had occurred had taken place because of - rather than in spite of - the unfair allocation practices to which he was subjected.

62. So far as the trend in the growth in remuneration is concerned, Mr. Leonard contended that there had been a dip from Q2 2016 to Q3 2016, which he picked up only belatedly during the course of giving oral evidence (although he had previously approved a tabulated summary of his remuneration across the whole period of his employment at Square which showed lower figures for Q2 2016, and consequently no dip: he explained that he had previously only been looking at the "ballpark", and so had failed to spot this). Nonetheless, taking the broad sweep of the period from 2016 until his departure from Square in November 2019, it was common ground that there was a substantial increase in Mr. Leonard's remuneration. Mr. Leonard commented, in particular:

"What should really be looked at is the bonus plus draw. If you look at this multiplied, it's only five times, not 10."

63. It is not possible to reach a firm conclusion as to whether Mr. Leonard is correct that a different approach to the allocation of his bonus, according to what he contends would have been a fair and proper methodology, would similarly have led to similar (or better) financial rewards for him. I do, however, find that the switch to the new system adopted at Square did not on its face cause Mr.

Leonard any financial disadvantage, and I find that it is probable that the adoption of this system was indeed conducive to a more harmonious and far better-functioning working environment.

64. As well as the change in structure, in January 2017, Mr. Uzan became Mr. Leonard's new manager. Mr. Scemama left the London office in April 2017 and was thereafter based abroad.
65. Throughout this second period, Mr. Leonard makes no complaint of being bullied by senior management.
66. Indeed, there is a substantial amount of evidence all indicating that Mr. Leonard's relationship with the senior management, and with Mr. Uzan in particular (his line manager from January 2017), was very good, and that this positive relationship continued all the way through into 2019. At one point in the course of his cross-examination at trial, Mr. Uzan gave an overview of the quality of the employment relationship, in a way that I accept is probably accurate:

"I'm not having a bad relationship with Julien Leonard. All of this does not mirror, effectively, what is happening here. I spent a lot of my time having some jokes during the day with Julien Leonard. You can see in the bundles, the type of relationship to the chats, wishing to each other for the birthdays, for the Christmas, for New Year. My partner, Daniel Even, went often with him, I mean many times with him, having you know, to some cigar bar at some private club. We tried everything we could to satisfy him when it was possible, for example, increasing his numbers of draw at the time of his wedding. He was the only employee, there's no one who received that from me because I'm quite of a busy man, an end of year meeting to top end restaurant, you know, every year ....".

67. Mr. Leonard himself was asked in cross-examination about Mr. Uzan's attitude and approach to dealing with him during the latter period of Mr. Leonard's employment at Square:

"Q. Now, around this time, I put to you that you were getting on pretty well with Mr. Uzan. I'm going to suggest to you that throughout this period, he was extremely supportive to you, was he not?

A. You could say he was supportive. Extremely is another word, but –

Q. Okay, let's not quibble over words. Would you agree he was supportive to you?

A. Yes, I would agree with that. ... I never said that Mr. Uzan wasn't pleasant toward me in 2019."

68. In short, Mr. Leonard fairly accepted that Mr. Uzan was supportive and pleasant. He does, however, refer to a pattern of abusive and insulting behaviour in the workplace on the part of another of the company's senior managers, Mr. Boubil (Mr. Uzan's brother-in-law, and a small shareholder in the company). In his oral evidence, he stated:

"Mr. Boubil was swearing and yelling on pretty much a daily basis and has been the case for throughout the whole of my employment, not just 2018, but also 2017, anyway, pretty much all the years and I mentioned several times that it was affecting my concentration and it was disturbing my client calls. Mr. Ronnie Feiereisen, as well, was out loud and outspoken about that and he would yell across the floor to tell Ari to lower his voice because it would again affect his client calls and it was -- it seemed unprofessional for his clients to hear yelling and swearing in the background. So the -- and as well, on a less frequent but still very frequent, maybe let's say, weekly basis, the swearing and abuse of Mr. Boubil towards his junior and also towards Ms Assor, working on his desk, those were also events that, you know, were part of the aggressive environment."

69. Mr. Uzan was asked about Mr. Boubil's behaviour too. He said, in particular:

"Most of the time he's shouting at himself, you know, like F words, it, why did I do this, and so on, and as I said yesterday, he's sometimes -- he's sometimes yelling, he sometimes

also having some outburst, it happened. With the market moving, for example, these days, they are crazy, I'm sure it happened, even though I was focusing on something else, I have no doubt it may well have happened, it very rarely, almost never, turn personally".

70. In my judgment, the evidence shows that Mr. Boublil's behaviour in the workplace was inappropriate and wrong. However, I do not find that it came close to reaching the point at which it could properly be regarded as rendering the workplace as a whole so unpleasant for other employees - and specifically for Mr. Leonard - as to amount to a repudiatory breach of the contract of employment. The totality of the evidence suggests that Mr. Leonard was broadly content at Square during the period 2017-2018.
71. Towards the end of 2017, Mr. Leonard asked for a basic salary increase from £80,000 to £120,000. According to Mr. Leonard, there had already been a temporary increase along these lines from March 2016 to September 2016 "*as a favour*" by Square, to help him pay for his wedding. (Mr. Leonard accepted, in oral evidence, that this was an example of generosity or at least flexibility shown towards him by Square). He said that his salary then reverted back to £80,000 in October 2016.
72. The discussions between Mr. Leonard and Square led to him agreeing to enter into a variation of certain terms in his contract (the "Variation Letter"), on 15 December 2017. In the Variation Letter:
- i) Square agreed to increase Mr. Leonard's basic salary to £120,000 per annum gross.
  - ii) In return, Mr. Leonard agreed not to give notice for his employment to terminate on any date before 24 November 2019 (i.e. committing to Square's employment for roughly two further years).
73. There was a further provision in the text of the Variation Letter on file, by which it was agreed to increase the length of the PTRs from six months to nine months. However, Mr. Leonard's position on this is that:

"Without mentioning it first, Mr. Uzan tried also to increase the duration of my post-termination restrictions termination [sic] from six to nine months but I spotted this and insisted he remove that term."

Moreover, neither party in this litigation relies on the Variation Letter as having contractual force: on Square's side, this is said to be because they considered that the consideration which they thought they were providing – an increased base salary – had already been provided by the point of variation. Instead, the main way that this event is deployed by Square (via Mr. Uzan's written statement) is to argue that the fact Mr. Leonard agreed to the terms of the Variation Letter:

"strongly reflected the overall positive relationship between Square and [Mr. Leonard] at that time such that he would commit himself to the business for at least a further two years."

Mr. Uzan also stated (albeit straying into legal submission):

"The proposed increase of the Post-Termination Restrictions to nine months reflected what we considered to be a reasonable period of time in all the circumstances, and is further demonstration that the six-month period we do seek to enforce is more than reasonable."

74. According to Mr. Uzan, only a couple of days after signing the Variation Letter, on 19 December 2017, he invited Mr. Leonard for dinner to a top-end restaurant, Alain Ducasse, to celebrate. He said that he and Mr. Leonard usually went out for a dinner around Christmas to celebrate the end of the year. On this occasion, he felt that they had reached a stage where both of them were happy. He says that the two of them had a very positive discussion about the future of the business. In particular, they discussed that as the business continued to grow there were many potential synergies and benefits for everyone (including Mr. Leonard) to take advantage of. For example, growing the business and hiring more brokers would lead to more brokers being able to potentially agree to "bilateral agreements" with Mr. Leonard (for example in single stocks volatility) that would naturally help his business grow as a result.



75. Mr. Leonard's account of events is different in one important respect, as explained below. He refers to going to an end-of-year dinner in December 2018, rather than December 2017. He says that Mr. Uzan told him, at this dinner in 2018, that he would benefit from synergies as Square grew, and, specifically, that he would benefit from an increase in volume of single stocks vanilla options (that is, vanilla transactions as opposed to exotics) with some future new hires. Mr. Leonard responded by asking to be kept in the loop on this process.
76. Both Mr. Uzan and Mr. Leonard agree that there was a further relevant exchange for the purpose of this litigation between them at the dinner in December 2018, which Mr. Uzan explains in his statement was the office Christmas party. It involved Mr. Uzan commenting on certain statements made by Mr. Leonard by saying: "*Are you a trade-union representative?*" Mr. Leonard's account is that these words were spoken after he suggested that the management of the company should be a little more attentive and careful with regard to its attitude towards the staff, as most people were unhappy, and that he also mentioned Mr. Boublil's abusive behaviour. He says that Mr. Uzan's response, although said with a smile, was given in such a way as to make him feel that he was raising points that he was not supposed to raise. By contrast, Mr. Uzan's account of this exchange was that, puzzlingly, Mr. Leonard was making ironic and derogatory comments about the company (such as "*do you think employees are happy at Square?*") which were inappropriate in the context of the social dinner, and that he replied in a similar tone to Mr. Leonard's with a focus on moving the conversation along.
77. On the points of factual disagreement referred to at paragraphs 74 to 76 above, I prefer the evidence of Mr. Uzan and find that his account is much more likely to be correct. His account fits much more naturally into the overall picture that emerges from the totality of the evidence presented to the Court; it is logical and coherent; and his demeanour as a witness was very convincing (more so than Mr. Leonard). As outlined below, Mr. Leonard relies on his differing account of both these points in support of his overall allegation that he was constructively dismissed. However, his account of them cannot be accepted.

### ***The final period of employment: 2019***

78. According to Mr. Leonard, an unacceptable "aggressive environment" at Square continued to prevail in 2019 (despite the departure of Mr. Scemama in 2017, who had been the main focus of concerns in the early period).
79. Mr. Leonard refers first to a message that he sent to one employee on 25 January 2019, apparently via WhatsApp, stating: "*I told Yves [Sarfaty] yesterday that I was shocked how Fred was addressing you. Especially after how she complains that Ari is yelling at her.*" The apparently puzzled response from the recipient employee was as follows: "*OK I see. Well thanks for that. She is mostly OK. But sometimes it's not.*"
80. On 25 February 2019, Mr. Leonard sent Mr. Uzan an email informing him that, the previous week, Mr. Boublil had been verbally abusive to a junior member of staff. Separately, on the same day, he said that an employee called Julia (a junior broker on the Dividend Swap desk) had started yelling at him in front of everyone when it was unjustified. He stated in particular:

"[About the first event:] I have raised several times this type of behaviour. Hearing this type of yelling on a daily basis is not promoting an environment where it is pleasant to work. It is getting on the nerves of everyone at work and affecting concentration/performance. Turning a blind eye on this bullying behaviour is sanctioning an attitude where people hide their incompetencies/unprofessional attitude behind aggressive behaviour. ...

