Neutral Citation Number: [2025] EWHC 475 (Comm)

Case No: CL-2022-000160

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
KING'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 03/03/2025

Before :

MR JUSTICE CALVER

- -

Between :

HENDERSON & JONES LIMITED	**Claimant**
- and -	
(1) SALICA INVESTMENTS LIMITED	**Defendants**
(2) DIGITAL HOME VISITS LIMITED	
(3) DIGITAL HOME VISITS TECHNOLOGIES LIMITED	
(4) DOMINIC ANTHONY CHARLES PERKS	

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Hugh Sims KC and Jay Jagasia (instructed by **Cardium Law Ltd**) for the **Claimant**
Edward Brown KC and Alexia Knight (instructed by **Foot Anstey LLP**) for the **First and Fourth Defendants**
The Second Defendant is in liquidation and was not represented
The Third Defendant is in administration and was not represented

Hearing dates: 22 January - 5 February 2025

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Approved Judgment

This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10:30 on Monday 03 March 2025.

Contents

Mr Justice Calver :

INTRODUCTION

1. By this action the Claimant (which is a litigation funder) brings a claim for breach of confidence against the First Defendant ("**Salica**[1]") and Fourth Defendant, Mr. Dominic Perks ("**Mr. Perks**").[2] The Claimant brings the claim as assignee, the claim having been assigned to it by Mr. Tony Gifford ("**Mr. Gifford**") by way of a deed of assignment dated 5 December 2021.

2. The claim arises out of two meetings in early 2016, in which Mr. Gifford sought to obtain investment funding from Salica to further develop and take to market his original cloud-based software application and associated business opportunity, 'True View Care' ("**TVC**"), being a care technology platform for the elderly cared-for population.

3. TVC was designed for the benefit of care providers, patients and their relatives, with the aim of modernising and digitising care services. Before and during the two meetings, Mr. Gifford maintains that he disclosed confidential information, both orally and in documentary form, concerning business and technical information about TVC. It is the Claimant's case that Salica and Mr. Perks misused this confidential information (through the development of the business of the Second Defendant ("**DHV**") and its subsidiary, the Third Defendant ("**DHVT**")), in order to develop their own business and cloud-based software (known as "**Vida**") for the care industry.

THE PARTIES

4. Mr. Gifford has significant experience in software development. He began developing TVC around the end of 2008, with the assistance of his then wife, Angela Gifford ("**Mrs Gifford**"), who worked as a carer. They moved to Tenerife in around March 2009, where they lived together at a care home named La Finquita (at which Mrs Gifford was working). By observing and talking to the staff of that care home, Mr. Gifford developed TVC. He subsequently returned to the UK in 2011.

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[1] Up until 20 June 2024 (and at all material times for the purposes of this claim), Salica was named Hambro Perks Limited ("**Hambro Perks**"); accordingly, references hereafter to the latter should be understood as references to Salica.

[2] The Second Defendant is currently in liquidation; and the Third Defendant is in administration.

5. Mr. Gifford continued developing TVC until mid-2015, at which point he considered further investment was necessary to finalise its development and eventually take the software to market. He sought out the assistance of Mr. James Walker, who became involved with the business development and marketing of TVC to potential investors.

6. Messrs Gifford and Walker contacted Mr. Marc Webster, who in turn introduced them to a potential investor, Mr. Alan Fernback in October 2015. Although Mr. Fernback could not himself invest in the project due to other commitments, he considered it would potentially be of interest to Mr. Perks. He arranged for an introductory meeting between the parties, thereby setting in motion the chain of events which have led to this claim.

7. Salica was founded on 4 November 2013 by the late Mr. Rupert Hambro and Mr. Perks. It is an FCA-regulated investment firm which backs and builds "disruptive" technology companies by providing seed investment and other forms of business support, usually in exchange for equity. It also originated and grew its own internal businesses through its own corporate vehicles.

8. Mr. Perks served as the director and CEO of Salica from November 2013 until his exit from the firm in April 2023, although he remains a shareholder. He was also a director of DHV between 28 January 2016 to 3 May 2018, and DHVT between 21 November 2017 and 3 May 2018. Mr. Perks gave evidence that during his time at Salica, he and Mr. Hambro had a mutual agreement that where either of them invested particular amounts of time or energy into a new venture, they would individually be entitled to 'sweat' equity alongside Salica itself[3].

9. In early 2016, Hambro Perks had become interested (amongst other things) in the health technology market, having identified it as an area ripe for disruption. To that end, it began recruiting healthcare technology personnel as 'entrepreneurs-in-residence', with a view to developing products and business propositions in that market. This included Mr. Karim Gargum (who joined Hambro Perks in January 2016) and Ms Devika Wood (who joined on 23 February 2016). They joined Mr. Naushard Jabir, who had been employed by Hambro Perks as an investor advisor before 2015.

[3] T/4/146-147.

10. DHV was incorporated on 28 January 2016 – a date which, as will be seen below, is the subject of some significance to this claim – with Mr. Perks as the initial sole director and shareholder. Its founding team included Mr. Perks as a co-founder, Mr. Jabir as the CEO and co-founder (becoming a director on 6 June 2016), and Ms Wood as Chief Medical Officer (becoming a director on 8 November 2016).

11. DHV was branded initially as Care Angels and subsequently traded as Vida. It aimed to disrupt the domiciliary care industry by matching carers with patients using proprietary cloud-based software of the same name. It was ultimately unsuccessful in doing so and ceased trading in April 2019. The company was placed into administration on 16 July 2024.

12. DHVT was a wholly owned subsidiary of DHV, being incorporated on 20 September 2016, with Mr. Jabir as the sole director. It was primarily set up for tax purposes and was assigned the intellectual property in the Vida software from DHV, which it in turn licensed back to DHV. Mr. Perks and Ms Wood joined the DHVT board on 21 November 2017 and 3 May 2018 respectively. DHVT was placed into creditors voluntary liquidation on 14 April 2024.

13. Mr. Jabir's involvement in the day-to-day running of DHV and DHVT ended on 20 December 2017 with his resignation as a director in acrimonious circumstances. The directors appointments of Mr. Perks at DHV and DHVT were both terminated on 3 May 2018, and those of Ms Wood were both terminated on 20 May 2019.

14. At the trial, Messrs Gifford, Walker and Webster gave evidence on behalf of the Claimant. I considered them all to be honest witnesses. A witness statement from Mrs Gifford was also admitted in evidence pursuant to a hearsay notice.

15. Mr. Perks and Ms Wood gave evidence on behalf of the Defendants. The parties agreed that I should also read the witness statements (which were admitted into evidence) of:

    (a) Mr. Max Fishwick (who was an intern at Hambro Perks in 2015 and at DHV in summer 2016; and was later employed by DHV from around October 2017 to December 2020); and

(b) Mr. Jacques Pagels (who worked as an application developer at Vida from March 2018).

16. The Court also heard from the Claimant's expert witnesses, Dr Nigel Young (who prepared two reports on the TVC software) and Mr. Stephen Skeels (who provided his expert opinion on valuation/quantum). The First and Fourth Defendants adduced no expert evidence. The reason for that is as follows. The deadline for the parties to exchange their expert reports on software engineering was 1 October 2024 and on quantum was 18 October 2024. The First and Fourth Defendants failed to comply with those deadlines and applied to this Court for relief from sanctions and/or an extension of time in that regard. Mr. Charles Hollander KC (sitting as a Deputy High Court Judge), who heard the pre-trial review, refused to grant them relief from sanctions and/or an extension and permission to serve expert evidence out of time. In consequence, the court only had the benefit of hearing from the Claimant's expert witnesses.

THE FACTUAL BACKGROUND

(a) The creation and development of TVC by Mr. Gifford

17. TVC's development began in late 2008, when Mr. Gifford began looking into ways to increase the quality of care by improving organisation and efficiency in the care industry. The software developed by Mr. Gifford was intended as a cloud-based technological solution to digitise the care process for the benefit of carers, patients and their relatives. TVC was an internet browser-based application accessible on all devices with internet capability, although it was intended to be supplemented by a mobile application.

18. Although originally developed in the care homes context, Mr. Gifford gave evidence, which I accept, that the TVC software could easily be adapted for use by anyone with a care plan (even, for example, pet owners).

19. From January to September 2010, an early version of TVC was developed and "beta-tested" at the La Finquita care home in Tenerife. The software sought to digitally reconstruct carers' tasks, and Mr. Gifford worked to refine and test the software with feedback from Mrs Gifford and other carers and residents at the care home (as well as external patients cared for outside the care home on domiciliary care rounds).

20. Upon his return to the UK with his then-wife in 2011, Mr. Gifford continued developing TVC (initially working full-time on his project, although he would subsequently scale back his efforts as he returned to full-time employment). As part of this, he carried out 'collaboration sessions' with various workers in the care industry and health sector, where he sought to learn more about the various tasks and information needs of carers. That information was incorporated into a workflow chart, which was then used to further develop the TVC software[4].

21. I accept Mr. Gifford's evidence that by mid-2015 TVC's development had reached the point where it was somewhere between 80-85% complete. What remained outstanding was component and performance testing to be completed on the software, and the creation of a mobile application and a user manual.

22. At the outset of his evidence at trial, Mr. Gifford provided a demonstration of a version of the TVC software from 2016, pointing out what he maintained were its unique features.[5]

The USPs of TVC

23. In this regard, the Claimant refers to seven "USPs" in Annex 1 to its Particulars of Claim, of which the following three were described by Dr Young (a software expert) as being new innovations in the care industry at the time:

    (a) *Task-based time scheduling* (USP 5): unlike the conventional approach of allocating shifts to carers (who would then carry out all of the tasks necessary during those shifts), TVC sought to break down individual tasks associated with a patient according to specific timings and durations. These individual tasks would then be allocated to the best-suited carer(s) working at the relevant time (instead of making a single carer responsible for carrying out *all* of the tasks related to a patient). The addition of timing and duration, in turn, enabled these

[4] T/3/125-126.

[5] This was the second of three versions of TVC built by Mr. Gifford, the first being the version beta-tested in Tenerife at *La Finquita*. A third version of TVC was produced in 2018, although Mr. Gifford confirmed that it is functionally the same as the 2016 version, and only contains cosmetic and user interface changes.

tasks to be monitored, and for an alert to be sent out if the task had been completed late (or not at all).

(b) *Rotas and carer matching* (USP 4): By way of a 'primitive' algorithm, TVC sought to optimise the matching of carers against patients, on the basis of specific 'scores' allocated to both. These scores were to be inputted manually by a supervisor or a care manager, and would include, *inter alia*, the carer's skills, training, experiences and past performance of tasks, scored against the patient's specific needs and preferences. In that way the best carer could be "matched" against the needs of a particular patient.

(c) *The 'Relative Portal'* (USP 2): This is a facility offered to patients' relatives allowing them to view, in real time, the overall operation and progress of a patient's care plan. Mr. Gifford told Mr. Perks at the First Meeting that the subscription model for the relative portal was £10 per month per user.

Mr. Gifford subsequently confirmed during cross-examination that the 'Relative Portal' was in fact a specific type of user account on TVC with reduced functionality – by which a relative was able to view the implementation of the patient's care plan, but was unable to make inputs (as would be possible on, for instance, a carer or a care manager's account)[6].

24. The four other 'USPs' (1), (3), (6) and (7) which the Claimant advanced in Annex 1 of its Particulars of Claim were:

(a) Real-time monitoring of tasks, including patients' health indicators (e.g., blood pressure, weight) and medication, with the ability to link to the carer's TVC application on their mobile device;

(b) Tracking and alerts – these were in fact two distinct propositions. The first (unrealised) feature was to utilise GPS technology (by iBeacon) to provide the physical location of the carer in real-time. The second was an alert system in

[6] T/2/25-26.

relation to tasks themselves, which followed on from the real-time monitoring feature above;

(c) The 'Care Plan Tracker' – an annual subscription-based alternative accessible care plan facility for patients being cared for at home without a professional carer (e.g. by their family members); and

(d) The cloud-based nature of TVC, which made it accessible on any internet-enabled device anywhere.

By its pleaded case[7], the Claimant had contended that these four features were also individually unique. However, in submissions Mr. Sims KC for the Claimant accepted that these four features were not individually unique, but it was instead their combination (together with the three other unique features set out above) which made TVC as a whole a unique software proposition. The Claimant maintains that these features (or "USPs") taken together, which were elaborated upon by Mr. Gifford in the First and Second Meetings described below – and at which he explained the pricing model for the application which was to be £1,000 per user per year – constitute the relevant Confidential Information ("**the Confidential Information**").

25. In his oral evidence, which I accept, Mr. Gifford explained in particular that:

(a) The Relative Portal concept had arisen from his own research and personal experience observing his ex-wife caring for a paraplegic friend who had visited them in Tenerife[8]; and

(b) From his research of other carer applications available at the time, none of these had provided the task-based time scheduling functionality[9]. Mr. Gifford's evidence was supported by Dr Young, who considered that although some of the individual software features of TVC were not 'novel' in the sense of never

[7] I address below the First and Fourth Defendants' complaint, which I reject, that the Claimant's case is not pleaded with sufficient particularity.

[8] T/2/28-29.

[9] T/3/92-93.

having been conceived before, what TVC had sought to do - which *was* unique - was to apply the whole range of them to the care industry[10].

26. It should be added that certain other useful features of the TVC application were also demonstrated to the court. These were (a) the Stocks and Medicines modules (which could be used to track and monitor purchases and uses of stock items and medicines); and (b) the HR and Payroll module[11]. Mr. Gifford explained that these modules were created in a different script language from the main TVC application, which allowed for them to be taken down for maintenance and updating as necessary.

27. In October 2015, Messrs Gifford and Walker were introduced to Mr. Fernback by Mr. Webster. They pitched TVC to Mr. Fernback at a meeting at his offices. Although Mr. Fernback considered TVC had merit, he was ultimately unable to invest as he felt that he did not have the time to be able to dedicate to the project. However, he felt that the project might be of interest to a business contact of his – Mr. Perks – and arranged for an introductory meeting with him.

(b) The origins of 'WeCare'

28. In the first half of 2015, Hambro Perks began looking, in a very general way, into the possibility of investing in the healthcare market, in particular in-home care. In January 2015, some initial, basic research was being done by it into what was termed the '*Grey Pound*' market for elderly care, as evidenced by emails dated 22 January 2015 between Mr. Hambro, Mr. Perks, and Mr. Nick Wentworth Stanley.

29. Mr. Vincent Menot (who was working at Hambro Perks under Mr. Jabir at the time) continued some basic research into this area between January and April 2015, alongside Mr. Jabir and Mr. Stephen Brittain. He subsequently identified a potential market for an app to find carers at short notice.

30. In particular, on 23 January 2015, Mr. Menot emailed himself an attachment described as '*Grey pound market research*', a short one-page research deck with some market

[10] T/6/34/11-19 and T/6/88/6-18.

[11] T/2/21-23.

insights and which identified one 'market player' ('myhometouch') being in the market of matching the elderly with carers.

31. On 25-26 January 2015, Mr. Menot emailed himself some further preliminary research sources concerned with the elderly care market. On 27-28 January 2015, Mr. Brittain and Mr. Jabir circulated some BBC articles concerning this topic via email.

32. In February 2015, a slightly longer '*Grey Pound*' research deck came into existence, with similar content to the earlier deck but with further 'market players' identified, an unfocussed 'opportunities' page and a similarly unfocussed 'ideas' page, which bears little or no similarity to what ultimately became WeCare (as CareAngels/Vida was originally known within Hambro Perks) in 2016.

33. On 2 April 2015, Mr. Jabir emailed Mr. Perks (at his perksdom.com email address) and others referring to a US company which matches carers to seniors, called "Honor". Mr. Jabir suggested that this was something which should be explored in the UK market. The distinction between the Hambro Perks and perksdom.com email accounts is an issue of some significance in these proceedings, to which I return below.

34. On 5 April 2015, Mr. Brittain sent Mr. Menot a similar email referring to 'Honor'. Also in April 2015, there was an email exchange in relation to the 'doctorcareanywhere' concept, a concept which appeared to be directed at medical care rather than social care.

35. In June-July 2015, there was apparently some interest from Hambro Perks in a concept or initiative described as 'Coordinate My Care', which appears to have been linked to Royal Marsden Hospital, and which was again seemingly directed at medical rather than social care.

36. In July 2015, some generic documentation came into existence at Hambro Perks referring to 'CareDrivers', another concept which bears no material similarity to what became WeCare.

37. In October 2015 an email chain came into existence which concerned a business concept described as the 'The Minders Group', which appears to have been an app-based child-care business, an investment opportunity which Hambro Perks declined

based on concerns which included "*employment of the carers and hence liability, and the legal aspects around these 2 components*" needing to be assessed.

38. Finally, in December 2015, there is an email reference to a business concept described as 'VideoDoc', which is (largely) concerned with online consultations with GPs.

39. Accordingly, I consider that Hambro Perks were exploring the healthcare industry in the first half of 2015 in an unfocused, generalised way. In my judgment it is clear that by late 2015/early 2016, and in particular at the time when Mr. Perks met Mr. Gifford, Hambro Perks had no focussed plan to develop an app for sourcing carers, alongside products for assisting care users, and I reject Mr. Perks' evidence to that effect.

40. In particular, I reject the suggestion that what became WeCare - as it was described in the deck dated January 2016 (referred to below) - was under discussion within Hambro Perks from early 2015, or at all in 2015. I also reject Mr. Perks' suggestion that he imagined the '*Grey Pound*' research would have carried on into the second half of 2015, notwithstanding the absence of any disclosed documents to that effect during that period. I return to this issue below.

41. I do accept, however, that Hambro Perks were interested in exploring commercial opportunities in the healthcare sector, amongst others, in a general way in 2015 and to that end, on 29 October 2015, Hambro Perks' Head of Talent, Ms Rachel Davis, contacted Ms Devika Wood via LinkedIn, inviting her to an introductory meeting with Mr. Perks. Mr. Perks gave evidence that Ms Wood had attracted the Defendants' attention as a result of her previous employment at a digital health service provider named Babylon.

42. On 7 December 2015, Ms Davis emailed Mr. Perks and his personal assistant, Ms Isabel Reynard to circulate a draft copy of a letter offering Ms Wood employment with Hambro Perks. Again, the email was sent to Mr. Perks' perksdom.com email address (not his Hambro Perks email address).

43. Ms Wood was subsequently made an offer of employment as an 'entrepreneur-in-residence' on 15 December 2015. In addition, Mr. Gargum (who had developed an

application for repeat medical prescriptions) commenced employment at Hambro Perks in January 2016.

(c) The First Meeting on 18 January 2016

44. On 18 November 2015, Mr. Walker emailed two draft documents about TVC to Mr. Webster and Mr. Fernback, entitled (1) 'TVC – Overview' and (2) 'TVC – Investors Introduction', which outlined the attributes of TVC. Whilst these documents do not appear to have been forwarded on to Mr. Perks at this stage, on 12 January 2016, Mr. Walker sent Mr. Gifford, Mr. Webster and Mr. Fernback (3) a presentation deck ('TVC – Presentation e2e ppt') under cover of an email which stated "*Here is the presentation deck to send to Dominic Perks ready for our meeting on Monday*." I will refer to these documents as **the Draft Documents**.

45. The first TVC pitch meeting between Mr. Gifford, Mr. Walker and Mr. Perks took place at Hambro Perks' offices at 21 Dartmouth Street, London on 18 January 2016 ("**the First Meeting**").

46. The First Meeting lasted approximately an hour. Mr. Webster also attended the meeting to make introductions, but he did not otherwise contribute to the discussion.

47. Mr. Gifford's contemporaneous account of the meeting is set out in three different documents. These are: first, his handwritten notes, taken during the meeting itself; second, an email from Mr. Gifford to Messrs Walker, Webster and Fernback dated 21 January 2016, which includes his initial comments on the meeting and explaining that more detailed notes will follow; and third, his typed-up detailed notes which were finalised on 22 January 2016, and largely echo the content of the handwritten notes but with some more detail.

48. The First and Fourth Defendants have disclosed no notes of the meeting and not a single internal email discussing the outcome of the meeting. I find that Mr. Gifford's manuscript and typed notes are an accurate note of what was said at the meeting.

49. Mr. Gifford's handwritten notes begin with "*talk through the presentation*". In his evidence, Mr. Perks agreed that investment pitch meetings typically entail a presentation being given followed by a Q&A session.

50. Mr. Gifford's handwritten and typed notes record and I find as a fact that:

    (a) At the outset of the meeting after introductions had been made, Mr. Gifford handed over a set of documents in a binder to Mr. Perks. The presentation was made by reference to these documents.

    (b) The binder included finalised versions of the Draft Documents, as well as three additional documents entitled: (4) 'TVC – The Business', (5) 'TVC – The Application', and (6) 'TVC – Business Model and Projections'. Collectively, these six documents shall be referred to hereafter as the "**TVC Documents**".

    (c) Mr. Gifford told Mr. Perks that "*these documents cannot be used anywhere because he was the only investor we had seen and we were concerned about the exposure. He agreed…*".

51. Mr. Perks gave evidence that he does not recall receiving any documents from Mr. Gifford at the First Meeting. I find as a fact that he did receive the TVC Documents. During cross-examination by Mr. Sims KC, Mr. Perks accepted that it was in the nature of the investment business that any pitch meeting would have been treated by both parties as confidential (even if this had not been explicitly spelled out) and that this confidentiality would extend to any documents or information which had been disclosed. It would have been known by Mr. Perks/Hambro Perks that the information and documents should be used solely for the purposes of determining whether or not to invest in the business being pitched, and the documents and information were not to be used for any other purpose[12].

52. The meeting notes make further reference to the discussions which took place between Messrs Gifford, Walker and Perks. In particular, the typed notes record the following:

> "*Dominic[13]: Tell me how you came up with the idea?*
>
> *I[14] explained that I researched the industry and monitored the care staff. I thought of replicating the actions of the care staff into a more automated fashion to save them time and concentrate*

[12] T/4/61-62.

[13] i.e., Mr. Perks.

[14] i.e. Mr. Gifford.

> *on the care. At the same time, we can track and analyse the data for improvement, reporting and all-round monitoring. I have been working on this for 6 years and it is the first of its kind.*
>
> *Dominic: What is the need for it in the market?*
>
> *James[15] answered with the need is that in the care industry it is mainly paper based and manual. With our system it will be digital. It is more secure, efficient and extensible to expand on demand. The system can be used anywhere at any time on any device by all care staff, even kitchen and cleaning staff. The need for the market is change and this will change the industry forever providing visibility for better care and resources.*
>
> *Dominic: What are the competitors?*
>
> *James answered with the competitors in the market today as it stands is that all systems concentrate on management of the staff and establishments where as ours concentrates on care as well. It concentrates on the actual quality of the care being given by the care workers. There are systems that do some of the modules we have but not all in one package and none of them have the Relative Portal.*
>
> *Dominic: Have you seen anyone else, any other investors?*
>
> *Tony answered no, you are the first as we do not want to expose this too much.*
>
> *Dominic: What is the Relative Portal, Tell me about it?*
>
> *Tony answered with an explanation; The Relative Portal is an online service that anyone can subscribe to and see information about their loved ones…*
>
> *Dominic: ... So, the support – what is this structure?*
>
> *Tony answered: the service is a service desk with workers that have extensive knowledge of the system. They are 24/7 support by phone."*
>
> (emphasis added)

53. I find that what Mr. Perks was told by Mr. Gifford and Mr. Walker in this passage was factually correct, namely that there were in existence at that time systems that contained

[15] i.e., Mr. Walker.

some of the USPs which TVC had, but not all of them in one package; and further, none of them had the Relative Portal.

54. Mr. Gifford also explained how he had come up with the idea for TVC and its development in Tenerife. He set out the main pricing model of charging users for a licence to use the system, being £1,000 per user per year (with users being interchangeable). He also explained the inspiration behind the Relative Portal and his annual subscription model of charging next-of-kin £10 per month per user for that.

55. Mr. Gifford also told Mr. Perks about the further potential revenue streams of the Care Plan Tracker:

> "*Dominic: What are the revenue streams, you mention the application licences and the subscription portal... Anything else?*
>
> *Tony answered: There is the Care Plan Tracker, this the same as the application except it is devised for people caring for family at home like they do in Europe. It does the same tracking but not as in depth. It manages all the aspects of a care plan in the same way. This is all subscription based at £10 per user per month.*"

56. Mr. Gifford also elaborated on TVC's business projections, estimating that they would need approximately £560,000 to complete TVC's development and then bring it to market within a projected three-year timeline (including some 3-6 months to complete load and performance testing, and build the mobile application). The note records some discussion regarding the speed with which TVC could be rolled out to market, which is further elaborated upon in an email dated 21 January 2016. Mr. Gifford recalls that Mr. Perks had pushed them about the possibility of taking TVC to market aggressively within a period of six months. There was also some discussion about the possibility of "*the expanded industry for potential profit including domiciliary and assisted living, home care…*". As will be seen below, WeCare/Vida concerned the provision of domiciliary care.

57. In response to a question from Mr. Perks, Mr. Gifford confirmed that although he owned the intellectual property in TVC, he had not registered it. It was also made clear to Mr. Perks that 40% was the maximum amount of equity he and Mr. Walker would be willing to part with in exchange for seed investment.

58. By the end of the meeting, Mr. Perks was clearly very enthusiastic about TVC and keen to reach a deal of some sort with Mr. Gifford. This was precisely the kind of focussed, well-researched business opportunity in the healthcare sector that Hambro Perks had been looking for, without success, in 2015.

59. Mr. Gifford's typed notes record Mr. Perks' excitement about the business opportunity:

> "*Dominic Perks then proceeded to a type on an overview saying he was very excited about it and thought the idea was fantastic, refreshing and unique. He said the concept was brilliant but he said the figures were a bit enthusiastic and maybe Unrealistic but if it is genuine we can definitely do something here. He said he would look into it and then let Alan [Fernback] know his thoughts. … We felt the meeting went very well and was (sic) excited about the feedback that was to come*".

60. In his email dated 21 January 2016, Mr. Gifford provided similarly excited feedback on the First Meeting to Mr. Walker, Mr. Webster and Mr. Fernback, commenting that "*the meeting went well with the direction of a good opportunity we thought*"; and further "*We thought it went really positive and we are looking forward to the feedback from them to what will happen next. Mark [Webster] was really excited about it as he though (sic) we done (sic) really well. It will be interesting to see how it goes now.*"

(d) Events after the First Meeting: Mr. Perks' enthusiastic feedback

61. On 31 January 2016, Mr. Perks provided his feedback on the First Meeting as he had promised he would do in an email, although he sent it to Mr. Webster rather than Mr. Fernback. He stated:

> "*I have reviewed this opportunity and my feedback is that there is clearly a market opportunity to build a better software solution for the care homes industry.*
>
> *The founding team, though, are not seasoned entrepreneurs and would be unlikely to be able to sell it like wildfire which is what is needed. Sales distribution would be key to success in such a venture.*
>
> *We wouldn't invest in the company in its current position with the two founders in situ. We would, however, consider "co-founding" the business but would want at least 30% of the starting equity to help make it happen.*

> *I hope this is helpful feedback and look forward to hearing your own thoughts.*"

62. It is accordingly recorded that Mr. Perks considered TVC to be a valuable market opportunity to build a better software solution for the care homes industry. He was enthusiastic about the idea. Indeed, his enthusiasm was such that he was prepared to offer to invest in the business, as co-founders, for a 30% shareholding. As Mr. Sims KC rightly pointed out, Mr. Perks did not express any concerns about either the TVC business concept or the software itself.

63. The Defendants have not disclosed *any* documents revealing any internal discussions about TVC following the First Meeting. It seems most unlikely that such documentation did not exist, given (a) Mr. Perks' enthusiasm about TVC viewed in the light of Hambro Perks' interest in the healthcare sector generally and (b) Mr. Perks' offer contained in his email of 31 January 2016 to Mr. Webster. Mr. Perks would surely have had some email discussion concerning the opportunity to invest in TVC with at least Mr. Jabir and Mr. Gargum, as the disclosed emails establish that he, Mr. Jabir and Mr. Gargum frequently emailed each other in respect of the related WeCare concept at around this time (and indeed throughout 2015 in respect of the earlier '*Grey Pound*' research).

64. Despite the contemporaneous meeting notes and his email of 31 January 2016, in his evidence Mr. Perks sought to downplay his interest in TVC:

> "*I set out that view in an email (on 31 January 2016) to Marc Webster of Sterling International (who I understand acted as a consultant for Mr. Fernback). Looking back at that email now, it was an aggressive (but also generous) offer by me. I do not recall the leadership team of TVC displaying any of the attributes I would typically look for in the founders of a would-be successful business (for example, displaying energy and the ability to energise others), I felt that the only way Hambro Perks could take the business forward would be to have been granted significant equity to assist in growing the business. Whilst the offer presented in my email was entirely legitimate, I knew that TVC would be unlikely to agree to the terms. The email represented a transactional way of not wasting anymore time and drawing a line under the matter*."

65. In his oral evidence, Mr. Perks further stated that the offer had been made in "*good faith but deep down knowing that it probably wouldn't be palatable to the counterparty.*

There was an element of goodwill here with the people that introduced to this. So we wanted … to try to be seen to be helpful and constructive."[16]

66. During cross-examination by Mr. Sims KC, Mr. Perks was pressed to explain his offer. He then stated for the first time that by 'co-found', he was not actually proposing for Hambro Perks to invest *any* money at all in TVC, but to simply receive the stake in founder equity in exchange for providing business knowhow and to drive its development[17].

67. I found Mr. Perks to be an unsatisfactory witness and I do not accept this evidence. I consider that, on the contrary, Mr. Perks was keen to do a deal, albeit as a co-founder. His offer of a 30% shareholding was below the maximum of 40% which he had been told Mr. Gifford would accept in return for an investment of £560,000. There is no suggestion in his email that he was asking for a 30% stake in return for no funding at all (investor funding was, after all, the whole premise of the presentation) but only for his (or Hambro Perks's) business know-how. Mr. Perks would have known that such an offer would have been a non-starter.

68. During cross-examination, Mr. Perks suggested that requesting 30% of founding equity was the 'market rate' for co-incubating in the industry at the time, with the intention of leaving a large enough stake for the founding members that they remained motivated to work on the business, and to avoid putting off other investors[18]. I reject this suggestion: if his offer was made at the market rate, it is difficult to see how it could also be characterised as being so steep that Messrs Gifford and Walker would have been unlikely to agree to it.

69. There is also the broader difficulty that Mr. Perks faces of having to explain why, if he felt that TVC was an unpalatable investment proposition, he did not simply say so to Mr. Webster. He is, after all, a seasoned professional investor who "*effectively built Hambro Perks … investment by investment*" and who would, no doubt, have had no

[16] T/4/81/16.

[17] T/4/81-82.

[18] T4/81/5-11.

difficulty turning down an unattractive investment opportunity (he said that this was one of hundreds that he receives).

70. The Court put this point to Mr. Perks, but his answer was unconvincing[19]:

> "*MR JUSTICE CALVER: Why did you make [the offer] then? Why didn't you just say: we are not interested? If you have hundreds of these meetings, I don't understand why you would be, as it were, leading them up the garden path. Why wouldn't you say: I am sorry, we are not interested? Otherwise, all you are doing is continuing to generate interest and correspondence in something you don't want to invest in.*
>
> *A. Yes. So -- (Pause). If they had accepted the offer, I guess Hambro Perks would have received 30 per cent of founder equity in the business and we would have gripped it and taken it forward. The chances of that happening were very, very slim. So we did make offers in a sort of commercial way for founder equity, where there was no cash investment, because the return on investment, when one is getting effectively free founder equity, is significant. So there was an element of our business where we would make such offers that were rarely taken up on, but if they were engaged with, then we may proceed with them. So there were other examples of businesses that we did take founder equity in and supported management teams, and they were rather different propositions than just a straight investment."*

71. Moreover, if Mr. Perks were genuinely seeking to let Mr. Gifford and Mr. Walker down gently as he suggested, it made no sense whatsoever for him to be very keen to line up a second meeting with Mr. Gifford and Mr. Walker – and yet that is exactly what he then did in very short order. He had no answer to this point. In his first witness statement, he merely stated that he cannot recall "*how or why a [second] meeting was arranged particularly in the light of my feedback email.*" The obvious explanation is, of course, that he is not telling the truth about this.