[About the second event:] I have endured/witnessed this type of unsanctioned attitude in this company for a long time and I am thinking some changes could be beneficial to everyone."

81. Mr. Uzan emailed in response the following morning. He wrote:

"We do not condone such behaviour at Square, and never will. These matters are being looked into and dealt with.

Also, even though we want the Square trading floor to remain vibrant and lively, please make sure you also keep to the same respectful standard with everybody here."

82. Mr. Leonard's email response that same day was:

"I am happy to hear that things are being looked into. I was simply flagging again a behaviour that is happening on a regular basis on the vol desk. I pride myself with applying professional, compliant and respectful standard with everyone on the floor. Should anything being viewed differently by anyone, I would take this at heart and would be happy to have a conversation about it."

83. In his evidence, Mr. Uzan said that the reason for his request that Mr. Leonard should "*keep to the same respectful standard with everybody here*" was that Mr. Leonard himself had had difficult relationships with the junior brokers on his own desk, and presented a "*harsh attitude*". Mr. Uzan explained that he had spoken to Mr. Leonard on a few occasions about his impatient and harsh management style with his first junior broker, and had suggested to him how he might change that to work better with her. Mr. Uzan said that similar treatment had been given by Mr. Leonard to her successor, after she left, and that Mr. Uzan continued to remind Mr. Leonard to provide proper support to the successor (Million Woldu), despite some justified frustration with Mr. Woldu's performance.

84. Mr. Uzan also gave oral evidence that he responded robustly to the email complaint about the behaviour of Mr. Boublil. He confronted Mr. Boublil directly, and did not merely let it lie. He said in particular:

"...he raised an issue about Ari, who called badly an execution trader, and for these issues we went into the room, we discussed. I clearly stated to Ari that he should not be talking to people like this, they can take this personally. Ari got -- I mean apologies to this person. They then went to have a beer and the day after, they came back like as nothing happened. This issue got treated".

85. As respects Mr. Leonard's complaint about the junior broker shouting at him, Mr. Uzan also said:

"...I then went to ... the other two directors who were at that time following the situation. They both told me that, if anything, it was Julien being aggressive. It was what they call a non-event. And in regards to the rest, I said clearly "Let's", you know, "if you want to make any comment about the other, I'm more than happy to accept it, but let's make sure that you also take care in the way you talk to people."

86. In the course of cross-examination, Mr. Leonard said that in around the end of February 2019 or the beginning of March 2019, he also began negotiations with the rival brokerage firm, Market Securities. There is no documentary evidence available to the Court (including in the form of WhatsApp or text messages) showing the genesis of the negotiations, or its date. Mr. Leonard explained that the discussions were conducted orally. As stated below, those discussions crystallised in the form of a detailed draft "agreement for brokerage services" and side letter that were sent by Market Securities to Mr. Leonard in late March 2019.

87. In view of the closeness in time between the admitted date when these negotiations started (end February/beginning March 2019), and the email written to Mr. Uzan on 25 February 2019, Mr. Laddie Q.C. put it to Mr. Leonard that, in effect, his email was written with an eye to being deployed in the event of a dispute if he left Square claiming constructive dismissal. Mr. Leonard responded that his motivation for writing the email had been unrelated. He pointed out that the email in part concerned Mr. Boublil, who was the brother-in-law of Mr. Uzan. He said:

"... I decided to take a defence for an employee that could not defend himself because he was not in a position to do so. I was in a stronger financial position, I was in a stronger

political position at that time, and I took it on me to help employees that were not able to defend myself and try to do so."

88. The cross-examination continued:

"Q: Why did you not just speak to Mr. Uzan who sat opposite you?"

A. My Lord, Mr. Uzan might sit, indeed, opposite me but we have two rows of screen between us, so we don't have - you need to actually stand up to speak to him. Also, because of the attitude of the company not to write anything down, I was concerned that, you know, history might be ignored and the matter, you know, raised verbally, would be written like it's been the case.

Q. So you wanted a written record of this; is that right?

A. That's correct, yes.

Q. Why did you want a written record of it?

A. In order to make sure that history was not rewritten several months later."

89. I have concluded that Mr. Leonard's evidence on this issue was unconvincing, both taking it in isolation and in conjunction with the totality of the evidence in the case. I find that it is probable that the email on 25 February 2019 was written in the context that Mr. Leonard had an eye on creating material that might prove useful in a subsequent employment dispute if he left Square, even if it was uncertain at that stage whether he would leave for Market Securities. I do not regard his email as reliable evidence supporting the proposition that there was an unacceptable aggressive environment at Square. Nor do I regard the response from Mr. Uzan to his email as proper evidence that Square's approach to complaints and grievances raised by Mr. Leonard was dismissive, or otherwise unacceptable (either on this individual occasion, or as part of a course of conduct over time).

90. On 27 March 2019, a director of Market Securities sent an email to Mr. Leonard from his personal email address. The email stated: "*I'm attaching a draft of the contract that reflects our agreements...*". It had two attachments: a 30-page draft agreement for brokerage services in a highly developed form; and a draft side letter relating to Mr. Leonard entering into the contract through a broking company.

91. Mr. Leonard agreed in cross-examination both that the scope of the mandate for him envisaged by the Market Securities documents, and the associated remuneration package, were more favourable than his existing arrangements with Square. He agreed too, that the draft agreement could be said colloquially to constitute an offer to him by Market Securities. Although he initially resisted the proposition that it was in fact an offer capable of being accepted, as opposed to being a valid offer where the terms were simply not favourable enough, in his mind, he did finally accept the proposition:

"Q. Could you turn, please, to page 1063. 1063 is the commission sharing arrangement. Yes?"

A. Yes.

Q. And we can see at clause 2.1 that the commission sharing arrangement there was 60 per cent on the production, up to £1.2 million, and 65 per cent thereafter?

A. That's correct.

Q. So that appears to have been a more favourable arrangement for you than the one that you were at that point enjoying at Square Global; do you agree?

Yes, that's correct.

Q. Let me ask you this. The contract being sent to you, you say you hadn't agreed it, but it was at the very least an offer, was it not?

A. You could say it was an offer from their point of view and in my mind it was not an acceptable offer.

...

Q. If you had been minded, it would have been possible to accept this offer; do you agree?

A. Yes, I do.

Q. And, therefore, it follows that you accept it was an offer?

A. You could say colloquially that it was.

...

And would you agree with this, Mr. Leonard, that it would have been open to you, had you so desired, to sign these documents and indicate your acceptance?

A. Yes, like I said, yes, if I had agreed any of those, I would have been in a position to sign them."

92. There were two further drafts of the Market Securities contract circulated before Mr. Leonard resigned summarily from Square on 11 November 2019. The first of these was sent to him in late May 2019; the second was sent on 6 November 2019 (i.e., a few days before he left, and one day prior to events that Mr. Leonard treats under one of his alternative cases as the operative "final straw" triggering a constructive dismissal). The final executed contract was eventually signed by Mr. Leonard after his departure from Square, on 6 March 2020.
93. Helpfully, in a post-hearing Note, Square's representatives carried out a comparison between the executed contract made between Mr. Leonard and Market Securities, and the draft version sent to Mr. Leonard on 9 November 2019. For their part, Mr. Leonard's representatives carried out an analysis comparing the draft provided on 26 March 2019 against the final version. Both these comparison exercises help to illustrate that the changes made between each of the successive drafts were fairly minor, and similarly that the changes made between the November 2019 draft and the executed version of the contract were fairly minor. The latter changes did include, among other matters, a new clause regarding garden leave (requested by Mr. Leonard during the currency of this litigation, on 14 February 2020), and the specification that the determination of Mr. Leonard's "commission share" by Market Securities should be "in good faith", which Mr. Leonard said was an important point for him after his experience at Square.
94. In my judgment, all the events in 2019 on which Mr. Leonard relies in these proceedings in support of his case on constructive dismissal, at least from the time of the email on 25 February 2019, fall to be viewed through the prism of Mr. Leonard's parallel private discussions with Market Securities, about leaving Square to join them. Mr. Leonard was asked, in cross-examination, whether he was in a hurry to finalise his negotiations with Market Securities, after receiving the draft contract from them in March 2019. He explained that he was "*in no rush at all*":

"Q. So the question I have to ask you is this: why didn't you accept it there and then?

A. Because like I said, schedule 1, paragraph 1, I wouldn't want to accept, so I wouldn't want to put myself again in a position where a company would have full discretion over the allocation of my commission.

Q. But presumably you would have been in a hurry to nail that down?

A. No, I was not in a hurry at all.

Q. Why not?

A. Like you said, you know, I was making some decent money at Square and despite being unhappy for quite a long time there, I was in no rush at all. At the time, I was like -- I mean I'm 42, and I'm thinking my next move is going to be an important one because I don't want to end up in situation where I'm getting abused."