72. The more likely explanation for the sending of Mr. Perks' email of 31 January 2016, as the Claimant maintains and I accept, is that Mr. Perks was in fact genuinely interested in TVC as a business proposition and he was keen to provide the funds for a 30% shareholding as a co-founder, and that explains why he was keen to hold a second

[19] T/4/87-88.

meeting with Mr. Gifford and Mr. Walker. As Mr. Perks was inevitably forced to concede during cross-examination[20]:

> "Q. Were you genuinely interested in pursuing this opportunity with Mr. Gifford?
>
> A. I elected that it was of interest enough to have a further meeting. Yes."

73. Mr. Gifford explains, and I accept, that in early February 2016, he and Mr. Walker met Mr. Fernback again. At the meeting, Mr. Fernback confirmed that Mr. Perks thought that TVC was "*a great idea and a great concept*" and Hambro Perks "*really liked it and were really interested in it.*"

74. Mr. Fernback later informed Messrs Webster, Gifford and Walker that Hambro Perks would be bringing in a person named "*Guy*" as a Managing Director to run the business, together with some other management, and Mr. Gifford said he was fine with that, being a technical person. During cross-examination, Mr. Perks accepted that this was a reference to Mr. Guy Sangster, who was also a potential investor. Mr. Perks gave evidence that Guy Sangster was not an employee of Hambro Perks although the parties agree that he was[21]; and he certainly had a Hambro Perks email address ("Guy@hambroperks.com").

75. On 15 February 2016, Mr. Webster emailed Mr. Perks at his Hambro Perks' email address as follows:

> "*Hi Dominic*
>
> *Alan [Fernback] said give you a call about the boys coming up and meeting a Potential investor and MD to the new company. Can you make 23rd Feb 11am*"

76. Once again evidencing his keenness concerning the TVC opportunity, Mr. Perks immediately forwarded Mr. Webster's email on to Ms Reynard (his PA), and asked her to set up a meeting as requested. He expressly stated that he would need "*Naushard [Jabir], Karim [Gargum] and Guy [Sangster] to be available. And me.*"

[20] T4/97/19.

[21] In the agreed list of employment and director dates lodged the day after oral closings.

77. On 16 February 2016, Ms Reynard checked the availability of Mr. Sangster, Mr. Jabir and Mr. Gargum for a meeting on 23 February at 11am. The latter two were available; Mr. Sangster said that he was supposed to be at NM Roshchild at 10am but that he could rearrange or cancel that meeting. He must have done so, because Ms Reynard emailed Mr. Webster on the same date, 16 February, confirming the meeting on the requested date (23rd February), and asking for it to be at Hambro Perks' Dartmouth Street office ("**the Second Meeting**"). This suggests that this was anything other than a routine meeting. The email names the four attendees from Hambro Perks' side as being "*Dom, Guy Sangster, Naushard Jabir and Karim Gargum*" – in other words, the four persons specified by Mr. Perks.

78. On that same day, Mr. Perks created a calendar event for the Second Meeting using his perksdom.com email account. He circulated invitations to Messrs Jabir, Gargum and Sangster on their Hambro Perks email accounts.

79. On 19 February 2016, Ms Reynard sent a chasing email to Mr. Webster, not having received a reply to her previous email. Mr. Webster replied confirming that the TVC side would be able to make the meeting, and asking for further background information on Messrs Jabir, Gargum, and Sangster. Ms Reynard forwarded Mr. Webster's reply on to Mr. Perks who must have agreed to this, as on 22 February 2016 she forwarded the LinkedIn pages of the trio on to Mr. Webster. There was no suggestion whatsoever that Mr. Perks and Mr. Sangster would not attend the meeting; on the contrary, they were central to the purpose of the meeting. The presence of Mr. Sangster reinforces the fact that Mr. Perks was very keen to push ahead with the TVC business opportunity.

(e) Hambro Perks' development of WeCare/Vida

80. Whilst all of this was occurring, Hambro Perks had also been taking steps internally after the First Meeting on 18 January 2016 to advance what was soon to become known as WeCare.

81. In particular, on 28 January 2016 (being 10 days after the First Meeting), DHV was incorporated with Mr. Perks as its sole director and shareholder. Mr. Perks maintained that the date of incorporation of DHV was a matter of coincidence: he (and by extension,

Hambro Perks) had simply felt it was the right time to push ahead with the WeCare concept at this time.

82. On 12 February 2016, Mr. Jabir emailed Mr. Perks (under the subject heading "WeCare") a WeCare investor presentation deck ("**the WeCare presentation deck**"), and followed up with a further email of the same date to Mr. Perks, describing how "*once the tech platform is built, and the product launched, [WeCare] could launch subsidiary products*" such as for babysitters and pet care (this is consistent with Mr. Gifford having told Mr. Perks at the First Meeting that the TVC technology was adaptable to different industries). This is the first time that the name 'WeCare' is mentioned in the documentary evidence and the first time that this technology platform is described.

83. On the same day, Mr. Jabir (using his Hambro Perks email) forwarded the presentation deck to himself on his perksdom.com email.

84. The WeCare presentation deck in question, on the face of the document, is dated January 2016. Its metadata indicates that it was created by Mr. Fred Fooks, an intern at Hambro Perks between July and September 2015. The document was 'last printed' on 8 October 2015, and 'last edited' on 12 February 2016. The Defendants argue that this is proof that, contrary to the Claimant's case, work was indeed being done on a '*Grey Pound*' carer app, which they say became WeCare during the second half of 2015. I do not accept this. As the Claimant points out, the metadata simply shows that a WeCare deck was created sometime in 2015; it does not show what the original contents of the deck were. It shows that it was then edited on 12 February 2016 when it was sent by Mr. Jabir to Mr. Perks, but the way in which it was edited is unknown. There is no document in existence which shows the form the deck took before it was edited on 12 February 2016. All that is known from the documents is that prior to 12 February 2016 Hambro Perks had assembled a few pages of generalised material about the "*Grey Pound*".

85. The contemporaneous documents show, therefore, that shortly after the First Meeting Mr. Perks incorporated DHV and he was very keen to push ahead with the urgent development of the WeCare app despite the lack of work/interest on the "*Grey Pound*" research deck in the second half of 2015. The Claimant maintains that Mr. Perks must

have shared the TVC Documents with Mr. Jabir and instructed him to draw upon them to inform the development of WeCare. I find that that is indeed likely to have been the case.

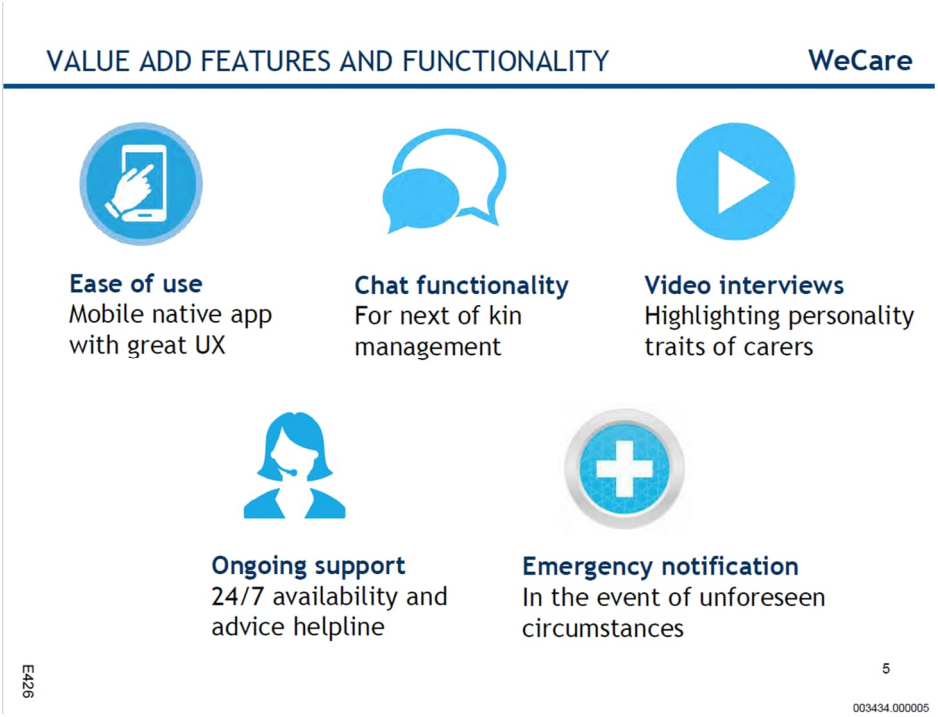
86. In support of its contention, the Claimant points out that certain central concepts in the WeCare presentation deck did not exist in the earlier '*Grey Pound*' materials, and which – they claim – were copied over from the TVC Documents.

87. In particular, slide 4 of the WeCare presentation deck is titled '*Convenient App, with Great UX*[22]', and sets out a *technology platform*. This outlines the technology concept underpinning the WeCare application as follows:

Mr. Gifford maintains, and I accept, that these features appear to be derived from an initial use of the Confidential Information, in that they enable patients, via their mobile phone, to submit their care needs, preferences, skill requirements and desired schedule in order to be matched to a carer, (which reflects TVC's carer-matching USP 4). Similarly, the concept of '*track[ing] all … shifts*" resembles TVC's real-time monitoring, tracking and alerts (USPs 1 and 3).

[22] User Experience.

88. This argument is strengthened when Slide 5 is considered. That slide is titled '*Value Add Features And Functionality*' and lists several other features of the WeCare application.



Although the chat functionality was not a feature of TVC, it appears to be inspired by the Relative Portal USP, hence its reference to 'For next of kin management'. Similarly, the proposition for a 24/7 support helpline reflects Mr. Gifford's disclosure to Mr. Perks at the First Meeting that TVC would have 24/7 technical support. TVC also allowed for emergency notifications via its tracking and alerts feature.

89. After receipt on 12 February 2016 of Mr. Jabir's WeCare presentation deck and his thoughts on the potential versatility of the proposed technology platform, on 15 February 2016 Mr. Perks emailed Mr. Jabir on their Hambro Perks email accounts, stating:

> "*P.s. – Let's push on WeCare…I like it! Get Karim [Gargum] to help you work [the presentation deck] up…*".

90. On 16 February 2016, at the time when the Second Meeting was being organised, Mr. Perks sent two emails using his Hambro Perks email account. The first was to Mr. Jabir, stating "*Let's really attack this one*". The second was to Mr. Gargum (copying in Mr. Jabir) and simply titled 'WeCare', where he directed the former to "*Please get stuck into helping Naushard with this opportunity. It would be good to take the draft business*

to the next stage now". Mr. Gargum asked Mr. Perks what it was that he wanted him to do and Mr. Perks added in a further email to Mr. Gargum "*Deck and business model … Something that can be seriously reviewed for funding and also to use to recruit a management team.*" Mr. Gargum subsequently provided some initial feedback on the presentation deck to Mr. Jabir.

91. Just two days later, on 18 February 2016 Mr. Perks emailed Mr. Jabir chasing for a progress update on WeCare, asking if he had "*done a model?"*. Mr. Jabir replied saying that Mr. Gargum was "*looking at 'MVP*[23]*'* and "*route to market*". Mr. Perks replied by email on the same day saying "*Brilliant! (We will do this without messing about with Nick*[24]*/Guy at this stage … They just slow things up*)"[25].

92. This shows how, at this time, Mr. Perks and Mr. Jabir were well accustomed to communicating by email. I consider that it was around this time that Mr. Perks began to consider pursuing the TVC business opportunity without involving Mr. Sangster. It can be seen that he was also keen to move quickly. It is also likely, in my judgment, that it was around this time that Mr. Perks decided not to attend the Second Meeting because he had decided to use TVC's software and technological concepts for his own and Hambro Perks' benefit (it is unclear whether at this stage Mr. Jabir knew this or not), and instead to allow Mr. Jabir to go to the meeting as planned and continue gathering information about the TVC software/technology. It is also likely that Mr. Perks made contact with Mr. Sangster at this time to ensure that he did not attend the Second Meeting, contrary to Mr. Perks' denial in evidence that that was so. It is striking that no documents have been disclosed by Mr. Perks or Hambro Perks concerning the unexpected and unexplained absence of Mr. Perks and Mr. Sangster from the Second Meeting, as seen below.

[23] Minimum Viable Product.

[24] Mr. Nick Wentworth-Stanley, a shareholder in Hambro Perks and angel investor who had also been involved in some of the earlier "*Grey Pound*" correspondence.

[25] This again demonstrates that at this time email communication was the typical form of communication between Mr. Perks and Mr. Jabir.

(f) The Second Meeting

93. The Second Meeting took place as scheduled on 23 February 2016 at Hambro Perks' offices. Messrs Gifford and Walker attended on behalf of TVC, expecting to see the four named individuals in Ms Reynard's email of 16 February. Contrary to their expectations, however, neither Mr. Perks nor Mr. Sangster were present; and they were met by only Messrs Jabir and Gargum on behalf of Hambro Perks.[26]

94. As with the First Meeting, contemporaneous accounts of the Second Meeting are set out in (a) Mr. Gifford's contemporaneous handwritten notes; (b) an update email sent by Mr. Walker to Messrs Fernback and Webster in the evening of the same day;[27] and (c) Mr. Gifford's more detailed typed notes which were finalised by him on 26 February 2016. I find that Mr. Gifford's manuscript and typed notes are an accurate note of what was said at the Second Meeting.

95. The Second Meeting appears to have been primarily driven by Mr. Jabir, with Mr. Gargum being present mainly in order to ascertain whether his prescription app could be integrated into TVC.

96. Mr. Gifford's typed notes of the meeting record that at the outset of the Second Meeting, Messrs Gifford and Walker asked Messrs Jabir and Gargum if Mr. Sangster would be attending. The notes record Mr. Jabir's response as follows:

> "*Naushard [Jabir] replied with the response: who? I don't know anything about Guy Sangster and that he was supposed to be attending and Dominic will not be attending.*
>
> *James [Walker] replied with, We were supposed to be meeting Guy Sangster as he is going to be a potential MD, this was the purpose of the meeting?*
>
> *Naushard [Jabir] said that the purpose of the meeting was to talk more about the idea and see when it would be possible to start moving forward.*"

[26] When originally emailed by Ms Reynard about the Second Meeting, Mr. Sangster had replied to say that he had a pre-existing commitment, but that he could cancel or rearrange it or be a bit late for the Second Meeting.

[27] This email also included copies of the documents which had been provided to Messrs Jabir and Gargum at the Second Meeting.

97. In cross-examination Mr. Perks was asked why he and Mr. Sangster did not attend the meeting – what had changed? His answer, bearing in mind his documented keenness at this time for the TVC market opportunity, was unconvincing:

> "*A. I don't remember. Mr. Sangster had plenty of other business interests and wasn't duty-bound to be at the office. And I don't know why I couldn't make it. I was very busy at the time*."

98. Again, no documents (including diary entries) have been disclosed by Mr. Perks or Hambro Perks explaining or even referring to Mr. Perks' absence or to any other commitment that he had that day. It seems very likely that such documents would have existed.

99. Mr. Gifford's handwritten and typed notes show that Messrs Jabir and Gargum were provided with binders at the Second Meeting containing not only the TVC Documents given to Mr. Perks at the First Meeting, but also Documents (7) ('TVC – The use of tracking within the system and care'), (8) ('TVC – Benefits Diagram'), (9) ('TVC – Modules Workflow'), (10) ('TVC – Database schema') and (11) ('TVC – Care application engines'). I shall refer to these as the '**TVC Technical Documents**' and Documents 1-11 collectively as "**the 11 Documents**".

100. In addition, a longer version of Document 3 ('TVC – Presentation e2e ppt') was provided which included additional content and, significantly, screenshots of the TVC application. I shall refer to this as **Document 3.2**.

101. An email dated 26 February 2016 from Mr. Walker to Mr. Webster, after the Second Meeting had taken place, records the fact that Mr. Jabir and Mr. Gargum were indeed given the documents referred to in paras. 99-100 above at the Second Meeting.

102. At the Second Meeting, Messrs Gifford and Walker were questioned by Mr. Jabir at some length. They described the development of TVC over the past six years and elaborated (by reference to some of the TVC Documents) about the task-based tracking, alerts, care matching and learning, monitoring and workflows, the application engines, the modular approach to TVC's design, their business model projections and their pricing model for both the main application, as well as describing further the additional elements of the Relative Portal and Care Plan Tracker. Mr. Gifford again clarified, in

response to a question from Mr. Jabir, that although he owned the IP behind TVC, he had not registered it.

103. Mr. Gifford's handwritten notes record some surprise at the highly technical nature of the discussions about the application engines which took place ("*why asking???*" "*Are these technical PPL?*"). He also recalls their being asked highly personal questions by Mr. Jabir, including whether they had mortgages; whether they were married; and whether they had children ("*Mortgage?? Why?? Married?? WTF? Kids??*").

104. During cross-examination, Mr. Perks accepted that these were not questions which he would have asked in a pitch meeting. However, he suggested that they were not "*utterly irregular*", since one of the purposes of a pitch meeting is to assess potential founders and to understand the person's background and motivations.

105. The Claimant's case is that Mr. Jabir and Gargum's purpose at the Second Meeting, under the direction of Mr. Perks, was twofold: first, to obtain as much technical and design information about TVC from Messrs Gifford and Walker as possible with the specific intention of incorporating these features into WeCare, having established that Mr. Gifford had not registered the IP in TVC; and second, that the purpose of Mr. Jabir asking highly personal questions was to assess Messrs Gifford and Walker's ability to raise capital on their own to bring TVC to market (thus posing a threat to WeCare).

106. Towards the end of the Second Meeting, Mr. Jabir suggested that the TVC application was closer to 60% complete, as opposed to the 85% as claimed by Messrs Gifford and Walker; and that it would not be possible to finish it within 3 months. Notwithstanding this, he and Mr. Gargum agreed there was "*a definite need for this type of application in the market*", and that they were looking forward to working together with Messrs Gifford and Walker, with Mr. Jabir having stated "*how good he thought [TVC] was*". He indicated that they wanted to start the process in '*a couple of weeks*' and encouraged Mr. Gifford and Mr. Walker to hand in their resignations at their current employers once they received the go-ahead.

107. Mr. Gifford again questioned Mr. Jabir as to what the company structure would be (as they had not yet met Mr. Sangster), and what the investment terms were. Mr. Jabir's noncommittal answer was to the effect that all of this would be sorted out in due course,

and the priority was getting them started at Hambro Perks in order to finish the TVC software. Unsatisfied, Messrs Gifford and Walker pressed the issue again, with Mr. Walker expressing concerns that he would not have anything to do at Hambro Perks, as technical development was Mr. Gifford's area of expertise, not his. Mr. Jabir replied that "*There will be plenty to do don't worry about that.*"

108. At the end of the meeting, Messrs Jabir and Gargum took Mr. Gifford and Mr. Walker for a tour around the Hambro Perks offices, pointing out where they would be working. At the end of the tour, Mr. Gifford again asked if Mr. Jabir knew when they were due to meet Mr. Sangster, and both Mr. Jabir and Mr. Gargum denied knowing anything about that.

109. Mr. Perks was questioned by Mr. Sims KC about the contrast between his supposed lack of interest in investing in TVC (as expressed in his first witness statement) and Mr. Jabir's many encouraging statements to Messrs Gifford and Walker, which appeared to convey a genuine interest in bringing them on board and proceeding with the co-founding offer. He initially sought to downplay Mr. Jabir's statements but ultimately conceded they could not be reconciled with his supposed lack of interest in the TVC software:

> *"Q. If Mr. Gifford's notes are an accurate reflection of what Mr. Jabir told him at the second meeting, then Mr. Jabir is communicating a positive view that they want to take things further forward; correct?*
>
> *A. Correct, but may I add something to that, please, which is, quite often, rejecting enthusiastic entrepreneurs is a difficult business. In venture capital, you reject 99 out of 100 businesses for investment, and perhaps Mr. Jabir wasn't terribly good at rejecting or giving negative feedback and was a little overenthusiastic here.*
>
> *MR JUSTICE CALVER: Well, it goes a bit further than that, though, doesn't it, Mr. Perks? He is saying, "Let's get you in working on the software".*
>
> *A. Yes, I find that very surprising, my Lord.*
>
> *MR JUSTICE CALVER: He is positively saying, "Come on, we are going to start with you. Come into our building and get cracking*".

A. Yes. I find it doesn't sit with how I remember any of this."

110. Mr. Perks could not explain this fundamental inconsistency. I find that the reason for it is that Mr. Perks had decided around 18 February 2016 that he did not want to share the TVC concept with Mr. Gifford and Mr. Walker; and instead, he wanted Hambro Perks to use the Confidential information itself via WeCare (see paragraph 92 above). There are then two possibilities: either, at the time of the Second Meeting, Mr. Jabir and Mr. Gargum did not yet know that that was what Mr. Perks had decided; or they did know but they continued to lead Mr. Gifford and Mr. Walker up the garden path in order to keep them on-side so as to learn what they needed to learn about the Confidential Information (having established that they were no threat to Hambro Perks misusing their Confidential Information because of their limited resources). However, it is not necessary for me to reach a concluded view on this point, as whether Mr. Jabir and Mr. Gargum knew at the time of the Second Meeting or not, I am sure that they did know that was Mr. Perks' plan shortly thereafter (see below).

(g) 2016-2018: Vida is created using TVC's Confidential Information

111. As with the First Meeting, no contemporaneous documents or emails have been disclosed by Mr. Perks or Hambro Perks which indicate any discussions between Messrs Jabir, Gargum and Perks about what took place at the Second Meeting. In his witness statement, Mr. Perks originally said that he did not recall having any discussions with Messrs Jabir and Gargum about the Second Meeting. However, when challenged on this in cross-examination, he accepted that there must have been some *in-person* conversations about the meeting[28]. However, I consider that in view of Mr. Perks' and Mr. Jabir's practice of communicating by email, there would almost certainly have been some *email communications* between Mr. Perks and Mr. Jabir in particular about the Second Meeting but which have not been disclosed.

112. On 23 February 2016 itself (the day of the Second Meeting), Devika Wood joined Hambro Perks as an entrepreneur-in-residence.

113. In an email on that same day to Messrs Jabir and Gargum, Mr. Perks suggested that Ms Wood be inducted into the WeCare project: "*Happy that she gets fully 100% stuck into*

[28] T5/12-15.

this". Mr. Gargum responded by email on the same day in which he stated that Mr. Jabir had already passed her the WeCare deck. *"[Jabir] has done the bulk of the work on [the] deck but I'm happy to share my thoughts on marketing/mvp etc*."

114. That evening, Mr. Perks stated in an email chain (including Messrs Jabir and Gargum, and Ms Wood) in response to Mr. Gargum sending him a BBC article concerning the fact that "Technology's biggest untapped market is elderly care":

> *"Love this space team! Let's flesh this WeCare plan out further at speed now and see whether we can get it to an investable state by the end of the week*".

115. Of course, at this stage, Mr. Gifford and Mr. Walker still believed that Hambro Perks were going to co-found and invest in TVC for a 30% equity stake.

116. On 24 February 2016 (the day following the Second Meeting), in an email entitled '*WeCare/Devika'*, Mr. Perks wrote to Mr. Jabir to say that he had investors lined up for WeCare, and further "*PS – I think we should sell Devika this opportunity … [T]ake her under your wing for this and push her hard. She needs to be stretched.*"

117. These emails plainly show that Mr. Perks and Mr. Jabir had already begun to work on WeCare before Ms Wood joined Hambro Perks and that she was not the originator of the same. I return to the significance of this below. They also show that Mr. Perks was actively seeking out investors in WeCare, which Mr. Perks was driving forwards for Hambro Perks.

118. Meanwhile, that same day, Mr. Walker emailed Mr. Perks and Mr. Jabir attaching a soft copy of Document 3.2 (which he explained had been provided in hard copy at the meeting) together with a public source document concerning the need for an application such as TVC in the care sector. Mr. Perks said nothing about any decision not to invest in TVC.

119. On 26 February 2016, Mr. Walker emailed Messrs Webster and Fernback, attaching soft copies of the documents which had been provided at the Second Meeting.

120. Later on that same day, Mr. Jabir emailed Mr. Perks an updated version of the WeCare presentation deck (now titled 'Investor Presentation February 2016') and a summary of updates. Three features of this email are worth noting:

    (a) Mr. Jabir states that "*The focus [of WeCare] should be on quality of service*". There is a striking similarity here to the central message advanced by Mr. Gifford and Mr. Walker in the First and Second Meetings that there was nothing in the market focussing on quality of care (see paragraph 52 above).

    (b) The WeCare application is described as involving three components, namely a user app, a carer app, and Next of Kin management. This bears a striking similarity to TVC's proposed offering.

    (c) Ms Wood is described as being tasked with "*looking at the various levels of care in more detail, and the vetting and levels of experience we require of carers*". She is not described as having been the source for any of these new ideas, nor is she held out as being responsible for the technological development of WeCare.

121. The February 2016 WeCare deck is considerably longer than the January 2016 version. It now includes a business projection and an Appendix, which sets out a mock-up of how the WeCare mobile app could look. Slides 5 and 6 of the February 2016 deck are materially identical to slides 4 and 5 of the January 2016 deck, which I have described above at paras. 87-88.

122. In paragraph 36 of her witness statement for trial, Ms Wood had referred to the February 2016 deck as being something she had recalled working on, and claimed that the features and functionality of the WeCare app described on slides 5 and 6 were "*all things I came up with*". This was demonstrably untrue given that the same slides had been produced prior to her joining the company, and she conceded as much during cross-examination[29]. Mr. Perks and Hambro Perks were keen throughout trial to seek to give the false impression that Ms Wood (and not Mr. Jabir, using the Confidential Information) had devised WeCare, so as to advance the case that it could not therefore

[29] T/5/83-90.

have misused TVC's Confidential Information because Ms Wood did not participate in and (they said) was never told about the First and Second Meetings.

123. On 1 March 2016, Mr. Perks emailed Mr. Jabir and stated that "*As soon as WeCare is ready to go, I have investors*", despite the fact that, as Mr. Perks knew, at this stage Mr. Gifford and Mr. Walker were still of the belief that Hambro Perks were going to invest in TVC as co-founders.

124. On 8 March 2016 Mr. Perks emailed Mr. Jabir in order to chase him again: "*[Where] are you with WeCare Plan*?" Mr. Jabir replied on the same day by attaching the February version of the WeCare deck. He said that they just had to get on with hiring. Mr. Perks then asked Ms Reynard to print the deck for him.

125. On 3 March 2016, Mr. Webster emailed Mr. Perks and asked him to bring him and Alan Fernback up to date after the meeting last week. This was obviously awkward for Mr. Perks, who had led Mr. Gifford and Mr. Walker to believe that he would invest in TVC as a co-founder. He did not reply to this email for six days. Then on 9 March 2016 he responded, declining to invest in TVC. He stated:

> "*The house view at this end is that the lads just aren't strong enough. The "idea" is decent albeit there isn't anything truly distinctive (and no IP) there.*
>
> *On balance, we don't recommend proceeding and feel like there are more exciting prospects to collaborate on.*"

126. This so-called 'house view' is flatly inconsistent with the views that had been expressed by Mr. Perks himself and Mr. Jabir at the First and Second Meetings respectively, and as recorded in the contemporaneous documents. They had told Mr. Gifford and Mr. Walker that the TVC idea was "*exciting*", "*unique*", "*brilliant*", "*refreshing*", and "*how good it was*". In his evidence, Mr. Perks was unsurprisingly not able to explain this sudden and unprompted *volte face*. The truth of the matter is, I find, that Mr. Perks had decided that Hambro Perks could use the "*unique*" and "*brilliant*" Confidential Information in order to launch WeCare itself, cutting out Mr. Gifford and Mr. Walker. I find as a fact that Mr. Jabir must, around this time, have become aware of this and that there likely would once have existed email exchanges at this time demonstrating this fact.

127. On 17 March 2016, Mr. Perks emailed Mr. Jabir to ask for his thoughts on whether Ms Wood could "*credibly be part of [the] founding team for [WeCare]?*". Mr. Jabir responded by agreeing that she could be part of the founding team, working alongside a CEO and a COO. Mr. Perks again said that he was "*keen to crack on*" with WeCare. This is one of many illustrations in the documentary evidence which show that it was the combination of Mr. Perks and Mr. Jabir, and not Ms Wood, who were the driving force behind the creation and development of WeCare.

128. On 7 April 2016 Mr. Jabir emailed Ms Wood to suggest that WeCare needed to start operating as a care agency with a web platform in the first instance; to that end, he directed her to begin exploring the regulatory requirements of registering with the Care Quality Commission (CQC). This exchange belies Ms Wood's oral evidence before this court, in which she sought to take credit for the idea of CQC registration, pretending that this was one of the key ideas which she came up with in the development of what would become Vida, with the other apparently being the concept of Vida operating as a care agency.

129. This conclusion is further supported by the documentary evidence, which also suggests that in April 2016, Ms Wood was also working on non-WeCare matters. She appears to have been involved with a concept called PsycApps (which I understand to be an application related to psychiatric health). On 16 April 2016, she gave a presentation in relation to PsycApps and had also referred to herself online as an advisor at PsycApps whilst working at Hambro Perks.

130. In May 2016, a further version of the WeCare deck came into circulation. In her trial witness statement, Ms Wood appeared to take credit for the '*Uber for care*' concept of carer finding/matching (a concept which in fact existed within WeCare before she joined Hambro Perks), referring to this deck in support of her assertion in paragraph 35 of her witness statement that carer matching was her idea. However, the two pages of that deck which describe the WeCare application features are materially identical to the features displayed in the earlier versions of the WeCare deck described above and which were part of the WeCare presentation deck before Ms Wood joined Hambro Perks.

131. It is also of note that the May 2016 presentation deck describes Messrs Perks and Jabir as co-founders – but not Ms Wood, who is instead named as part of the founding team

as Chief Medical Officer,[30] which again confirms that her role was not on the technology side but the medical/care side of WeCare.

132. The marketing material for WeCare (including the latest version of the presentation deck referred to in para. 130 above) which was being circulated by Mr. Jabir and Ms Wood to potential investors around this time bears a striking similarity to TVC's USPs and objectives. This marketing material also makes clear that, notwithstanding the First and Fourth Defendants' assertion that WeCare/Vida was primarily concerned with the provision of care, like TVC the selling point of WeCare/Vida was very much based upon the *technology* it was developing and hoping to bring to market. For instance:

(a) In an email dated 10 May 2016 from Ms Wood to potential investors, she states:

> "*We are building WeCare, an innovative technology platform matching seniors with the highest quality carers. We aim to deliver better outcomes for patients, improve communication for relatives and better the working standards for carers*
>
> *(…)*
>
> *We will develop a sophisticated app with a unique and proprietary matching algorithm. The app will improve transparency and communication between the 3 'clients' involved:*
>
> *1. Seniors: Matching them with the right carer with the correct experience, providing detailed care plans and capturing data on their health.*
>
> *2. Carers - Enabling carers to better manage patients by providing detailed care plans, task management and easier communication with next of kin*
>
> *3. Next of kin: Providing transparency to loved ones, with a detailed list of tasks completed on a daily basis and regular updates on the condition of the client."*

(b) In response to queries from a potential investor, in an email dated 13 May 2016, Mr. Jabir explained that WeCare would:

> "*develop an algorithm that matches the right carers to the right patients based on factors such as age, gender, medical condition,*

[30] The deck also names Mr. Barry Shaverin, who was WeCare's first COO.

> *location, ethnicity, mobility etc. The technology would ensure that there is greater transparency in the care process and also capture data relating to the health of the patient" and "The app will mainly be used by the next of kin and the carer. Our end client is the next of kin who will pay for the service and manage bookings, care plan etc.*"
>
> This looks like a succinct summary of TVC's Confidential Information.

133. On 11 May 2016, Ms Wood emailed a former colleague from Medefer, in which she stated that "*myself and a colleague came up with an idea - and pitched it to the co-founders and they like it - and will invest in it*". The reference to a colleague is presumably to Mr. Jabir. But on no view did Ms Wood come up with this idea; and nor did Mr. Jabir – this was Mr. Gifford's idea.

134. In mid-May 2016, it became clear that the name 'WeCare' had already been taken, as evidenced by a series of emails dated 11 May 2016 between Mr. Jabir, Mr. Perks, and several other Hambro Perks employees. Ms Wood was not included in any of those emails. It was subsequently decided to change the company's trading name to 'CareAngels', and an investment deck dated 23 May 2016 was produced in that name. Again, the deck names Messrs Perks and Jabir as co-founders, and Ms Wood as CMO.