95. I can now deal fairly briskly with the main events on which Mr. Leonard relies in support of his constructive dismissal case, between March 2019 and his resignation on 11 November 2019.
96. First, he refers to the conduct of a sectoral index trade on 30 April 2019, which in his view was a type of product that fell within a "grey area" so far as concerns which of the exotics desks had the "mandate" for it. On 3 May 2019, he indicated to Mr. Uzan that he felt he should be paid commission on the trade, owing to his relationship with the client. Mr. Uzan's response was, in his view, dismissive and unjustifiably annoyed. Mr. Uzan responded he wanted to speak to Mr. Leonard about his "attitude" and that it was a shame he "was playing like this".
97. Mr. Uzan was not questioned about this event, which was dealt with in his written evidence. He took the view that this was not a "grey area" at all, and that Mr. Leonard was repeating a wearing pattern of challenging the agreed arrangements. He said:
- "...I replied that I would like to talk to him about his "attitude". I was frustrated that I was again having to have discussions around allocation of revenue on transactions which clearly did not fall within Julien's mandate, for which no bilateral agreement had been made, and in respect of which there was simply no good reason the revenue should be allocated to Julien. In order to keep the client happy, I ended up agreeing to split the revenue from Guillaume on this trade with Julien 50/50.
- This episode triggered a discussion between Julien and myself about general coverage and revenue allocation of sector indices. It was decided that (apart from Quanto products on sector indices which the Index Exotics Desk would continue to cover) Call vs Call sector index vs sector index would now fall within Julien's mandate. However, Call vs Call index vs sector index would remain within the Index Exotics Desk mandate. This was applied from May 2019 onwards."
98. Secondly, he refers to having been provoked deliberately by Mr. Boublil in an incident on 14 May 2019, when Mr. Boublil expressed to a junior broker in Mr. Leonard's presence that she should "make a push on single stocks exotics", in other words trespassing on Mr. Leonard's agreed mandate. He complained to Mr. Uzan about this provocative treatment. Mr. Uzan's response was to make crystal clear to Mr. Leonard that mandate discussions were a matter for him and for no one else, as Mr. Leonard agreed, when this was put to him at the trial. Mr. Leonard also agreed that this was a sensible and responsible reaction from Mr. Uzan. Moreover, Mr. Boublil contacted Mr. Leonard himself to say: "Hi Julien, looks like there's a big misunderstanding here. I'm happy to have a conversation with you and Harold regarding this, whenever he is back." Mr. Leonard also accepted in cross-examination, that: "He's [i.e. Mr. Boublil is] trying to calm the situation down."
99. The third event was an incident on 11 June 2019. Mr. Leonard argues that Mr. Scemama (who was of course still with the company) had joined in with a client who was mocking him. Mr. Leonard raised this with Mr. Uzan asking for his support, and contends that the response he received was dismissive. In fact, a fair reading of the relevant documentary exchange shows that this was a trivial and unjustified complaint. Mr. Uzan wrote, at the time:
- "I read the chat, but I don't understand why you are trying to create an issue around something like that, Julien? Nothing was said about the bad guy, so I don't see why you're trying to build up something."
100. In cross-examination, it was put to Mr. Leonard that he had printed out and taken away this documentary exchange on 11 June 2019, which had been on a Bloomberg chat. He was asked why he had done this, and he replied that his intention would have been to have shown it to a lawyer "should history be rewritten again."

101. Fourth, Mr. Leonard complains that on 6 September 2019, Mr. Uzan unilaterally decided to allocate to the index exotics desk one-half of the brokerage on a trade that fell squarely within Mr. Leonard's mandate. On inspection of the facts, Mr. Uzan's behaviour appears to me to have been justified, and not to have constituted unfair treatment of Mr. Leonard. There were exceptional circumstances in this particular case. The trade concerned was the second of two trades with Asia-based clients, which was a region in which Mr. Leonard had no market presence. Mr. Uzan had proposed a bilateral (revenue-sharing) agreement between the two exotics desks in relation to trades in this market, in circumstances where one of his own junior brokers, Jeremy Louis, did have connections in Asia and was in a position to interact with the Asian client. The first trade took place successfully, with Mr. Louis working hard to generate the business. Mr. Leonard said to Mr. Louis that he would reward him by contributing to his own bonus at the end of the year, and kept the entire Production. On the occasion of the second trade, where Mr. Louis was again of special assistance (and did significantly more than merely effect an introduction), Mr. Uzan stepped in to ensure that fairness was achieved. He said, in cross-examination:

"Julien tried to cross the line, to avoid me, to talk directly to this guy and to say: oh, I'm gonna pay you one day. It should have been a desk-to-desk bilateral agreement and in a sense here, it looks like he did everything he could to avoid this. And I've tried -- I've tried to put some equity after the second attempt."

102. Fifth, Mr. Leonard complains that in September 2019, Square recruited a broker called Mr. Chichportich without informing or involving him. He says, in his written statement:

"Mr. Chichportich was not introduced to me by anyone, and his mandate was to cover all clients including mine. Therefore, I was not going to benefit from the synergies to which Mr. Uzan had referred during our 2018 dinner and my remuneration would not increase as promised. This compounded my belief that Mr. Uzan was not to be trusted."

103. The argument was put somewhat differently by Mr. Leonard in his oral evidence: he appeared to accept that Mr. Chichportich was recruited only to broke vanilla products, and not exotics. He said:

"...so he would basically work these as his mandate, and I -- I would have been able to speak to my client about the product that -- and refer to him some interest, due to my relationship with my clients."

104. I agree with the submissions by Square's counsel on this issue: it is not at all clear why Mr. Leonard thought he would not benefit from synergies, nor why Mr. Leonard (who was not a member of the management team) should have been involved in this recruitment.

105. Sixth, there are the events in October 2019 which, in the Defence and Counterclaim, are described as the culmination of a course of conduct over several years amounting to a constructive dismissal. According to Mr. Leonard, on 15 October and 22 October 2019 Mr. Uzan insisted that he pass two interests received from a client at Goldman Sachs to the index desk, with the consequence that Mr. Leonard would not be allocated any brokerage on these (having taken the opposite approach when Mr. Louis on the index desk had referred a single stock interest to Mr. Leonard). Mr. Leonard says that he tried to raise a formal grievance about this on 15 October, and followed this up on 22 October, but in both cases Mr. Uzan dismissed him out of hand.

106. I find that there is no substance either in the allegation of unfairness, or in the allegation that Mr. Uzan dealt inappropriately with a grievance raised about it by Mr. Leonard.

107. Mr. Leonard agreed under cross-examination that this was a "*straightforward application of the mandate rules*." Mr. Uzan, for his part, also cogently explained to the Court that the situation was not comparable with the situation involving the Asian trade effected with the assistance of Mr. Louis, described above. In the latter case, there had not merely been an introduction of a client by Mr. Louis: he had worked hard and interacted with the client to help generate the business.

108. Furthermore, it is relevant in this connection to note an event on 1 November 2019, on which Mr. Leonard was also questioned. On that day, Mr. Uzan wrote to Mr. Leonard in the course of business, offering proactively to bring him in on a trade. It was put to Mr. Leonard that this was an example of

fairness towards him, on this occasion, rather than bending the rules to suit the interests of the senior management. Mr. Leonard responded: "*In that case it was a grey area, yes. It was more fair than unfair, correct, my Lord.*" This acceptance on the part of Mr. Leonard itself seems to me entirely fair, and correct.

109. As respects the alleged raising of a grievance and the response to it, Mr. Leonard's statements on 15 October were made in the course of an informal Bloomberg live chat with Mr. Uzan. Mr. Leonard wrote: "*I am expressing my frustration and a grievance on an unfair situation where things are never in my favour whatever the circumstances.*" He was cross-examined about his choice of words, and about his motivation for engaging in this chat generally. I am satisfied that, despite Mr. Leonard's protestation to the contrary, he did not intend to lodge a formal grievance, with a view to this being treated as such by the company (and nor was it understood in that way by Mr. Uzan). He was offered a meeting to continue the conversation further, which he did not avail himself of, describing it as a "*fanciful invitation*". I do not find that it was a fanciful invitation by Mr. Uzan, either in its intent or in the way that it was received (or would reasonably have been received).

110. As respects the events on 22 October 2019, a week later, Mr. Leonard was not merely asking for a share of the revenue on an index exotics trade; he was now refusing to pass on the business to the index exotics desk at all. In the course of another informal Bloomberg chat, Mr. Uzan explained to him that the prevailing rule at Square was "*clear and given.*" Mr. Leonard's response (having failed to take up the offer of a meeting made the previous week) was to raise the same essential issues of perceived unfairness resulting from the operation of the system as he had already raised before. It is against that context that Mr. Uzan wrote back:

"Julien please stop insisting, you have a clear mandate, there is a rule in place and we will not come back on this. Same as we did our side I invited you to make things clear to your clients. We are business specialists ... There has been too many attempts recently so looking fwd I will authorise myself not to answer to avoid wasting anymore time on this."

111. I find that Mr. Uzan's response on the Bloomberg chat needs to be viewed firmly in context. It does not bear the implication that Mr. Leonard seeks to give to it in these proceedings, essentially that Mr. Uzan was wrongly announcing an intention, in his capacity as the employer representative, not to engage with good faith attempts by an employee to discuss issues of unfairness in the allocation of remuneration. Viewed in its proper context, this was a situation where the same issue as was raised on the Bloomberg chat had been discussed (and settled) over a long period of time. It had been raised once again only very recently, and the offer of a meeting had been extended to Mr. Leonard but not taken up. It is clear that Mr. Uzan was frustrated, as he acknowledges in his evidence, and that he vented that frustration in the Bloomberg chat, but it is also clear that his statement was directed at avoiding unproductive exchanges in the workplace using this medium.

112. The inference that Mr. Uzan did not intend to close the door generally on any further attempts by Mr. Leonard to discuss concerns, or to raise a grievance, is supported by the events that followed. On 7 November 2019, Mr. Leonard left the office in the middle of the day, according to Mr. Uzan, without explanation. (The events of 7 November 2019 are addressed below). He then asked to take 8 November off from work as well. Mr. Uzan discussed this with Mr. Herriger, and the two of them agreed that Mr. Herriger would send an email asking Mr. Leonard if he wanted to address any of the frustrations he had voiced informally in a different, more formal manner. Mr. Herriger duly sent an email on 8 November 2019. It stated:

"Harold has recently mentioned to me that you have on several occasions communicated on BBG chats to him some frustrations about the manner and fairness with which you perceive certain product and coverage mandates are being allocated and managed, between specific desks and individuals. I would just like to clarify if these frustrations are to be viewed as part of usual frictions and disagreements on a brokerage floor which would you prefer to continue addressing in an informal manner as you have done so far, or if you would rather engage a formal grievance process, according to the ACAS Code of Practice which Square adheres to".