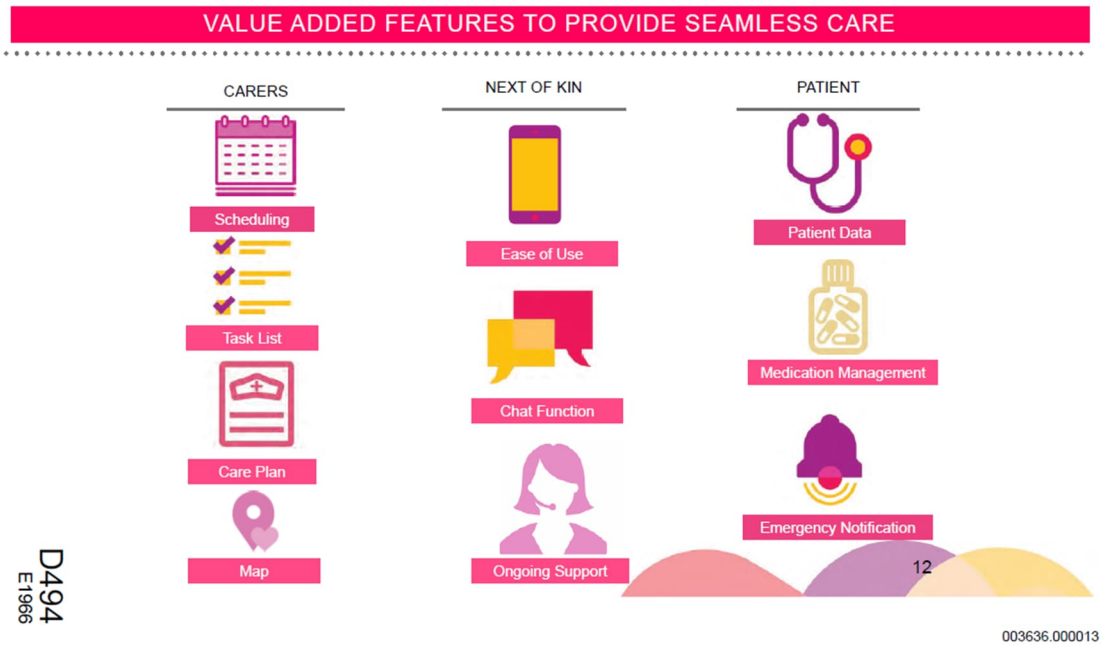
135. On 2 June 2016, Mr. Jabir emailed a potential investor and attached the CareAngels presentation deck. By now, Mr. Jabir was referring to the concept as "*a technology platform targeting a £25bn market that will revolutionise care at home by providing holistic, integrated and seamless care solutions; the platform will help deliver better outcomes for patients, improved communication for relatives and better working standards for carers*". He stated that "*once the platform is developed, the intention is to licence the technology to operators in developed countries which suffer from an aging population.*" This idea to licence the technology replicated the TVC business model.

136. To like effect, the presentation deck referred to: "*revolutionise[d] care*", "*better outcomes for patients*" and "*improved communication for relatives*". CareAngels' mission was described as being to "*Provide holistic care [and] technology-led health monitoring solutions*". The software application included the same core functionality as in the earlier WeCare decks described above, and included monitoring and data collection similar to that which TVC offered.

137. On 9 June 2016, a shareholders agreement was entered into in respect of DHV. The 'first Founder Director' was named as Mr. Jabir, and the 'first Investor Director' was Mr. Perks. Once again, Ms Wood was not included.

138. Sometime later, CareAngels was rebranded as Vida, which name it would continue to use until it ceased trading. In what appears to be the first document under the Vida branding (apparently dated 14 July 2016), Vida is described as being, like TVC, a holistic technology platform which provides a "*bespoke digital care plan*", improves patient outcomes and empowers "*next-of-kin through our technology-enabled support system, providing real time information about their loved one's wellbeing*".

139. On 19 July 2016, the first slide deck with Vida's name on it came into circulation. This deck is very similar to the earlier CareAngels deck referred to above, and Mr. Perks and Mr. Jabir continue to be identified as the two co-founders (with Ms Wood also retaining her previous title of CMO). In a slide titled "*value added features to provide seamless care*", it sets out offerings bearing a striking similarity to TVC's USPs as follows:



140. On 4 August 2016, Vida launched its new website on a pilot basis.

141. On 5 August 2016, Mr. Jabir emailed a potential investor explaining that he came up with the idea that became Vida and put together the Vida team: "*Got some interesting*

news - I came up with an idea to build a care technology platform for the elderly population. Over the last few weeks, I've put together a stellar team and also managed to soft-launch the product this week: www.vida.co.uk".

142. On 22 August 2016, Mr. Claudio De Pace was hired by Vida as their Chief Technology Officer. He was to be responsible for leading Vida's growing technology team and by September 2016, work had started on creating the Vida app.

143. On 20 September 2016 Mr. Jabir drafted some proposed website text for Vida – which he sent from his perksdom email address to his Hambro Perks email address – describing Vida as "*the brainchild of Naushard Jabir, the Founder and CEO of Vida. Having previously built several technology start-ups, Naushard identified the structural decline of the care industry and the resulting poor quality of care being provided. With the care industry in dire straits, Naushard set about building Vida by bringing together a young and energetic team to revolutionise the care industry in the UK*". Ms Wood's role was described as being the "*the co-founder and Chief Medical Officer of Vida*" and "*adopting a clinical approach to care and empowering our carers and clients*". That text was displayed on the Vida website. Ms Wood accepted in evidence that she was or would have been aware of this, but she did not dispute this characterisation at the time, even though she said she did not consider it to be accurate.

144. On 8 November 2016, a DHV board meeting took place at which Messrs Perks and Jabir and Ms Wood were present. The meeting minutes record that:

(a) Agreement had been reached for new fundraising (for Vida) of £1m at £6m pre-money valuation, with an agreement to oversubscribe up to £1.25m;

(b) Ms Wood was to join Messrs Perks and Jabir on the board as a director;

(c) Mr. Perks would transfer some of his shares to Mr. Jabir (125,000) and Ms Wood (50,000), but the latter (but not Mr. Jabir) would have to pay him 0.96p per share upon her exit or disposal from DHV; and

(d) Mr. Jabir was confirmed to have moved onto the Vida payroll on 1 December 2016, having previously been working for Hambro Perks until that point.

145. On 13 November 2016, Mr. Jabir emailed Kristin Polman of Vida (with Ms Wood copied in), identifying several competitors and stating that:

> "*We need to get our hands on the carer apps of Hometeam, HomeHero and Honor. We need to map out the core functionalities, so that Claudio & Team don't miss a trick. There is a real risk if the tech is not on par with the US players. They could start licensing into the UK in the medium term. By then, we need to make sure we've started licensing into Europe and Asia.*
>
> *I am getting an investor and a friend to trial the service in San Fran – the key is to get screen grabs, particularly of the carer app..*"

146. Whilst Ms Wood sought to suggest in her evidence that this practice was commonplace in the industry, I consider that it shows that Mr. Jabir, whom Mr. Perks agreed could be described as "*tricky*", had no scruples about plagiarising/exploiting the technological ideas and concepts of others in the industry; and that he similarly had no scruples about doing the same with TVC's Confidential Information.

147. To similar effect, on 3 August 2017, Mr. De Pace, who worked with Mr. Jabir, emailed others in Vida (copying in Ms Wood) in relation to a rival software product called CARAS, stating "*The software looks really 90s, but maybe worth to get a DEMO to see if we can *cough*steal*cough* some feature?*". Ms Wood raised no objection at the time to this.

148. During cross-examination, Mr. Sims KC put to Ms Wood that this was indicative of Vida's culture of unashamedly appropriating the ideas of others to further Vida's own business. Ms Wood denied that this was indicative of any such culture under Mr. Jabir. As noted above, she sought to suggest that it was common practice within the startup industry to review competitors' products for "inspiration" on how to develop one's own ideas. On this basis, she suggested that Mr. De Pace's email was intended to be light-hearted humour as opposed to a cause for concern; and she felt that the word 'steal' had been taken out of context.

149. I do not accept Ms Wood's evidence about this; rather I consider that this was, as Mr. Sims KC submitted, indicative of a culture within Mr. Jabir's team of unashamedly misappropriating the work and ideas of others.

150. Indeed, the lack of ethical practices at Vida is also illustrated by the fact that, Vida having obtained CQC registration on 23 November 2016, on 22 August 2017 Ms Wood emailed a number of people including her mother, requesting them to complete fake CQC reviews for Vida in order to improve its ratings. This elicited a response from her mother that "*If CQC find out you are doing this it would be fraudulent*". When it was put to Ms Wood in cross-examination that this was indeed fraudulent, her unimpressive response was:

> "*I think there are many organisations that have reviews done on them done by influencers, done by colleagues, employees, that haven't necessarily used the service. It is quite commonplace to be done, and so that was why I essentially had written to ask for reviews about the service*".

151. In an email dated 13 December 2016 from Mr. Jabir to a potential investor (copied to Ms Wood), he emphasised (again) that it was the underlying tech platform which would yield the financial dividends over time, and that the intention (as with TVC's business concept) was to licence it. He also emphasised B2B partnerships with "*public and private institutions*" as "*avenues [which] will further enhance our growth*".

152. On 19 December 2016, a DHV board meeting took place. The meeting minutes record that share options were to be granted to employees of DHV, with Mr. Jabir granted the most at 100,000, Mr. De Pace being granted 35,000 and Ms Wood granted 30,000 shares. A confirmation statement dated 27 January 2017 sets out the then shareholdings in DHV, with Mr. Jabir holding approximately 32% of the shares, Hambro Perks holding approximately 21% of the shares[31], Ms Wood holding approximately 10% of the shares (the value of some of which in fact belonged to Mr. Perks) and Mr. Perks holding (directly) approximately 8%.

153. Accordingly, Mr. Jabir, Mr. Perks and Ms Wood all stood personally to benefit financially from the success of Vida.

154. A Vida briefing document dated 18 January 2017 sets out several 'overall key messages' about the business. Consistently with the First and Fourth Defendants seeing the value in the new business as resting in the technology, and contrary to the evidence

[31] In which Mr. Perks had a majority shareholding

of Mr. Perks and Ms Wood[32], the final bullet point in the document states that "*This is not Uber for home care*". Instead, it describes Vida as:

> "***A sophisticated, first-of-its-kind technology platform for personalised home care.*** *Vida's technology carefully matches carers and clients and aligning specific needs to skills, gender, culture and many other variables which are critical to providing the best quality of care…**Real-time insights and unprecedented transparency into the entire home care process.** With a smart, easy to use platform, Vida's home care service is accessible to everyone in the care unit (including family members) – from the moment the carer is on their way to the client's home**,** the time they walk through the door and precisely when medication has been administered, to when meals are provided – and also details the overall condition of the client*".
>
> (emphasis added)

155. In an email from Mr. Jabir dated 25 April 2017 (copied to Ms Wood) with proposed text for publicity, Vida is again described as "*not another marketplace or an "Uber for care*"". Emphasis is also placed on the novelty of Vida's technology platform: "…*we have developed state-of-the-art technology: Vida digitises care plans which will make home care more efficient and reliable. Our pioneering technology carefully matches care professionals and clients to align specific needs to skills, gender, culture, location and many other variables which are critical to providing the best quality and continuity of care. The technology platform delivers efficiency in the timely delivery of high-quality care, and improves communication and transparency for all stakeholders involved in the health of our loved ones*".

156. Accordingly, I do not accept the First and Fourth Defendants' submission in paragraph 94 of its written opening that "*The core concept of Vida is that intermediation of care workers to users (i.e. the 'Uber' concept, in the B2C market) which would be regulated by the CQC. Any other similarities between TVC and WeCare are incidental matters that would be inevitable in any business operating in the healthcare or wider service sector*"; and I reject their attempt to downplay the central importance of Vida's technology platform to its success.

[32] See for example paragraph 26 of Mr. Perks' first witness statement: "*If I was to liken the idea of WeCare to an existing company, it would best be described as 'Uber' for care workers.*"

157. One of the disclosed documents dating to around this period is an organisational chart of Vida, which is illuminating. As CEO, Mr. Jabir sat at the top of that structure. He is shown as managing the technical team under Mr. De Pace, who reported to him. Ms Wood also reported to Mr. Jabir but ran the Care/Operations Team and is not part of the technological team, reinforcing the fact that she had no involvement (directly, at least) in the technology side of Vida's business.

158. On 16 May 2017, Mr. Jabir emailed a potential investor in which he continued to emphasise the future revenue potential from subscriptions/licensing of the Vida software (which was the TVC business model) and also explained "*Next-of-kin app monthly subscription - £10 monthly charge for informal carers to manage their loved one's health*". The fixing of a £10 monthly charge for Vida's next of kin application is, I consider, significant as this is precisely the same pricing model that Messrs Gifford and Walker had disclosed (orally) to Mr. Perks and Mr. Jabir at the First and Second Meetings respectively in relation to TVC's Relative Portal concept. I consider that Mr. Jabir also used Mr. Gifford's Confidential Information for this purpose.

159. In a Technical Data Questionnaire document (seemingly part of a tender exercise) on 14 June 2017 there is some discussion of Vida's care matching technology. Under the heading "solution" it states "*Our system allows the operator to create detailed profiles of both carers and clients. The information provided in these profiles is compared against each other during the matching process*". It then goes on to refer to an algorithm and an improved algorithm.

160. This replicates the TVC rota and care matching technology (USP 4), an illustration of which was given by Mr. Gifford and Mr. Walker in Document 11 as follows:

> "*An example is a care worker matching to the best possible care and the best person to who that care is for. As an example there could be a care requirement for a person where they have early dementia. A care worker would be best for the fit where they have experience of working with dementia and to have experience in de-escalation, to be calm and understand needs, a more experienced care worker or perhaps a care worker of a certain culture such as Indian and can speak Hindu. All of the factors that require the best care to be given are calculated and recommended to a match.*"

161. TVC's Document 11 indicates that each carer would have a record which stated their potential clinical, personal, communication or other requirements, and their ability. These would be matched against the requirements of patients (which would also have a similar corresponding record). Mr. Perks accepted in cross-examination that the two systems were the same in this respect[33].

162. On 20 June 2017, Mr. Jabir emailed a Vida employee (with Ms Wood copied in) providing some brief feedback on the Vida investment deck. The deck appears to be an earlier, more detailed version of a subsequent presentation deck that would be used by Ms Wood in October 2017, which I consider in greater detail below.

163. Slide 6 of the Vida deck is entitled "*Highly fragmented market beset with structural issues*" and points out some of the problems affecting the care industry. These are split into two subheadings: "'*Human' related issues*", and "*Lack of technology*". Under the former subheading, it lists '*Declining quality of care and poor service*' and '*Patient outcomes not monitored*'. Under the latter subheading, it lists '*Paper based systems*', '*Poor operational software*', '*Lack of data*', and '*No real-time monitoring*'.