113. Mr. Leonard did not respond to this email, which he explains on the basis that: it deliberately played down his formal grievance; it was sent 17 days after the CEO had authorised himself not to speak to Mr. Leonard about his issues; and he inferred it was not to be taken at face value but was designed to be used by Square in a legal dispute. I find, however, that the email from Mr. Herriger was genuine (and would reasonably have been regarded as genuine), and I accept the evidence of Mr. Uzan about the reasons why it came to be written.
114. Seventhly, Mr. Leonard relies on two events on 7 November 2019, both as involving acts of repudiatory breach in their own right, and as constituting an alternative "final straw" to a course of conduct that was repudiatory when viewed as a whole.
115. Prior to dealing with those events, however, it is appropriate to point out that the evidence establishes that Mr. Leonard began preparing on 5 November 2019 (with the assistance of a solicitor) his letter of resignation, which was eventually served on 11 November 2019. The draft letter was last modified on 10 November 2019. However, the letter does not refer to either of the events on 7 November, which nevertheless are now each put forward as part of the reason why Mr. Leonard considered that he had been constructively dismissed, and chose to resign summarily.
116. The first such event was that Mr. Leonard obtained access to an electronic file containing information about employees' pay. According to Mr. Leonard, he happened to see the computer screen of a company accountant while standing up, and he also spotted his name in an excel spreadsheet on the screen. He says he also saw the name of the excel file. He then went to his own desk to search for the file, whereupon he discovered that there was unprotected pay information available on the shared drive. He said:

"I just happened to, at some stage, look at the screen. Maybe I looked -- I went to the window to see what was going on in the street, turned my head, saw this file on the screen and then went back to my desk to check what it was, when I saw my name on it ... I think I must have seen the name of the file at the top of Excel."

117. It was suggested to Mr. Leonard in cross-examination that this was untrue: this was not the way that he came to discover the existence of this file, and that there was some evidence that he had been told about it by two other employees beforehand. On this question, I consider that Square is probably correct: Mr. Leonard's account of a fortuitous discovery on 7 November 2019 was unconvincing, and the available evidence does indeed suggest that two other (non-accountant) employees accessed the pay information file prior to Mr. Leonard's discovery.
118. The second event on 7 November 2019 on which Mr. Leonard places reliance was the information given to him while he was having what he describes as a general catch-up over a coffee with a former employee. Mr. Leonard says he was told during the catch-up that Mr. Tidiane Diallo (another former employee) had been tasked with regulatory activity at Square when subject to an FCA prohibition. Although Mr. Leonard served a witness statement from Mr. Diallo in these proceedings, on which Mr. Diallo was ultimately not cross-examined (see paragraph 13.ii) above), Mr. Diallo's statement gives no sufficient details either of the FCA prohibition or of the activities said to constitute breaches of the prohibition. As indicated above, the conclusion of the statement is in qualified terms: "*With hindsight, I realise that there might have been something questionable with regard to the trades I was instructed to execute.*" Mr. Uzan was cross-examined extremely shortly about this allegation:

"Q. And the last point is in relation to Mr. Diallo: and it's correct, isn't it, that he was trading without authorisation?"

A. No, it's not correct. To the best of my knowledge, it is absolutely not.

Q. And Mr. Diallo will give evidence, but Mr. Leonard discovered this, that it would cause concern to any employee, wouldn't it, if there was trading without authorisation?"

A. Again, I've given you my answer. I don't think he was, I'm happy to give some context if you wish.



Q. No, no."

119. In the light of the carefully expressed concluding sentence of Mr. Diallo's written statement, Mr. Uzan's clear and strong denial of the essential allegation, and Mr. Uzan's invitation to counsel to explain it (which was emphatically refused), I do not find it proved either that there were specific unauthorised behaviours by Mr. Diallo in executing trades, or that, if there were, Square knew of and encouraged them.
120. Finally, Mr. Leonard says that, after leaving Square, he went to check Mr. Louis' FCA status, and this revealed that Mr. Louis was not authorised to perform regulated tasks out of London. As in the case of Mr. Diallo, I do not find this allegation proved. Mr. Louis was specifically questioned about his activities at Square: he was clear that he did not arrange or bring about trades, and that his role was "*bringing interest only*". I find that this proposition is likely to be correct. I note, moreover, that Mr. Louis' evidence was that Mr. Leonard himself knew at the time he was at Square that Mr. Louis did not have a regulatory authorisation to trade: he said that the point was brought up many times on the trading floor, within earshot of Mr. Leonard. The relevance of this observation is not that Mr. Leonard was in some way barred from complaining about the fact that Mr. Louis was unregulated. It is that if, as appears to me to be probable, Mr. Leonard was aware of Mr. Louis' status, then if Mr. Louis was breaking the rules I would have expected Mr. Leonard to have noticed this and to have objected to it. The fact that he did not do so tends to suggest that there was no good reason for concern.

***Mr. Leonard's resignation and the subsequent events***

121. On 11 November 2019, Mr. Leonard sent his formal letter of resignation with immediate effect. It is not necessary to set it out in full. In it, he referred to a group of specific complaints, including in particular: having had necessary information for his job withheld from him or released too late to act upon (this was not explained further); having been promised synergies as the company grew that were never provided; having had the rules defining his mandate changed without his agreement, and always to his detriment or inconsistently; having had commission from one of the Asian trades with Mr. Louis in September 2019 (on a single stock exotic product) allocated in part to the index desk; having been given no commission on two index product trades on 15 and 22 October 2019 despite his connection with the client, inconsistently with the events concerning Mr. Louis; having had his written grievance on 15 October 2019 dismissed preemptorily, and being told on 22 October 2019 that Mr. Uzan was authorising himself not to answer him anymore; and having overheard a new joiner of the company asking a partner about some of the products in his mandate, in a context where he had previously been bullied by a partner to hand over some of his clients to that same partner.
122. Mr. Leonard's letter made the general point that he could not work in an environment where rules were not applied consistently, were regularly bent to his detriment without consultation, and his grievance was dismissed without due process. He appeared to refer to the events on 15 and 22 October 2019 as "*the final straw*", and said: "*I am left with no choice but to resign following this flagrant breach of trust and confidence.*"
123. Mr. Leonard did not mention either of the events on 7 November 2019 discussed above, and which he now relies on. He explained in oral evidence: "*Retrospectively, I admit, my Lord, I should have done that [referred to the issue concerning Mr. Diallo]. I was not aware of the fact that I should have said all my reason for resignation in my resignation letter ...*". However, he did proceed to deploy his contentions about those events outside the framework of his resignation letter:

i) At around 8.30pm on 11 November 2019, he sent an email to Mr. Uzan stating:

"It came to my attention that my salary, current and past bonuses and other extremely confidential terms of my contract, along with the ones of a lot of other employees, have been made easily accessible and available to everyone in the company. I have serious concerns on how the company is handling confidential and private information. I would also like to know if the ICO was made aware of the use of CCTV in the office in accordance with the Data Protection Act of 1998. I also never saw any signs of the use of CCTV in the office."

ii) At around 11.05pm on 13 November 2019, he wrote a "private and confidential" email to Mr. Uzan in his capacity as compliance officer. He said in it:

"I overheard a conversation between a partner and a director of the company that I find could represent an issue with regards to the regulating authorities. Apparently a few years back senior members of staff were directing/forcing an individual to perform regulated duties and execute market orders. This was done despite those members of staff knowing that the employee was unable to trade due to being under a prohibition to perform regulated duties and execute market orders from the FCA. You might already have been made aware of this, but in any case as a compliance officer I thought I should make you aware of it so that you could take the appropriate actions if necessary.

I shall try to think about other possible sensitive situations such as this one, that I could have come across during my time but missed then and let you know if I can think of something else that could have skipped my mind at the time."

124. This letter was intended to refer to the issues surrounding Mr. Diallo. In cross-examination, Mr. Leonard accepted that the reference in his letter to having overheard a conversation between a partner and director of the company was a lie, but asserted that he had lied in order to protect his real source (another employee who had also left Square). I am not prepared to make any findings about Mr. Leonard's motivations in this regard, and do not need to do so. It remains unclear whether, if what he says is right, Mr. Leonard had in mind a need to protect that other employee from a possible defamation action brought by Square, or from some other unspecified consequences.
125. Late in the afternoon on 11 November 2019, Mr. Uzan emailed Mr. Leonard to explain that he did not accept that he was entitled to resign without notice. He asked him to come back to work the following day. Square has consistently taken the position that Mr. Leonard remains an employee, and that his resignation letter on 11 November 2019 is to be regarded as a notice of intention to cease his employment on 11 May 2020 (i.e. after six months).
126. In the following days and weeks, inter-solicitor correspondence ensued. Mr. Leonard engaged new solicitors, Wallace LLP, whom he met with for the first time to give instructions on 18 November 2019. In Wallace's letter of 18 November 2019 to Mishcon de Reya, representing Square, they stated: "...our client has not accepted an offer with a competitor of your client." In a letter two days later, on 20 November 2019, Wallace wrote: "[our client] also confirms, again on an entirely voluntary basis, that he has no offers of employment from competitors." Mr. Leonard was questioned about this at the trial, given the successive draft contracts which he had been sent by Market Securities by this point. His explanation, when pressed, was that he did not view the drafts as amounting to an offer of employment at the time, but had in mind that an offer would be a document already signed by the offeror, and only awaiting a signature by the offeree. I do not find this explanation convincing, particularly in the light of his acceptance at the trial that, if he had been so minded, it would have been possible to accept the offers in the draft contracts. That is not to say that I consider Mr. Leonard to have acted in a level-headed, collected and composed manner: I consider it probable, based on the totality of the evidence, that Mr. Leonard was acting under very considerable stress following his resignation from Square, and that he was anxious at the prospect that information about the offers made to him by Market Securities would be harmful in this dispute when learned of by Square and its lawyers.
127. It appears that the fact of the Market Securities draft contract became known to Mr. Leonard's solicitors shortly afterwards. On 29 November 2019, they wrote a follow-up to the letter of 20 November 2019. In it, they stated that prior to 11 November 2019 Mr. Leonard "*was in possession of what might colloquially be described as a "job offer" from a competitor. That proposal remained subject to negotiation and hence our client did not regard it as an offer ...*".
128. The final matter that requires to be mentioned also occurred on 29 November 2019. At around 11am that day, Mr. Leonard telephoned an IT consultant working at Square called Konstantinos Evangelou. Mr. Evangelou had at that time been working at Square for roughly 18 months, and he had had only a handful of dealings with Mr. Leonard over that period. He says in his statement that he was surprised to receive the call. According to Mr. Evangelou, Mr. Leonard asked him if the CCTV cameras on the broking floor and elsewhere were operational, and Mr. Evangelou replied that as far as he was aware

they were not. Mr. Leonard asked him if he had had any "*bad experiences*" during his time at Square, and Mr. Evangelou told him that he had not. He says that Mr. Leonard asked him for the contact details of two former employees of Square (which Mr. Evangelou did not provide, then or later). He adds that, towards the end of the conversation, Mr. Leonard asked him if he knew of "*any bad things [he] can use against Square?*"

129. As indicated at paragraph 12.iv) above, Mr. Leonard accepts that he called Mr. Evangelou and asked him about his own experience at Square, but denies that he went further than that by asking about other bad things Mr. Evangelou was aware of, or that he asked for the contact details of at least one of the other former two employees mentioned by Mr. Evangelou.
130. Mr. Leonard was questioned about his telephone call with Mr. Evangelou. He said that the reason he had asked Mr. Evangelou about the CCTV cameras was because he had wanted to establish that these cameras were working and that staff had been recorded on them. He agreed that he had started contacting former employees of Square to see how much help they might be able to give in terms of tracking down copies of CCTV recordings. He said: "*The reason why I did so is I wanted to expose the lies, possibly, alleged lies.*" He agreed: "*You could say it was a fishing expedition.*" When asked the reason why he had asked Mr. Evangelou about the bad things that Square had done to him, he responded: "*I was trying to find allies in a possible – in a future dispute.*"

### **Constructive dismissal: the relevant law**

131. Mr. Leonard's case concerning constructive dismissal turns on alleged breaches by Square of the implied term of trust and confidence in his contract of employment. It is necessary to consider both the content of the duty imposed under that term, and the standard that must be reached in order to show a breach.
132. As respects the content of the duty, it is well-established that the employer must not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee: Malik v. BCCI [1997] ECR 606, 610E-611A (Lord Nicholls), 620H-622C (Lord Steyn).
133. The test of whether there has been a breach is objective, and the conduct relied on must "*impinge on the relationship*" between the employer and employee: Malik, per Lord Nicholls, at 610H. However, the circumstances which may give rise to a breach of the term are infinitely various. It is a highly context-specific question: Tullet Prebon plc v. BGC Brokers [2011] EWCA Civ 131, at [19]-[20].
134. In Horkuluk v. Cantor Fitzgerald International [2004 ICR 697 (on appeal, [2005] ICR 402), the breach of the implied term arose from effective bullying behaviour including "outbursts" during which intemperate, summary views were delivered in foul and abusive language, which gave no chance to the employee to respond to any criticism; acting with a view to frightening the employee into performing according to the standards the employer required; and acting so as to make it plain that any contrary view which questioned the employer's authority would not be tolerated. Newman J. found that this behaviour, viewed in the round, removed any possible basis for the claimant having trust and confidence in his ability to preserve the relationship.
135. It is possible that the breach may not even arise from the way in which the employer has treated its employees. In Malik, it arose from the way in which the bank conducted its business in general. It ran the business in a corrupt and dishonest way. Lord Nicholls regarded this as a key feature, and in his speech expressed the view that in the ordinary way there would not be a breach of the implied term even if the business was run with gross incompetence that may have implications for the employee's reputation: 618A. In his oral closing submissions in the present case, Mr. Laddie Q.C. accepted the principle that behaviour by an employer which does not directly affect the individual employee alleging breach of the implied term is capable of amounting to a repudiatory breach. He added: "*However, we know of only a single case in the history of English employment law in which that has actually occurred and it is Malik.*"
136. So far as concerns the standard that must be met to establish breach of the implied term, it was common ground that this is exacting. Lightman J. held in BCCI v. Ali (No.3) [2000] ICR 1354, at

[54(1)] that the employer must have conducted itself such that the employee "*cannot reasonably be expected to tolerate it a moment longer after he has discovered it*".

137. Mr. Croxford Q.C., on behalf of Mr. Leonard, accepted this proposition with one qualification. He emphasised that it should not be taken to mean that if the employee does not leave immediately after the discovery of the conduct, then it is to be inferred that the conduct cannot have been serious enough. I accept this point: it is essentially a reminder that the test of breach is an objective one. In particular, there may be circumstances where an employee is in a vulnerable position for one reason or another, and despite the application of trust-destroying conduct, they are constrained not to leave immediately. They will not be taken to have affirmed the contract meanwhile, provided that they do finally leave within a timeframe that can be characterised as "prompt" in all the circumstances.
138. In a nutshell, the relevant standard involves the Court being satisfied that, from the perspective of a reasonable person in the position of the innocent party, the employer has "*clearly shown an intention to abandon and altogether refuse to perform the contract*": Eminence Property Developments v. Heaney [2010] EWCA Civ 1168, per Etherton LJ at [61] (applied many times in the employment law sphere, for example in Tullett Prebon plc v. BGC Brokers [2011] IRLR 420 (CA), at [20], [24]).
139. A breach of the implied term may occur as the result of a single act having the character and meeting the standard described above. However, it may also come about as the result of a course of conduct carried on over a period of time. In such a case, the final act of the employer in a series of events (the "final straw") need not be sufficient to satisfy the test for breach, taken in isolation. The only question is whether the final straw is the last in a series of acts or incidents which cumulatively amount to a repudiation of the contract by the employer. The final straw cannot be an entirely innocuous act. It must contribute, however slightly, to the breach of the implied term: Omilaju v. Waltham Forest LBC [2005] ICR 481 (CA), per Dyson LJ at [15]-[22].
140. The case law also establishes that, on ordinary principles, if the employee decides not to leave promptly but to "soldier on", they will be taken to have affirmed the contract. Lord Denning M.R. stated in Western Excavating v. Sharp [1978] ICR 221 (CA):
- "The employee is entitled in those circumstances to leave at the instant without giving any notice at all, or alternatively, he may give notice and say he is leaving at the end of the notice. But the conduct must in either case be sufficiently serious to entitle him to leave at once. Moreover, he must make up his mind soon after the conduct of which he complains: for if he continues for any length of time without leaving, he will lose his right to treat himself as discharged. He will be regarded as having elected to affirm the contract."
141. However, the case law also shows that an employee who is the victim of a continuing cumulative breach of the implied term is entitled to rely on the totality of the employer's acts, notwithstanding a prior affirmation: Kaur v. Leeds Teaching Hospitals NHS Trust [2019] ICR 1 (CA), at [51].
142. In Kaur, Underhill LJ expressed the concern that the law in this area should not be regarded as complicated and full of traps for the unwary. He stated, at [55]:
- "In the normal case where an employee claims to have been constructively dismissed it is sufficient for a tribunal to ask itself the following questions:
- (1) What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation?
  - (2) Has he or she affirmed the contract since that act?
  - (3) If not, was that act (or omission) by itself a repudiatory breach of contract?
  - (4) If not, was it nevertheless a part (applying the approach explained in Omilaju [2005] ICR 481) of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a (repudiatory) breach of the Malik term? (If it was, there is

no need for any separate consideration of a possible previous affirmation, for the reason given at the end of para 45 above.)

(5) Did the employee resign in response (or partly in response) to that breach?

None of those questions is conceptually problematic, though of course answering them in the circumstances of a particular case may not be easy."

143. In their post-hearing submissions, counsel for Mr. Leonard argued that the questions set out by Underhill LJ in the passage above – with one notable omission – showed the approach to determining a case when it is alleged that there has been a course of conduct amounting to trust-destroying behaviour, coupled with a "final straw" event which may be relatively insignificant. In my judgment, the framework set out by Underhill LJ is not limited to that scenario: it applies generally to the ordinary run of cases where an employee claims to have been constructively dismissed, as the introductory wording shows. The notable omission by counsel for Mr. Leonard was the fifth question set out above by Underhill LJ (i.e. "*Did the employee resign in response (or partly in response) to that breach?*").

144. In this connection, it is argued on behalf of Mr. Leonard that, in assessing whether there has been constructive dismissal, the particular reasons of an employee for resigning are irrelevant, save insofar as those reasons cast light on two key questions, namely (i) did the employer engage in conduct which, objectively assessed, constituted a repudiatory breach of the contract? (ii) if so, had the employee affirmed the contract / waived the breach at the time of his resignation? For example, it is argued, if there is overwhelming evidence of an employee trying to contrive a claim for constructive dismissal, this might prompt the Court to apply greater scrutiny to the events relied on as amounting to a breach.

145. On the Claimant's side in the present case, it is argued that, to establish a constructive dismissal claim as Mr. Leonard seeks to do here, the proper question for the Court to ask is whether the employee has accepted the repudiation by treating the contract of employment as at an end – the resignation must be at least in part "in response" to the breach of contract. Reliance is placed on, among other authorities, Meikle v. Notts. County Council [2005] ICR 1, per Keene LJ at [33].

146. In my view, the position is that there are situations in which it will undoubtedly matter to establish whether the employee resigned in response to the repudiatory breach of contract. But it is also quite clear that the right starting point is to consider what is the remedy that the Court is being asked to give in the instant case, and to whom.

147. Thus, for example, Lord Nicholls stated in Malik, at 611F:

"In the nature of things, the remedy of treating the conduct as a repudiatory breach, entitling the employee to leave, can only avail an employee who learns of the facts while still employed. If he does not discover the facts while his employment is still continuing, perforce this remedy is not open to him. But this does not mean he has no remedy. In the ordinary course breach of a contractual term entitles the innocent party to damages."

Lord Steyn stated, at 624E-F:

"In truth the ignorance of an employee of a breach of the implied obligation is only relevant to the choice of remedies: obviously the employee cannot decide to terminate on a ground of which he is unaware. Moreover, if counsel's submission were right it would mean that an employer who successfully concealed dishonest and corrupt practices before termination of the relationship cannot in law commit a breach of the implied obligation whereas the dishonest and corrupt employer who is exposed during the relationship can be held liable in damages. That cannot be right."