164. These were precisely the issues which had been identified by Mr. Gifford during his development of TVC, and which he referenced in the TVC Documents which had been provided to Mr. Perks and Mr. Jabir during the First and Second Meetings. For example:

    (a) Document 1 ('Investor Overview'): "2. *The industry – The industry is mostly paper based still with all the notes being recorded on paper … At present there is not a product on the market that accommodates for all levels of care, staff and management reporting."*

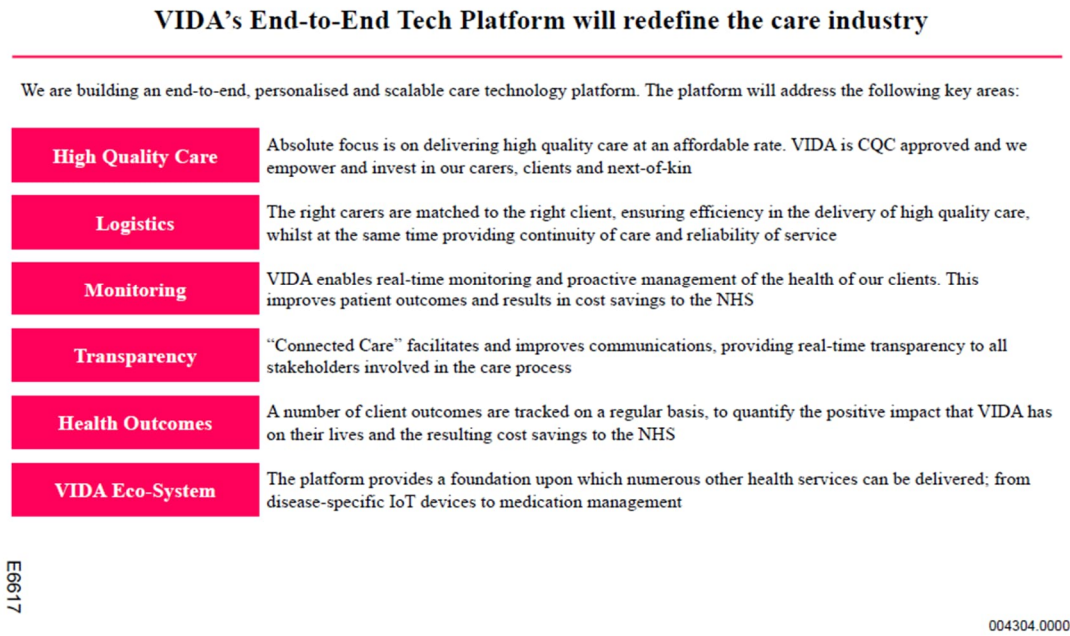
    (b) Document 2 ('Investor Introduction'): "*Within the care industry the recording of data is still paper based and stored as paper files … At present the industry has many issues with paper based recording of data …*"

    (c) Document 4 ('The Business'): "*Within the Care industry there have been numerous reports of bad practice. This is because within the industry there is*

[33] T4/126/6-11

little to no monitoring of real-time activity, the staff activities for the care as an example. Our research shows the majority of records are paper based and have to be stored and filed with access being slow when needed. A large segment of this application is so that each task or action that is required can be recorded in real time and stored safely. This is an information system that can be viewed and acted upon with alerts and reminders at a real time, real world practice … Due to the way information is stored, together with task to complete, are recorded by paper base and frequently tasked to memory as a result information is not recorded in full or incorrectly. This in turn facilitates a lack of instant information when required whether it be in the day to day task or as often is the case emergency situations."

165. Slide 7 of the Vida deck is entitled '*VIDA's End-to-End Tech Platform will redefine the care industry*'. It elaborates on the benefits and functionality of Vida:



VIDA's End-to-End Tech Platform will redefine the care industry

We are building an end-to-end, personalised and scalable care technology platform. The platform will address the following key areas:

High Quality Care	Absolute focus is on delivering high quality care at an affordable rate. VIDA is CQC approved and we empower and invest in our carers, clients and next-of-kin
Logistics	The right carers are matched to the right client, ensuring efficiency in the delivery of high quality care, whilst at the same time providing continuity of care and reliability of service
Monitoring	VIDA enables real-time monitoring and proactive management of the health of our clients. This improves patient outcomes and results in cost savings to the NHS
Transparency	"Connected Care" facilitates and improves communications, providing real-time transparency to all stakeholders involved in the care process
Health Outcomes	A number of client outcomes are tracked on a regular basis, to quantify the positive impact that VIDA has on their lives and the resulting cost savings to the NHS
VIDA Eco-System	The platform provides a foundation upon which numerous other health services can be delivered; from disease-specific IoT devices to medication management

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166. The reference to building an '*end-to-end*' care technology platform for carers, clients and next-of-kin mirrors precisely the TVC concept; indeed, that precise phrase was used in the TVC presentation. Similarly, the references to ensuring that '*[t]he right carers are matched to the right client*', '*real-time monitoring*', '*real-time transparency*' and tracking '*a number of client outcomes*' all mirror TVC's Real-Time Monitoring, Tracking and Alerts and Care Matching USPs as described in the TVC Documents. I

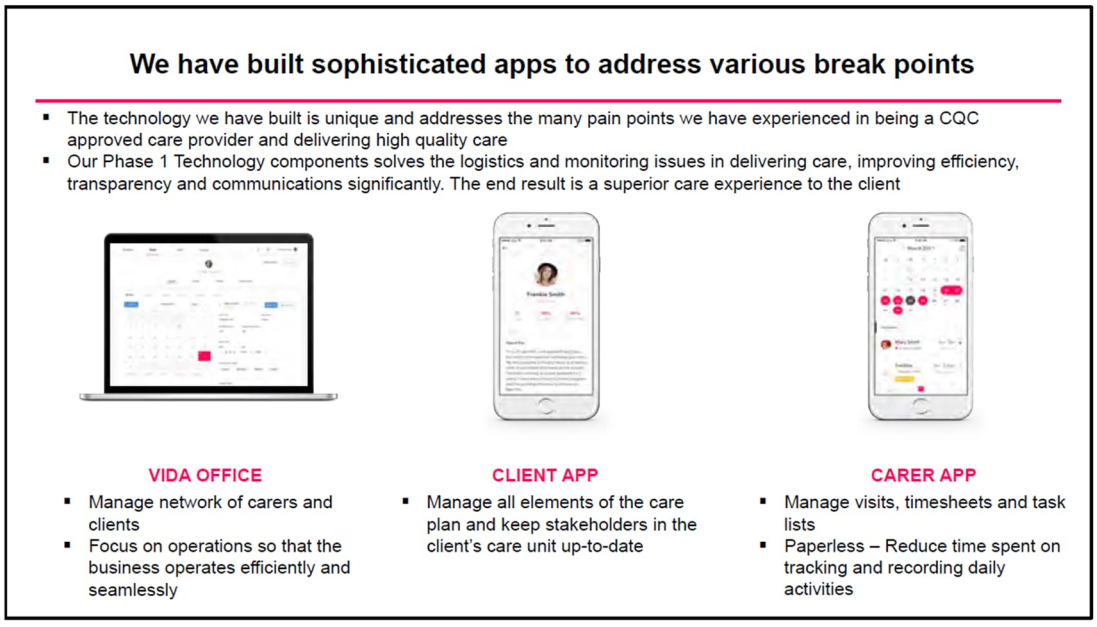
consider that these are all concepts and ideas taken by Mr. Perks and Mr. Jabir from the TVC presentation at the First and Second Meetings.

167. Significantly, on 13 October 2017 Ms Wood gave a presentation of Vida at a Laing Buisson healthcare event. The deck used for the presentation ("**the Laing Buisson deck**") appears to be a shortened version of the most recent Vida investment deck in use at the time.

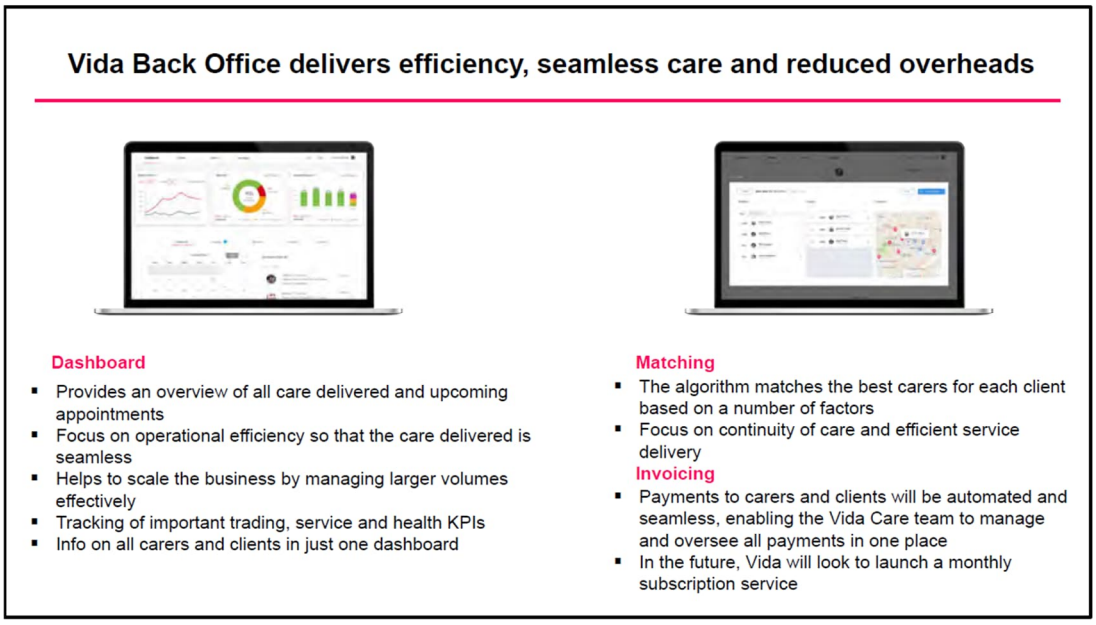
168. In the Laing Buisson deck, Vida was promoting its next-of-kin app functionality at a £10 per user per month subscription fee, and emphasising that this "*would enable the informal carer to manage and care for the patient at home*". This was, as I have said, plainly derived from TVC's Relative Portal and Care Plan Tracker concepts.

169. More widely, the use of TVC's USPs continues to be seen in the features and functionality presented by Ms Wood in the Laing Buisson deck.

170. In particular, slide 12 of the Laing Buisson deck, which refers to the technology as "*unique*", sets out mock-ups of the Vida Office, Client and Carer apps. Slide 13 then includes further mock-ups of the Vida Back Office, showcasing several features including a dashboard.

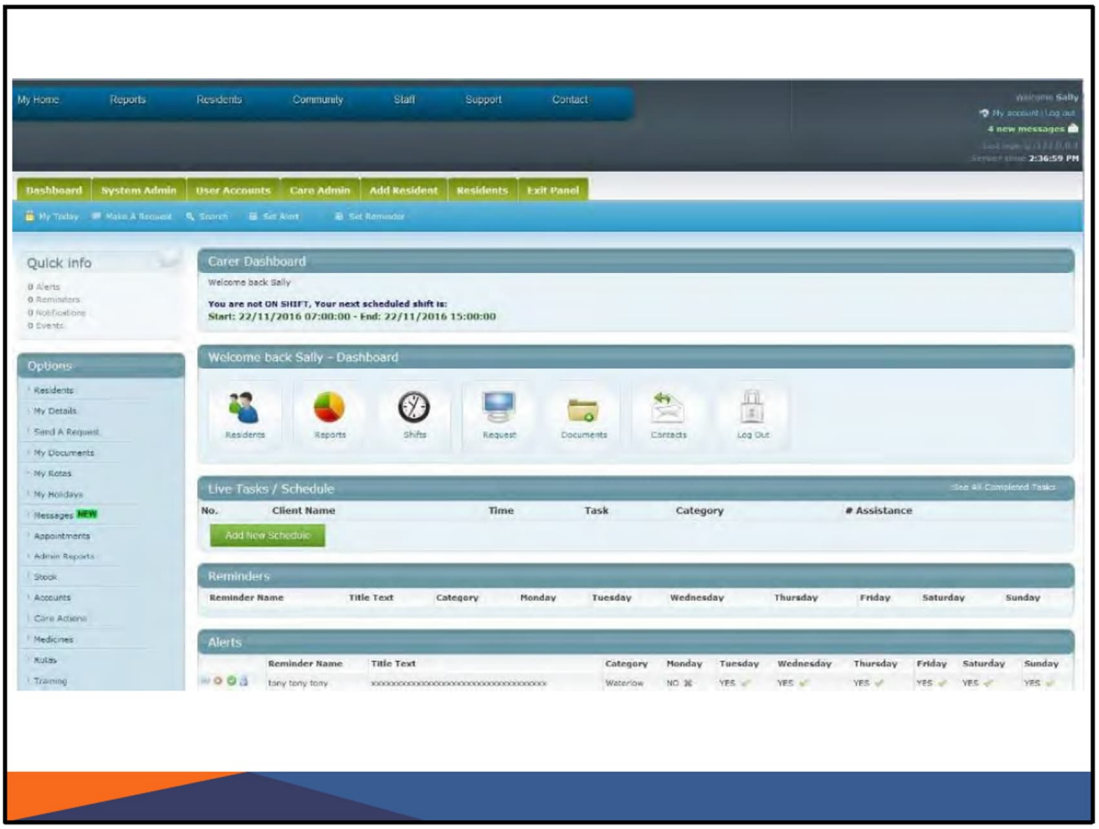


Slide 12



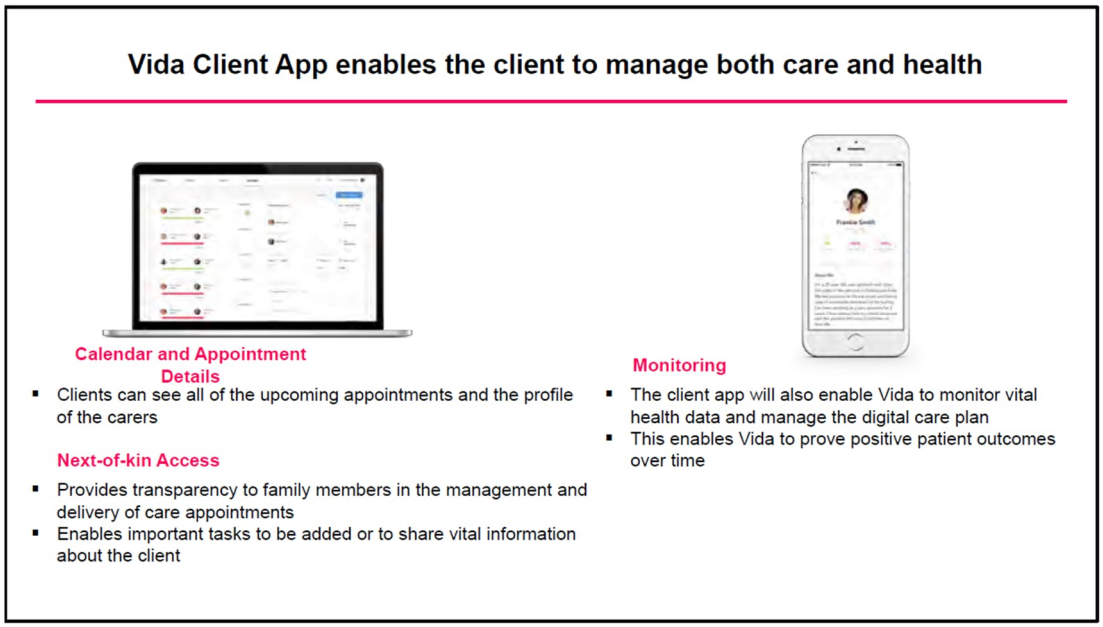
Slide 13

171. This is to be compared to a screenshot of the TVC Dashboard as included in Document 3.2, reproduced below:



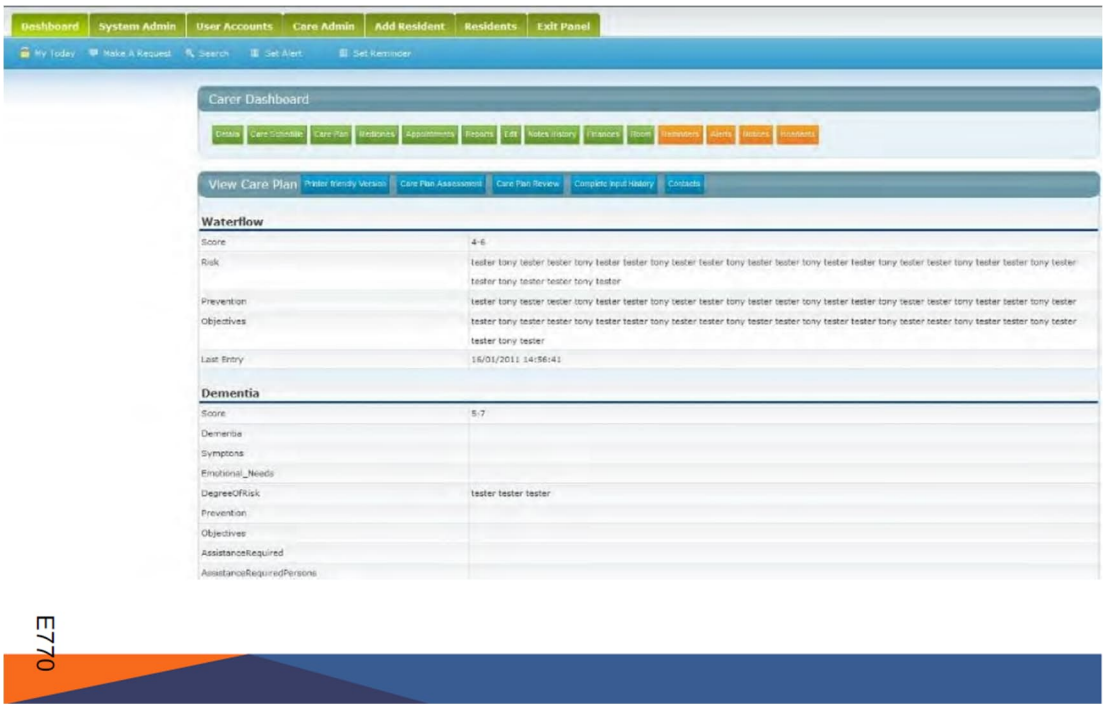
172. Not only does the Vida Office app adopt the same TVC 'dashboard' concept which was demonstrated to the court by Mr. Gifford[34], but it also gives the same overview of care data, client information and tasks as on the TVC dashboard. Moreover, the references in slide 13 under the subheading "Dashboard" and "Matching", as well as the reference to a monthly subscription service, all mirror key elements of TVC's Confidential Information.

173. Turning next to the Client app, a mock-up of the app is set out in slide 12 above. It describes the app's purpose as being to '*manage all elements of care plan and keep stakeholders in client's care unit up to date*'. Its features are further elaborated upon in slide 16 of the Laing Buisson deck:

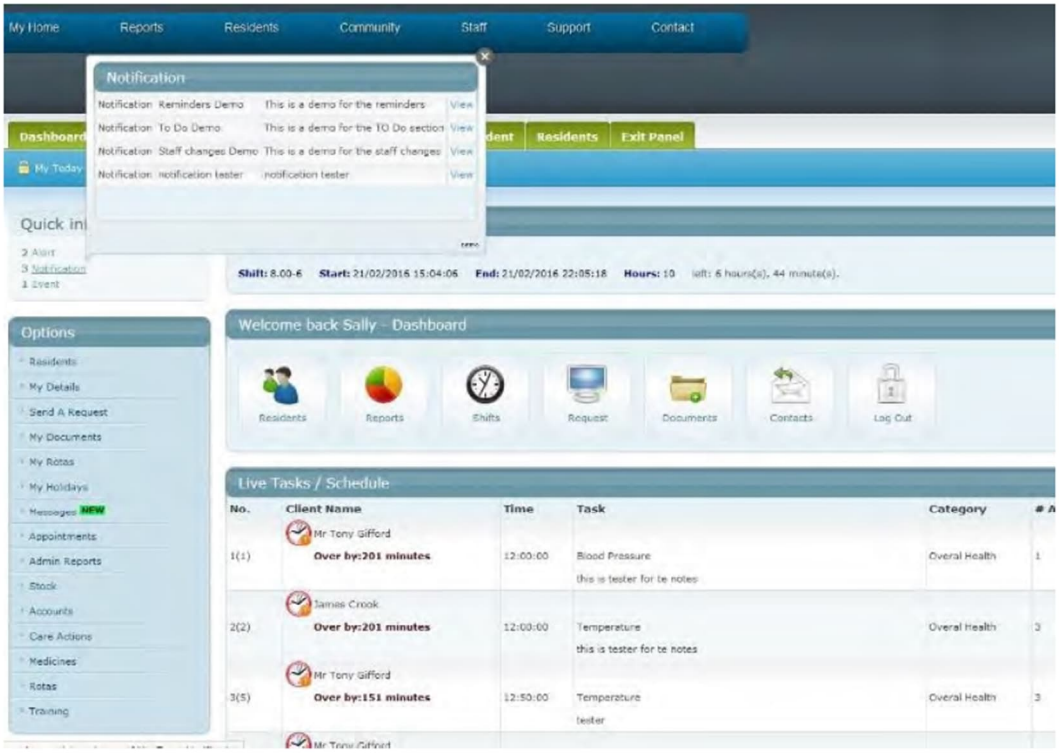


174. This again mirrors key features of the TVC Confidential Information. Much of this is based upon TVC's 'Careplan' view (being a component of the Relative Portal) from the TVC dashboard which is contained within Document 3.2 and which Mr. Gifford demonstrated in his presentation to the court:

[34] It should be noted that, whilst it is attempted to do so, it is difficult to replicate in this judgment, by reference to poor quality copy slides, the live presentation which Mr. Gifford gave to the court of the TVC system as described in this section of the judgment.

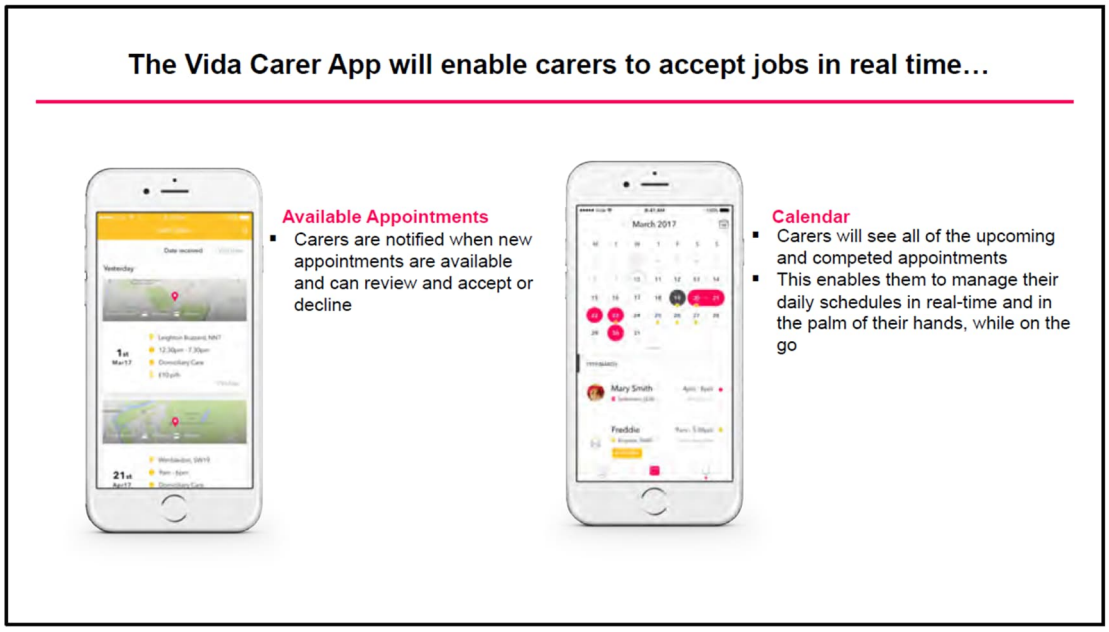


175. Similarly, the references under the subheading '*Monitoring*' (on slide 16 of the Laing Buisson deck) to the Client app being used to '*monitor vital health data and manage the digital care plan*' are, in my judgment, also derived from another TVC dashboard screenshot in Document 3.2, as demonstrated by Mr. Gifford in his presentation to the court. In that screenshot, TVC's functionality for monitoring patients' vital signs is displayed:

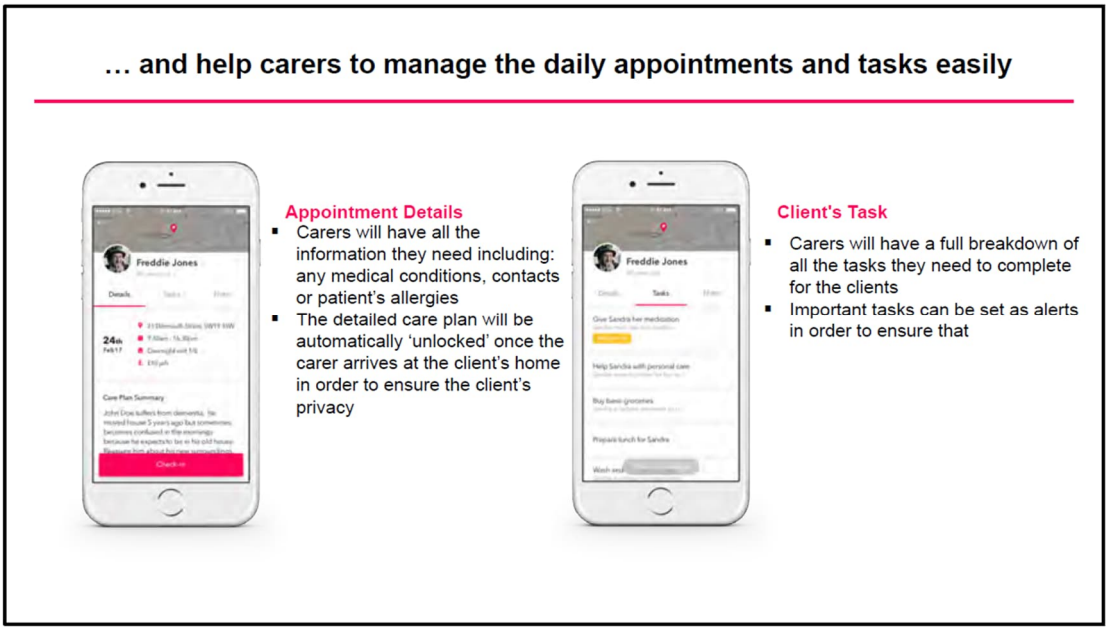


176. Finally, there is the Carer app. A mock-up is also included on slide 12 of the Laing Buisson presentation, which describes the function of the Carer app being to '*manage visits, timesheets and task lists*' and that it is also '*paperless*'. Again, these mirror the functions provided by TVC and the mock-up's elements are based upon the 'Live Tasks/Schedule' function of the TVC Dashboard, also included as a screenshot in Document 3.2, and as demonstrated by Mr. Gifford in his presentation to the court.

177. The functionality of the Carer app is elaborated upon further in slides 14 and 15 of the Laing Buisson deck:



Slide 14



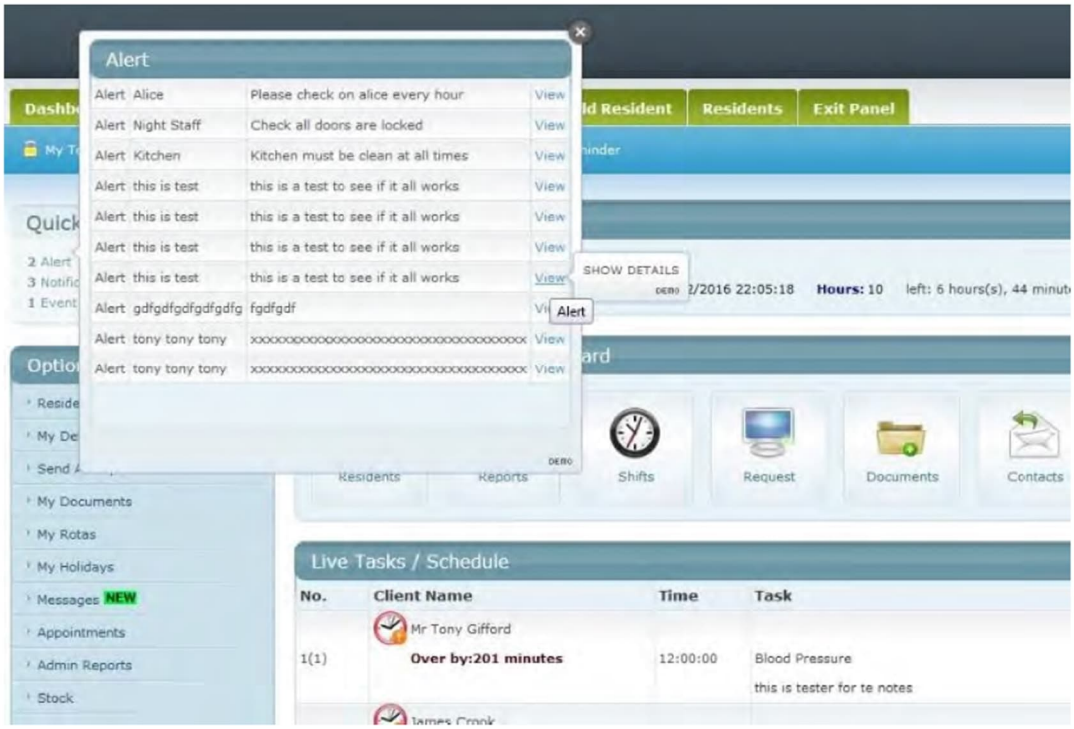
Slide 15

178. The 'Calendar' functionality on slide 14 enabling carers to see all their upcoming and completed appointments reflects the TVC dashboard, as demonstrated by Mr. Gifford in his presentation to the court. Equally, the references in slide 15:

(a) under the subheading '*Appointment Details*' to giving carers a full breakdown of the patient's information (including "*any medical conditions, contacts or patient's allergies*") and

(b) under the subheading '*Client's Task*' to a '*full breakdown of all the tasks [carers] need to complete for the clients*' and that important tasks '*can be set as alerts*',

clearly mirror the functionality of the TVC dashboard set out in the screenshot above, and also the alert functionality below (which was demonstrated by Mr. Gifford in his presentation to the court):



179. Indeed, both Mr. Perks and Ms Wood accepted in their oral evidence that the carer's tasks in slide 15 of the Laing Buisson deck evidences the same task-based time scheduling approach as TVC, including the feature of alerts being set for important tasks, with the objective of specifying a time for the carrying out of those tasks[35].

180. In response to these striking similarities, Ms Wood suggested that the concept of a dashboard is ubiquitous in any form of app, and that there are only so many ways of displaying information[36]. Whilst this may be so insofar as visual similarity is concerned, what is important and striking are the similarities of the technical features and functionalities of Vida and TVC. Those are most certainly not ubiquitous.

181. By November 2017 cracks had started to appear in Mr. Perks and Mr. Jabir's relationship, which appear to have been triggered by a disagreement over Mr. Jabir unilaterally deciding to move Vida out of the Hambro Perks offices, without consulting either Mr. Perks or Ms Wood. An email chain dated 5 November 2017 between Mr. Perks and Ms Wood indicates Mr. Perks' dissatisfaction with Mr. Jabir, with his noting

[35] Perks [T/4/134/11-15]; Wood [T/5/141].

[36] T/5/137

that potential investors were not keen on investing in Vida as long as Mr. Jabir remained as CEO.

182. Around the time of this exchange, Mr. Perks contacted Ms Kate Burns (a venture partner of Hambro Perks and a former technology executive at Google Europe) and asked her to speak to Ms Wood to '*assess the situation*' within Vida. This meeting took place on 7 November 2016 on which date Ms Burns emailed several board members of Hambro Perks (including Mr. Perks and Mr. Wyke) in order to set out her findings. In particular, she found as follows:

> "*Hi Guys*
>
> *Sat with Dev for a few hours this morning. I asked her to run through the Investor deck and their numbers - please find below my findings.*
>
> ***Product and Tech***
>
> *(…)*
>
> *Carers / industry experts have not been involved in the scoping of the tech solution - this is alarming - they are the clients/users*
>
> *(…)*
>
> ***Vision and Strategy***
>
> *Muddled - Vida present themselves as a Tech company first. However, Tech has not been built! In my view, they are a care service provider at the moment - with hopes to be a tech company (not a bad one at that - but get your focus right)*
>
> *Claim to be a Global provider - BS!!*
>
> *Lack of human element in their story (this is about caring for v sick people)*
>
> *Vida cannot include the franchise model as part of their strategy until it has been fully tested by the core business beforehand. [Jabir] has this roll out for franchising happening mid 2018 - BS*
>
> ***Team***
>
> *Massive team attrition*
>
> *(…)*

> *All the above state [Jabir] was a major factor in their leaving: Irrational and aggressive behaviour*
>
> *[Jabir] insists on hiring interns for carer recruitment - but Dev feels this greatly compromises on the quality of Vida carers. [Jabir] will not be told that this is the wrong way to go (isn't the carer side of the business Devika's responsibility?)*
>
> ***Findings***
>
> *[Jabir] has not let Claudio fully run with his ideas on product strategy - to the detriment of the roadmap. Crazy - as [Jabir] has no experience building tech or a consumer product.*
>
> *[Jabir] has withheld key information and wrestled a majority of business control from Devika. [Jabir] manages Tech, Product, Marketing, Ops and Finance - he has no management experience in this!*
>
> *Dev has little understanding of current business data and future projections. [Jabir]has built all financial models on his own (or with input from Hunt - a junior team member).*
>
> *(…)*
>
> *The investor deck is grossly misleading - there is no solid or well thought out current / long term business strategy*
>
> *(…)*
>
> *Finally, I think Dev is a capable leader; passionate, smart, open and knowledgeable. She ultimately needs a sector experienced co-founder to work alongside her, and support her - but I feel strongly [Jabir] is not that individual."*
>
> (emphasis added)

183. This email is revealing. It shows that Mr. Jabir was the driving force behind Vida at the time, in particular in relation to the development of the software technology, but that he had no experience in *building or managing* the technology side of the business which was to its detriment. This is unsurprising if, as I find as a fact, he had simply lifted the technological ideas from the TVC Confidential Information, which were then worked upon by Hambro Perks' technological team under Mr. De Pace. It is again notable that Ms Burns does not make any reference to Ms Wood's involvement with technological development but instead explicitly associates her with "*the carer side of the business*".