148. In Tullett Prebon plc v. BGC Brokers, *supra.*, at first instance Jack J. followed and developed the line of reasoning in Malik. In particular, after analysing and explaining in [77] an apparent tension between the authorities of Malik and Meikle, he stated as follows, at [78] and [79]:

"... as Malik shows, breach of the duty as to trust and confidence may have other consequences besides founding a claim for unfair or wrongful constructive dismissal. Even though the employee does not know of the breach when his employment terminates, he may have a claim for damages. It can also be used to justify his leaving, whether or not he left because of it. So if an employer asserts that the employee should not have left, the employee may show that he was entitled to leave because of the employer's conduct, regardless of why he in fact left.

It is well-established that an employer who dismisses his employee can rely on grounds of which he was unaware at the time of dismissal: Chitty on Contracts, 30th Edition, volume 2, paragraph 39-183, citing in particular Boston Deep Sea Fishing Co v Ansell (1888) 39 Ch D 339. This is an application of the general principle that a party who refuses to perform a contract, giving a wrong or inadequate reason, may subsequently justify his refusal if there were facts in existence at the time of the refusal which would have provided a good reason for it. I refer to volume 1 of Chitty at paragraph 24-014. The application of other principles such as those relating to waiver or estoppel may prevent him from doing so. Turning to the situation with which I am concerned, the converse of that in Boston Deep Sea Fishing, it follows that an employee may justify his refusal to perform his contract of employment by any grounds which existed at the time of his leaving. So, if he simply walks out without apparent justification, but later discovers that his employer was fraudulently deducting from his pay on account of tax more money than he should, his employer would fail in any action brought against him, whether for damages or for an injunction to restrain him on the basis that the employment was continuing. Likewise, taking some of the facts in Malik, if the employees had left to work for another bank before they were free to do so, and BCCI had sought to restrain them from doing so, it would have defeated BCCI's claim for the employees to show that the bank was run in a dishonest and corrupt manner even though the employees did not know that when they left."

149. I respectfully agree with Jack J.'s reasoning in [79], cited above. Applying his reasoning to the present case, the position in these proceedings is that Square is treating the contract of employment as subsisting, and it seeks enforcement of the fidelity clause and the clause requiring Mr. Leonard to respect the period of six months' written notice (by not working for a third party during this period), and enforcement of PTRs. However, if it were correct that Square was in repudiatory breach as a result of (say) dishonest and corrupt operations, then, even if these were learned about by Mr. Leonard after he had resigned, I consider that he must still be able to rely on them in order to oppose Square's action.
150. Square's counsel submitted a "Note on the Law" in which, among other matters, they contend that Jack J.'s judgment is both *obiter* and wrong. They attack his reconciliation of the apparent tension between Malik and Meikle, which I have referred to above. I do not need to examine this in detail: it suffices to say that I do not consider that their attack on Jack J.'s reasoning is well-founded. They argue that Malik does not support the proposition for which Jack J. cites it (i.e., the need to consider the issue from the perspective of the remedy which the Court is being asked to grant), whereas – as appears from the extracts I have cited above – I consider it does. They argue that Jack J. was wrong to consider that in a wrongful dismissal claim the employee must establish "causation" of loss, since, in a contract claim, demonstration of loss is not an essential ingredient. However, this misses the basic point that the gist of the claim which Jack J. was discussing was a claim for compensation caused by the unfair or wrongful dismissal.
151. It is not, however, necessary for me to extend the discussion of the legal principles on this point any further. As appears from the analysis of the facts in the following paragraphs, I have concluded that the controversial point of law does not strictly arise: it is clear to me that there is no repudiatory breach by Square on which Mr. Leonard can rely, whether or not one takes account of matters extraneous to his reasons for resignation on 11 November 2019.

### **Was there a repudiatory breach by Square: Discussion and findings**

152. I have come to the conclusion that there is nothing in the facts relied on by Mr. Leonard which amounts to a repudiatory breach of the contract of employment by Square. Whether the individual acts referred to are relied on in their own right, or as part of a wider course of conduct over time, the case is not proved. Square did not show "*an intention to abandon and altogether refuse to perform the contract*", to take the language of Etherton LJ (as he then was) in Eminence Property Developments. I start with the final group of acts and events relied on by Mr. Leonard, in October/November 2019.
153. First, it is argued on Mr. Leonard's behalf that the Court should conclude that Square allowed or required both Mr. Diallo and Mr. Louis to engage in regulated conduct when they were not authorised to do so by the FCA. In the case of Mr. Diallo, Mr. Leonard was informed on 7 November 2019 at his coffee catch-up with a former employee that Square had permitted Mr. Diallo to execute financial trades while subject to a prohibition; in the case of Mr. Louis, it was discovered by Mr. Leonard only after his resignation (but confirming suspicions which Mr. Leonard had held during his employment) that Mr. Louis was not authorised to bring about, arrange or execute trades and yet he had been doing so.
154. For the reasons given in particular at paragraphs 118 to 120 above, on the available evidence I do not find either that those individuals were acting in breach of FCA regulations, or (consequently) that Square knew of this and sanctioned it.
155. I should add that Square's counsel submitted that, had I reached those findings, then although this would be a very serious matter for Square, it would nonetheless be altogether different in its character and consequences from the situation in Malik where the entire business operation of the employer was dishonest and corrupt. In the particular circumstances of the present case, they argued that it would not impinge sufficiently on the employment relationship between Square and Mr. Leonard to amount to a repudiatory breach of the contract between them. Although this point does not arise for determination in view of the facts I have found, I accept this submission. I note the point made by Mr. Leonard's counsel in their post-hearing submissions:

"The Claimant operates in a tightly regulated financial services environment. It necessarily (objectively) undermines the trust and confidence of its other employees if its management are instructing unauthorised individuals to carry out regulated tasks. This behaviour creates a risk for all employees, especially in such a small office, not least because it creates a risk that others will unknowingly get caught up in trading with an unauthorised individual ...".

In my view, this is a question of scale and degree. Where the conduct of the employer in relation to certain individual employees can properly be said to reveal that the business as a whole is run in a dishonest fashion, that may well amount to a breach of the implied term of trust and confidence. In my view, even assuming that Square had wrongly authorised Mr. Louis and Mr. Diallo to engage in regulated trading activity, the factual position in the present case would fall short of that.

156. I should deal also with the claim by Mr. Leonard that his discovery on 7 November 2019 of an accessible electronic document containing employee pay information was also a repudiatory breach on its own or else a relevant "final straw" event, forming part of a course of conduct that was repudiatory. I have no hesitation in rejecting this claim: I agree with Square's counsel that the fact that a document with pay information was mistakenly not password-protected is not an indication that the employer is refusing to perform the contract; nor, in the present case, does it form part of a wider course of conduct amounting to a repudiatory breach because of the reputational or other professional implications for Mr. Leonard. In this connection, I recall the remarks of Lord Nicholls in Malik that, in the ordinary way, even gross incompetence on the part of an employer would not be sufficient to amount to a breach of the implied term.
157. Second, Mr. Leonard relies on his exchanges with Mr. Uzan on the Bloomberg chat on 15 and 22 October 2019 as an alternative "final straw", or else in their own right as repudiatory acts. I reject these contentions. They do not reveal either unacceptable behaviour on the part of Mr. Uzan in dealing with a grievance raised by Mr. Leonard, nor any underlying systematic unfairness in the allocation of remuneration: see in particular paragraphs 105 to 113 above.

158. Third, Mr. Leonard relies on the various other events from 2019 examined above, at paragraphs 78 to 89 and 95 to 104, as amounting to a repudiatory breach of the contract of employment. I do not find that any of those events were, or form a part of, a breach of the Malik term. In particular, I reject the contention that there was an intolerable aggressive environment prevailing at Square, of which the alleged behaviour by Mr. Boublil or Mr. Scemama during this period were examples. I firmly reject too the suggestion that, when disputes arose involving Mr. Leonard on one side and senior managers on the other side, Mr. Uzan always took the part of his fellow senior managers. As shown by, in particular, the matters referred to in paragraphs 66 - 67, 84 and 98 above, the evidence establishes that Mr. Uzan was a fair and conscientious manager, who was certainly prepared to tackle his fellow senior managers over allegations of unfairness, aggressiveness, or any other misbehaviour.
159. Similarly, I reject the contention advanced on behalf of Mr. Leonard that the conduct alleged in 2019 was linked with an earlier pattern of behaviour in 2015-2016, falling into the three broad categories referred to by Mr. Leonard, namely (i) bullying / aggressive environment; (ii) unfairness over the allocation of remuneration; and/or (iii) a failure and/or refusal to deal with complaints and grievances.
160. As the starting point, I am prepared to accept that, in principle, if there was indeed shown to be repudiatory conduct by Square in the period 2015-2016, this could be "revived" in 2019. That would be the case even if, in the meantime, Mr. Leonard had taken steps which affirmed the contract of employment. (In fact, I do consider that Mr. Leonard's acts in continuing to work at Square during 2017 and following, and by formally signing the Variation Letter in December 2017 whereby he committed to remain at the firm for roughly two more years, would have amounted to affirmation of the contract.)
161. Further, I also am prepared to find that it is proven that the conduct of Mr. Scemama in the 2015-2016 period was inappropriate and aggressive, both towards Mr. Leonard and indeed others in the workplace (even Mr. Uzan himself). However, I find that Mr. Uzan grappled decisively with that problem at the end of 2016, in part as a direct response to complaints made by Mr. Leonard himself: see in particular paragraphs 53 to 57 above. Mr. Scemama was asked to step down as a director, and his role as the line manager of Mr. Leonard was brought to an end. This is an example of the employer dealing robustly and responsibly with an employment issue that affected Mr. Leonard, and directly in response to his articulated concerns, contrary to the overall thrust of the case which is advanced by Mr. Leonard in these proceedings.
162. On a review of all the evidence put before the Court, I do not find that there was unfairness towards Mr. Leonard in the allocation of remuneration, either in the period prior to the full re-organisation of the brokering arrangements in January 2017, or subsequently (operating the so-called Starting Principle). I refer, in particular to the findings made at paragraphs 38 to 42, 47 to 52, 58 to 63, 71 to 74, and 108, above.
163. It is convenient at this point to deal with an argument advanced on behalf of Mr. Leonard in closing submissions about the true interpretation of events from March 2019. Mr. Leonard contends that "*the Claimant's overarching theory of the case is illogical*". This overarching theory is said to be the proposition that Mr. Leonard had resolved to leave Square to work for Market Securities as soon as possible, but chose to spend roughly nine months building up a dossier against Square. It is argued on behalf of Mr. Leonard that, if he had really resolved to leave Square in March 2019, the sensible thing for him to have done would have been to hand in his notice straight away, so that at least time was running. He could still have taken advantage of any developments during the six-month notice period that might have allowed him to allege constructive dismissal, and by that means he might have hoped to avoid the constraints from the PTRs under his contract with Square (and any outstanding balance of his notice period too).
164. I consider that this line of argument is misconceived. It is not hard to see how, depending on the circumstances, a person in the position of Mr. Leonard, who had reached an advanced point in discussions with a potential new employer in March 2019, and who had experienced a significant degree of conflict at Square three years earlier, might make the calculation that he had a good chance of escaping what was potentially at least a 12-month contractual prohibition on working for the new



employer, if he were able to set up a case that he had been constructively dismissed so that the PTRs fell away.

165. A person in that position might realistically also take the view that the prospects of being able successfully to claim constructive dismissal, against the background of having already handed in his notice, would be materially reduced.
166. As indicated in paragraph 94 above, I take the view that Mr. Leonard's behaviour and approach in the workplace were polarised, from at least the time of receiving the draft contract from Market Securities in March 2019. I agree with Square's counsel, in short, that from at least that point Mr. Leonard was particularly keen to find fault with the way he was treated at Square, and to ensure that there was a written record of all interactions that might prove useful in the event of an employment dispute. In this connection, I recall that it is a contention put forward by Mr. Leonard's counsel (in the post-hearing written submissions) that if there is overwhelming evidence of an employee trying to contrive a claim for constructive dismissal, this might prompt the Court to apply greater scrutiny to the events relied on as constituting a repudiatory breach by the employer. Subject to the qualification that, in my view, the Court should simply take care to scrutinise claims of constructive dismissal carefully in circumstances where the employee has a significant financial incentive to advance such a claim in order to avoid notice periods and irksome restrictive covenants (cf. Jack J.'s approval of a similar statement made in Bloch and Brearley on Employment Covenants & Confidential Information (3rd edition), at [86] in Tullett Prebon at first instance), I agree.
167. In summary, standing back, and assessing the totality of the evidence presented to the Court, I find that Mr. Leonard's allegations of a repudiatory breach by Square fail, on each basis on which they are advanced.
168. In the circumstances, I find that Square was entitled to, and did, affirm the contract of employment in the light of Mr. Leonard's summary resignation. Under its terms, Square is entitled at a minimum to require Mr. Leonard not to work for a third party until the expiry of his six-months' notice period (11 May 2020).

### **Breach of the job notification clause**

169. Square alleges that Mr. Leonard breached the job notification clause (clause 17.4) in his contract of employment. This provides:

"If the Employee receives an offer to be involved in a business concern in any Capacity during the Appointment, or prior to the expiry of the last of the covenants in this clause 17, the Employee shall give the person making the offer a copy of this clause 17 and shall tell the Employer the identity of that person as soon as possible after accepting the offer."

170. The clause therefore has two components: first, it imposes an obligation on Mr. Leonard to give to any person making him an offer to be involved in a business concern, during the currency of the contract with Square, a copy of the clause; secondly, it requires Mr. Leonard to tell Square the identity of that person promptly after accepting the offer.
171. The first component does not seem to be the focus of Square's concern. In any case, although it is plain that successive offers were made by Market Securities to Mr. Leonard with each iteration of the draft employment contract, there has been no investigation at trial of the question whether Mr. Leonard provided Market Securities with a copy of clause 17, either at the time of the first draft contract in March 2019, or subsequently. It is not possible to make a finding that there was a breach by Mr. Leonard of this requirement, even if it served some useful function to do so.
172. The second component is concentrated on by Square. Square contends that the Court should find that Mr. Leonard accepted the offer contained in the first draft of the contract sent in March 2019, and that all that remained was to tie up the formalities and negotiate the finer details. Square argues that the fact that an agreement had already been reached between the parties, at least in relation to all the essential elements of the contract, was intended to be obscured by the drawn-out process of negotiations over trivial details after March 2019.

173. I reject this argument. There is no proper basis for concluding that Market Securities and Mr. Leonard had already entered into a (binding) employment contract with each other before his resignation from Square. It is true that the evidence shows that, in the main, there were relatively small changes made between the successive draft contracts after the first draft was sent in March 2019. But there is, in particular, no indication that Mr. Leonard made clear to his counterparty in March 2019 that they should regard all the major terms as settled, and that these would not be subject to any further reconsideration by him prior to readiness for signature. Certainly, there were some non-trivial amendments over the course of the following year, such as: the inclusion in November 2019 of the provision that Mr. Leonard's broking company would be granted a "sole and exclusive" global mandate for equity exotic derivatives; and a materially new clause regarding garden leave which was inserted following a request made by Mr. Leonard on 14 February 2020.
174. It is probable that both Market Securities and Mr. Leonard did have a high degree of confidence - at least from March 2019 - that a binding contract would in due course be executed. But it is a bridge too far to decide that in fact Market Securities and Mr. Leonard had already struck a contract in March 2019, and that the ongoing negotiations between them after that stage were a form of stage-management and, as Square contends, "*designed to obscure the fact that an agreement had already been reached between the parties, certainly in relation to the essential elements of the contract.*"

## **The PTRs**

### ***Introduction***

175. The relevant PTRs in this case are described at paragraph 35.v) above. On analysis, the Non-Compete clause in clause 17(1)(c) is critical. Mr. Croxford Q.C. explained to me, for example, that the content of the restriction in clause 17(1)(d) (an aspect of the Non-Deal provision) was effectively subsumed within the Non-Compete clause anyway; in effect, it served as a fallback if the Non-Compete clause were found unenforceable.
176. In the light of my findings in the earlier part of this judgment, the Non-Compete clause, if valid and enforceable, would essentially prevent Mr. Leonard from working for a competing "shop" to Square for a further 6 months after the expiry of the notice period under the contract of employment, i.e. it would have effect until 11 November 2020.
177. On behalf of Mr. Leonard, it was argued that the Non-Compete clause (and the Non-Deal term) were unenforceable, and/or the Court ought to refuse to grant injunctive relief enforcing these terms in any event. On the latter point, it was urged in particular that on Square's own case, the period it considered necessary to protect its interests by keeping a former employee out of the market was only six months, but in the present case Mr. Leonard would already have been kept out of the market for six months as the result of not working between the date of his resignation on 11 November 2019 and 11 May 2020.

### ***PTRs: the relevant law***

178. The right approach to analysing the reasonableness of PTRs such as those in the present case was discussed in the judgment of Cox J. in TFS Derivatives Ltd. V. Morgan [2005] IRLR 246. That was also a case concerning the inter-dealer brokering industry. It concerned restrictive covenants in the contract of employment of an equity derivatives broker specialising in the DAX market. Cox J. outlined the following process of analysis, at [37] – [39]. First, the Court must decide what the covenant means when properly construed. Secondly, the Court will consider whether the employers have shown on the evidence that they have legitimate business interests requiring protection in relation to the employee's employment. Thirdly, once the existence of legitimate protectable interests is shown, the covenant must be shown to be no wider than is reasonably necessary for the protection of those interests. Finally, even if the covenant is held to be reasonable, the court will then finally decide whether, as a matter of discretion, the injunctive relief sought should in all the circumstances be granted, having regard among other matters to its reasonableness judged at the time of the trial.
179. In her judgment, Cox J. observed that it was common ground that the employer had three types of protectable interest: customer connections; confidential information; and the integrity or stability of the

workforce. In the case of confidential information, the extent to which it was memorable or portable was relevant.

180. The issue of the reasonableness of certain restrictive covenants in employment contracts in the inter-dealer broker industry was also examined in TFS Ltd. V. Gamberoni [2017] IRLR 698. In that case, Foskett J. decided at [96] that the necessity for non-compete provisions may arise where non-solicitation and non-dealing covenants and confidential information restrictions are difficult to police, or where there are material disputes as to what information is confidential. He referred back to, among other cases, TFS Ltd. v. Morgan (*supra*), where Cox. J. had observed (at [84]) that the evidence before her exemplified that non-solicitation clauses are almost impossible to police in the circumstances of this industry.
181. Foskett J. emphasised that each case is fact-specific, and that reference to past decisions on what was held to be acceptable, or to what was said to be current "industry practice", could only be a factor in the decision-making process: [24]. Subject to that qualification, he held at [109] that a non-compete clause that keeps a broker of whatever experience or seniority out of the market for between 6 – 12 months is not excessive by the current standards of the industry.
182. In Credit Suisse Asset Management v. Armstrong [1996] ICR 882 Neill LJ in the Court of Appeal held that the existence of a garden leave clause can be taken into account in determining the validity of a restrictive covenant as at the date of the contract. Moreover, in an exceptional case, where a long period of garden leave had already elapsed, perhaps substantially in excess of a year, there was the possibility that the Court would as a matter of discretion decline to grant any further protection based on a restrictive covenant.

### *Analysis*

183. I focus in this judgment, as I have been invited to do on behalf of Square, on the Non-Compete clause.
184. I am satisfied, first, that Square has legitimate protectable interests in this case. The evidence at trial established in particular that the nature of Mr. Leonard's job at Square involved building up and exploiting customer connections. Mr. Uzan gave evidence, for example, that:

"...it was specifically agreed with Julien as part of his recruitment that he would be able to spend 3% of Net Production on client entertainment in order to build relationships. Pursuant to that agreement, over the last three years for example, Square has invested very substantial sums specifically to enable Julien to develop his relationships with Square's clients: £43,498 in 2017; £44,862 in 2018; and £44,133 as at 11 November 2019. Julien is the only Producing Broker at Square who has expenses funded by Square in this way. This is a clear indication of just how much we expected him to build client relationships."

185. The evidence also established that the market for trading exotics is both illiquid and opaque. Mr. Croxford Q.C. engaged in sustained cross-examination of Mr. Uzan seeking to undermine these propositions, by suggesting that much of the relevant (supposedly confidential) information can be accessed by skilful and knowledgeable brokers anyway. Mr. Uzan disagreed (contrary to the submission of Mr. Croxford Q.C in closing submissions), explaining eloquently the difficulty of discovering key information, its value, and the "adventure" in trying to do so. In his written evidence, Mr. Uzan elaborated on the nature of the confidential information to which Mr. Leonard had access, and its longevity in some instances:

"... knowledge of which traders at which banks are interested in which products at what price at any given time is incredibly valuable information and confidential to Square - it is the lifeblood of our business and the value we bring to the table as a broker.

In exotics, that information remains confidential and of significant commercial value to Square for a long time. Exotics do not trade frequently due to their complexity. Clients therefore can and do keep open trading positions and trading interests for a long time, sometimes 12 months or more. In my experience, I would say that, from first receiving a client interest, it could take between a few days and a few months to structure the product,

find a counterparty interested in that product, find the required volume, find a price agreeable to both parties, and ultimately execute the trade.

As I describe in this witness statement, Julien primarily worked on single stocks exotics, but also worked with certain clients on index exotics. Each desk keeps a written log (usually in spreadsheet format) of this sort of market information. For example, Julien had a log for single stocks exotics (and also included within that log market information in relation to index exotics).

The spreadsheet log that Julien created (and retained after 11 November 2019) contained relevant information about trades and trade interests that various clients had been involved with over a four-year period, together with details of the brokerage earned by Square.

Our market information has huge commercial value. This is particularly true of (single stock) exotics, due to our prominence in the industry, and the opacity and illiquidity of the market. I have been approached on a number of occasions by third parties wanting to purchase Square's market information relating to exotics, most recently in the last month or so."

186. In the course of examination of Mr. Leonard at trial, it was also established that he had retained a copy document containing highly confidential information about clients and trades on his personal Hotmail account. This is not to say that he had done so deliberately, for illegitimate purposes: Mr. Leonard explained convincingly in evidence that his device may innocently have selected his personal account as the relevant account from which to send the electronic document. The salient point, however, as Mr. Laddie Q.C. emphasised, was that this incident illustrated vividly the portability of Square's confidential information. If Mr. Leonard were to start work at a rival "shop", and to undertake the same line of work that he had been engaged in at Square, it would be almost impossible to find out that he was using Square's confidential information illegitimately.
187. For completeness, I should deal with a submission made on Mr. Leonard's behalf in oral and written closing submissions, that the exotics broking industry was essentially a duopoly with Sunrise Brokers, and "*the justification for the covenants was simply to prevent competition.*" I entirely reject this contention: Square had a legitimate interest in protecting its valuable confidential information from commercial use against itself; to vindicate this interest is the stuff of normal healthy competitive activity in a well-functioning market economy, and is not anti-competitive.
188. Secondly, I am satisfied that the six-month Non-Compete clause is reasonable, and that it goes no further than necessary to protect Square's legitimate business interests. In this regard, I take into account that Mr. Leonard's previous employment contract with ICAP contained a six-month non-compete covenant, and that the evidence shows that he actively negotiated his contract with Square too. Similarly, his employment contract with Market Securities contains a six-month non-compete covenant.
189. It is true that the latter contract, as executed, includes a provision (clause 4.2) that was introduced very late at Mr. Leonard's request on 14 February 2020, stipulating that there should be a set-off between any worked period of garden leave and the period of time during which the non-compete covenant would apply. In my judgment, this does not point to the unreasonableness of the six-month Non-Compete clause.
190. Finally, Mr. Croxford Q.C. contended that, even if the Non-Compete clause is reasonable and valid, the Court should exercise its discretion to refuse to grant injunctive relief enforcing it. His argument was that: (i) Mr. Uzan's position was that he would not have put Mr. Leonard on garden leave, had he given due notice to terminate his employment; (ii) it follows that Square has conceded that the maximum protection it needs by way of a non-compete clause is six months from the date that Mr. Leonard leaves the market; (iii) in the circumstances of the present case, Mr. Leonard has in fact been off the market already for over four months.
191. I do not accept that this argument is well-founded. The premise is the assumption that relations between Square and Mr. Leonard are sufficiently harmonious to permit him to work out his notice

period, following which time a six-month PTR suffices. As Square's counsel pointed out, the garden leave clause which is included in the contract exists to cater, among other matters, for a situation where Square has concerns about an employee's conduct (e.g. harvesting client information, or engaging in deceptive behaviour), and so chooses to restrict the employee's duties during the notice period. On the assumption that such concerns have a reasonable foundation, it would not then be unreasonable to enforce the full period of the PTRs. In the present case, Mr. Leonard is not placed on garden leave having given notice to resign, but he is nonetheless in a comparable position for present purposes. I do not regard the fact that since his summary resignation on 11 November 2019 he has been "off the market" as a reason to set off this period against the six-month term envisaged by the Non-Compete clause.

192. For the reasons set out above, I consider that the Non-Compete clause is justified and enforceable, and that I should exercise my discretion to enforce it in this case. Square submitted that this case is in reality only about the Non-Compete clause within the group of PTRs, and deliberately addressed only that PTR in its skeleton argument and in its other submissions for the trial. Although I find that the Non-Deal term (together, in clause 17(1)(a) and (d)) of the contract of employment) are also enforceable, in view of the analysis set out above, I do not need to address this further or in the context of the grant of relief.

### **Conclusion**

193. In conclusion, I find that:

i) Mr. Leonard continues to be an employee under his contract of employment with Square, and he will remain so until the end of his notice period on 11 May 2020. Square is entitled to declaratory relief to this effect.

ii) Mr. Leonard was not entitled to resign summarily on 11 November 2019. In taking this action, and in failing to give six months' written notice of termination, he was in breach of his contract of employment. I dismiss his counterclaim for wrongful dismissal.

iii) It is not proven that Mr. Leonard was in breach of clause 17.4 of the contract of employment (the job notification clause).

iv) Square is entitled to an order prohibiting Mr. Leonard from engaging in employment with a third party while he remains an employee of Square.

v) Square is entitled to an order enforcing the Non-Compete clause, by prohibiting Mr. Leonard from involvement in a business concern in competition against Square until 11 November 2020.

194. I invite written submissions from Counsel, at the time of handing down this judgment, in relation to the form of Order (to be agreed insofar as possible), and dealing with consequential matters. I will receive submissions, if these prove necessary, on the issue signalled by Square's counsel in post-hearing submissions, that if successful Square may seek a further determination and order from the Court relating to a forensic examination of Mr. Leonard's electronic devices and his private email account in order to confirm that no confidential information of Square's is retained, together with an order for delivery up of any such information. I also invite submissions on the appropriate directions to be given in relation to the outstanding issues of the claim for damages and interest by Square.

### **Postscript**

195. At trial, Square complained strongly that Mr. Leonard had been remiss in complying diligently with his disclosure duties. In particular, Square complained that Mr. Leonard initially disclosed only three emails passing between himself and Market Securities at the end of January 2020 (the first occasion that Market Securities' identity was made known). Square complained that Mr. Leonard also only gave disclosure of the cover emails at that point, and not the important attachments (including the detailed draft contract and side letter sent to Mr. Leonard in March 2019). This prevented Square's advisers from being able to see, for example, whether there were offers made by Market Securities which were capable of acceptance. When this was challenged, Mr. Leonard responded that there were no other

written communications exchanged, beyond what had been disclosed. It was only on 27 February 2020 that Mr. Leonard disclosed the attachments to the emails, together with further communications he had had with Market Securities. Mr. Leonard explained that the omitted documents had been inadvertently overlooked by his advisers.

196. In his witness statement for the trial, Mr. Uzan alleged that it had been established in the inter-solicitor correspondence that Mr. Leonard himself conducted a review of his documents (rather than the solicitors), and - importantly - he had also selected which documents he considered relevant.
197. At my request, both parties put in brief written submissions on this issue. Square's counsel clarified that they were not suggesting that there was a breach of any professional obligation by Mr. Leonard's solicitors, as opposed to underscoring what they submitted was evidence of lack of candour on the part of Mr. Leonard himself. They stated that the solicitors "*are under an obligation only to advise their clients properly on their disclosure obligations*", pointing to CPR PD 31A, at para 4.4. That paragraph states:

"If the disclosing party has a legal representative acting for him, the legal representative must endeavour to ensure that the person making the disclosure statement (whether the disclosing party or, in a case to which rule 31.10(7) applies, some other person) understands the duty of disclosure under Part 31."

198. On Mr. Leonard's side, it was clarified that:

"it is not correct to suggest that the Defendant's solicitors were not involved in the document review, [and] there is nothing untoward in the Defendant undertaking searches for potentially relevant documents, particularly in circumstances where the party is a private individual who holds a limited number of documents and is well aware of where relevant documents are located."

It was also pointed out that Mr. Leonard had raised numerous serious issues with the adequacy of Square's disclosure exercise too, including, they said, a complete failure to search for documents relating to Mr. Diallo.

199. I am not prepared to find, on the basis of the evidence I have seen, that there has been a breach of professional duties on either side, in any respect. I am well aware of the immense strains placed on both advisers and litigants by expedited proceedings of this nature, and I have been highly impressed with the skill, efficiency and industry of all the legal advisers in this case.
200. I must, however, underline that the paragraph from the Practice Direction to CPR Part 31A, to which Square's counsel drew attention, does not (and is not intended to) set out the extent of a solicitor's relevant disclosure duties in civil litigation. It is fundamental that the client must not make the selection of which documents are relevant (cf. the allegation in this regard made on the Claimant side). The position is well summarised in Matthews and Malek, *Disclosure* (5<sup>th</sup> edn. 2017), at paragraphs 18-02 and 18-09:

"A solicitor's duty is to investigate the position carefully and to ensure so far as is possible that full and proper disclosure of all relevant documents is made. This duty owed to the court, is:

"one on which the administration of justice very greatly [depends], and there [is] no question on which solicitors, in the exercise of their duty to assist the court, ought to search their consciences more."

"The solicitor has an overall responsibility of careful investigation and supervision in the disclosure process and he cannot simply leave this task to his client. The best way for the solicitor to fulfil his own duty and to ensure that his client's duty is fulfilled too is to take possession of all the original documents as early as possible. The client should not be allowed to decide relevance—or even potential relevance—for himself, so either the client must send all the files to the solicitor, or the solicitor must visit the client to review the files

and take the relevant documents into his possession. It is then for the solicitor to decide which documents are relevant and disclosable."

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