184. This directly contradicts what Ms Wood sets out in paragraphs 57 and 62 of her trial witness statement (and indeed in her witness statement of 13 December 2018), in which she asserts that Mr. Jabir was largely uninvolved with Vida's technological development, and in fact she was the one who mainly sat with the technology team. She gave evidence that WeCare (and subsequently Vida) was her brainchild and that the idea was inspired by (a) her own childhood experience caring for her ill grandmother, combined with (b) her Master's thesis on the use of home tele-monitoring devices in elderly patients with chronic obstructive pulmonary disease.

185. That evidence is, I find, designed to set up a false argument that Vida was not based upon TVC's software/technological ideas because Ms Wood did not know about them, having joined Vida after the First and Second Meetings. I accordingly reject her evidence in this respect.

186. As the documentary evidence shows, WeCare's existence as a concept (utilising TVC's Confidential Information) predated her arrival at Hambro Perks. I find that her role in relation to the development of WeCare/Vida, although important, was not a central one; and it was Mr. Perks and Mr. Jabir[37] who were the key figures in pushing for its development up until the latter's departure in 2018. Ms Wood's role primarily centred around the 'care' aspect, as opposed to involvement in the technological development of WeCare/Vida, which is where the value in the business was considered to lie (through the licensing of the software technology).

187. Shortly after receiving Ms Burns' feedback in her email of 7 November 2016, Mr. Perks forwarded it on to Ms Wood but not on to Mr. Jabir. By this stage it is clear that Mr. Perks and Ms Wood were liaising with a view to ousting Mr. Jabir from DHV, and the in-fighting at Vida was well underway.

188. On 16 November 2017 Mr. Perks and Ms Wood sought to convene a DHV board meeting at short notice. One of the items on the agenda was "*3. Position of Naushard Jabir*". This prompted several irate emails from Mr. Jabir to Mr. Perks and Ms Wood, blind copying in all the shareholders of Vida, in which he expressed his displeasure at

[37] To whom Ms Wood reported, as is apparent from the organisational structure of Vida which was contemporaneously documented by DHV.

what he perceived to be an imminent attempt to remove him from the management of Vida. In those emails, he once again described Vida as a "*business concept I came up with*" and notes he has "*seen first hand over the last few years how Dominic Perks has orchestrated similar situations in other technology starts-ups*". Whilst I accept that Mr. Jabir developed Vida and not Ms Wood, I find that he did so by utilising TVC's Confidential Information upon Mr. Perks' instruction from around February/March 2016.

189. Mr. Jabir was subsequently suspended and ultimately resigned as a director of DHV and DHVT on 20 December 2017, although he remained DHV's largest shareholder.

190. On 3 May 2018, Mr. Perks resigned from the boards of DHV and DHVT.

191. In the wake of this acrimony and turbulence within the defendant companies, sometime in April 2019, Mr. De Pace departed Vida and the Vida software ceased to be utilised.

192. Shortly thereafter, on 20 May 2019 Ms Wood also left Vida in acrimonious circumstances.

193. DHV and DHVT were still active as at the date these proceedings were issued on 25 March 2022, but DHV subsequently engaged in a series of disposals. According to their CQC records in 2021, Vida's CQC licence applied to three distinct entities: Vida Greenwich, Vida Basingstoke and Vida Torquay. Each of these entities was archived and removed from the Vida CQC licence as it was sold/closed with Vida Basingstoke being archived on 22 June 2022, Vida Greenwich being archived on 5 January 2023 and Vida Torquay being archived on 11 June 2024 shortly before DHV was placed into administration on 16 July 2024. DHVT Ltd was placed into creditors voluntary liquidation on 14 April 2024.

194. These events occurred shortly after DHV and DHVT had failed to comply with their extended disclosure obligations in this action and after default judgment was entered against both Defendants (by reason of their failure to comply with unless orders concerning their disclosure).

(h) The failure to preserve documents and their likely destruction: The Perksdom Email account and the Additional Accounts

195. In early 2018, Mr. Gifford was alerted to the fact that Hambro Perks had developed Vida, which was being advertised on its website. He instructed solicitors, who sent a letter before action to the First and Second Defendants on 28 March 2018, threatening to bring proceedings for breach of confidence in respect of Vida's use of the 11 Documents. The letter was addressed to "*a director, Hambro Perks Ltd*" and was sent by email to Mr. Perks at his Hambro Perks email address, as well as Hambro Perks' registered office and email address. Included as an appendix to the letter were template undertakings, one of which Mr. Gifford's solicitors required to be signed by Mr. Perks personally in order to avoid proceedings being brought against him. Mr. Perks remained a director of DHV/DHVT at this time.

196. Mr. Perks accepted in cross-examination that he became aware of the potential for this claim at this time.

197. The Defendants' solicitors (who continue to act for them in the present proceedings) returned a holding response on 11 April 2018, confirming that they had been instructed by the First, Second and Fourth Defendants and that a substantive response would follow shortly.

198. The formal response to the letter before action is dated 18 April 2018. In it, the Defendants' solicitors note that they were also responding on behalf of Ms Wood, who had also instructed them; but not Mr. Jabir. The claim was denied, and it was suggested that "*the reality is that the business which later became Vida Care was already in development before any of our clients or their personnel ever met your client*", and suggesting the timing of DHV's incorporation was "*entirely coincidental*". That, as I have already found, was untrue.

199. During cross-examination, Mr. Perks accepted that by 18 April 2018 he knew that he was under a personal duty to preserve relevant documents[38]. I return to the significance of this point below.

[38] T/3/177/13-21

200. On 11 May 2018 Mr. Gifford's solicitors wrote directly to Mr. Jabir, who had also received a copy of the letter before action and responded via email on 14 May 2018. Mr. Jabir subsequently instructed his own solicitors, who sent a substantive response on 1 June 2018. In that letter, Mr. Jabir asserted that he had "*originally conceived of the idea [of Vida] in 2015*". That was untrue.

201. By 14 November 2018, Mr. Gifford had instructed a new law firm to act for him, who wrote on that date to the solicitors for the First, Second and Fourth Defendants and Ms Wood. In that letter, various targeted questions were raised (including "*Who and when your client(s) came up with the concept of Vida Care*") and documents evidencing the alleged independent derivation of Vida were requested. The final paragraph of the letter explicitly requested confirmation that the named parties had been briefed about and understood their disclosure obligations pursuant to CPR Part 31, and that "*all and any documents relating to this matter will be preserved*."

202. On 13 December 2018, the Defendants' solicitors responded in a formal letter, to which a witness statement from Ms Wood was attached (also of the same date). The witness statement was said to support the facts as set out in the letter. The letter itself referred back to the previous correspondence on 18 April 2018, and stated that "*it is clear from both our 18 April letter and the remainder of this letter that the Vida concept was developed completely independently of anything said or provided by your client*".

203. It was further stated that "*Vida was fundamentally the brainchild of Devika Wood. Ms Wood has significant experience of working in the healthcare sector and first considered the concept of using digital technology to assist with the provision of care in the home since 2013. She developed the concept of Vida completely independently of any of the information or documentation provided by your client…Whilst Mr. Jabir was present at the Second Meeting and he is not a party we represent, our instructions are that TVC was not a concept that he believed in. Mr. Jabir went on to assist with the development of the Vida concept but, as you will see from Ms Wood's statement, Mr. Jabir was against using digital technology to help provide care and wanted Vida to pursue a basic app to help carers maintain their notes and check in and check out of their appointments (this would not have required CQC registration)*".

204. It can be seen from the analysis of the contemporaneous documentation in this judgment that this was untrue in a number of fundamental respects, in that (i) Vida was not the brainchild of Ms Wood, and it was Mr. Jabir who drove it forward after receipt of TVC's Confidential Information; (ii) the Vida concept was not developed by Ms Wood and it was not developed completely independently of any of the information or documentation provided by Mr. Gifford; (iii) Mr. Jabir did indeed believe in TVC as a concept – as is recorded in the notes of the Second Meeting, he and Mr. Gargum agreed there was "*a definite need for this type of application in the market*", and that they were looking forward to working together with Messrs Gifford and Walker, with Mr. Jabir having stated "*how good he thought [TVC] was*"; and (iv) Mr. Jabir was most certainly not against using digital technology to help provide care and he wanted Vida to pursue much more than "a basic app."

205. Turning to her 13 December 2018 witness statement, Ms Wood stated that "*I came up with, on my own, the concept of Vida and the use of technology to help with providing care in the home*"; "*…I initially spent a lot of time doing background research into the care at home industry and how my idea would work*"; and "*We then started writing the software to be used to make my idea work*". She also similarly diminishes Mr. Jabir's role and interest in the 'idea' by stating that he was merely "*tasked with looking into the financial viability of my idea*", and credits herself with hiring Mr. De Pace. Eliminating the central role of Mr. Jabir in the technological development of Vida, she states "*I employed Claudio De Pace in August 2016 to help develop this software and he started work on developing it immediately. The software is entirely the work of him and his team*."

206. As is apparent from the contemporaneous documentary evidence discussed above, none of these statements of Ms Wood are true. Regrettably, she must have known this to be the case at the time of the settling of this witness statement.

207. On 5 December 2021, Mr. Gifford, who lacked the funds to pursue his claim, assigned his rights and interests in TVC to the Claimant.

208. On 25 March 2022, the claim form was issued. The Claimant's solicitors served the Particulars of Claim on 21 July 2022, and the Defence was served on 3 October 2022. The Claimants filed and served their Reply on 5 December 2022. On 3 May 2023, the

Defendants filed a Request for Further Information, which the Claimants responded to on 26 May 2023.

209. On 21 June 2023, the Defendants provided an initial proposed Disclosure Review Document. They made no reference at all to the existence of the perksdom.com email accounts (in particular of Mr. Perks and Mr. Jabir), as opposed to the hambroperks.com email accounts. Thereafter a case management hearing took place before Dias J on 6 July 2023, where extended disclosure was ordered in respect of section 2 of the DRD which was subsequently agreed between the Claimant and First and Fourth Defendants. This required Mr. Perks to search his laptop and mobile device for relevant electronic documents (including emails) between the period 1 June 2015 to 30 November 2019. A list of search parameters was provided. The DRD document further stated that Mr. Perks' personal email account (which had not yet been named) did not need to be searched, unless a train of inquiry arose from Extended Disclosure.

210. On 16 February 2024, Hambro Perks provided its disclosure. This was followed by Mr. Perks providing his on 6 March 2024. As a consequence of the disclosure of *Hambro Perks*' emails – but not as a result of any disclosure of Mr. Perks – the Claimant identified the existence of the perksdom.com email domain, which had been incidentally disclosed as part of the correspondence to or from emails which had been disclosed by Hambro Perks. Several of these emails included content relating to the development of WeCare and Vida, including emails that Mr. Jabir had forwarded from his Hambro Perks email to his perksdom.com email.

211. On 12 April 2024, the Second and Third Defendants' statements of case were struck out and judgment was entered against them.

212. On 29 May 2024, the Claimant's solicitors wrote to the Defendants' solicitors requesting that Mr. Perks carry out searches of his email domain address @perksdom.com, on the basis that the correspondence contained therein fell within the scope of the DRD and was accordingly disclosable.

213. On 5 July 2024, the Defendants' solicitors responded to the Claimant's solicitors' letter, refusing to carry out a further search on the basis that it was not necessary, reasonable or proportionate in the circumstances. The reasons advanced for this were:

(a) Mr. Perks confirmed that he had an email account with the domain address @perksdom.com, but that was, it was said, his personal Gmail account which "*he does not use for work related matters*".

(b) The Claimant's statement that "*[Mr. Perks'] email address was utilised for correspondence relating to the development of WeCare and Vida is therefore not accepted, it was not*".

(c) Mr. Perks did not recall whether Mr. Jabir had an email address at that domain, but "*in any event, it is not a domain that to the best of our client's information and belief anyone has access to anymore.*" The letter further stated that none of the Defendants had the ability to access or search any such perksdom.com mailboxes even if they still existed.

214. On 23 October 2024, the Claimant applied to this Court seeking to compel the First and Fourth Defendants to disclose to its solicitors a complete electronic copy of the following email accounts:

(a) dominic@perksdom.com (Mr. Perks)
(b) naushard@perksdom.com (Mr. Jabir)
(c) isabel@perksdom.com (Ms Reynard)
(d) kate@perksdom.com (Mrs Kate Perks)
(e) vincent@perksdom.com (Mr. Menot)

I shall refer to Mr. Perks' email account at (a) as the **Perksdom Email account**, and emails (b)-(e) above as the **Additional Accounts**.

215. The application was heard by Charles Hollander KC (sitting as a Deputy High Court Judge) on 20 December 2024. The First and Fourth Defendants were ordered to file a witness statement by 10 January 2025 explaining *inter alia* what steps had been taken to retrieve data from the Additional Accounts, and to explain why (if at all) any documents obtained from the Perksdom Email which had been searched and reviewed were alleged to be irrelevant or non-disclosable. This was to be accompanied by a signed letter from the Defendants' e-disclosure provider, Lighthouse.

216. Consequently, on 10 January 2025, Mr. Perks provided his second witness statement in these proceedings, with a letter dated 9 January 2025 from Lighthouse attached ("**the Lighthouse letter**"). The contents of Mr. Perks' witness statement largely echo what was stated in the letter dated 5 July 2024. In it, Mr. Perks stated as follows:

(a) He stated that the Perksdom Email account had been used "*at the early stages of Salica's business (before it became known as Hambro Perks)*".

(b) The dominic@perksdom.com email address was a Gmail address that he used (and continues to use) as his *personal* email address.

(c) On 14 November 2024, he provided Lighthouse with his login credentials to access the dominic@perksdom.com email account.

(d) Lighthouse subsequently obtained 44,389 documents from the mailbox, against which the DRD search parameters were applied. 90 documents were flagged and reviewed by the Defendants' solicitors. None of these documents were deemed to be disclosable, and the Claimant was notified of this on 18 December 2024.

(e) He was unable to explain why emails contained in his disclosure in March 2024 which had copied into them the Perksdom Email account were not found following Lighthouse's search of that mailbox.

(f) However, he believed that "*since [he] became aware of the potential for this claim*", he had not deleted or removed any emails or documents from the Perksdom Email account which were relevant to the proceedings.

(g) As he had used the Perksdom Email account prior to learning about the potential for a claim, he would however have deleted emails routinely '*outside of the relevant date ranges in respect of which disclosure has been given*' and '*in the ordinary course of business*'.

(h) On 13 December 2024, he had provided Lighthouse with his login details again, so that they could attempt to search for and access the Additional Accounts. They were unsuccessful in doing so.

217. The Lighthouse letter elaborates further on the 13 December 2024 attempt to access the Additional Accounts:

> *"6. On 13 December 2024, Mr. Perks accessed the Perksdom Email Account via Gmail using the updated Perksdom Login while sharing his screen with us through Microsoft Teams. We requested that Mr. Perks perform the following tasks at our direction:*
>
> *6.1 open the Perksdom Email Account settings; and*
>
> *6.2 attempt to use the Gmail functionality entitled "check email from other accounts" (POP3) for each of the Additional Accounts.*
>
> *7. These attempts to access the Additional Accounts were not successful, Gmail returned an error message stating:*
>
> *Authentication error. Mail from this account has not been retrieved since 11/07/2018."*

218. If, as stated, mail was retrieved from the Additional Accounts on 11 July 2018, those accounts could have been preserved after April 2018. But they were not, despite the fact that Mr. Perks must have known that they existed.

219. The First and Fourth Defendants have not disclosed any further emails from the Perksdom Email account, other than those emails which have been incidentally disclosed by Hambro Perks as part of its Extended Disclosure. It is the Claimant's case that based on an analysis of the emails which have been disclosed, there are likely to have been other relevant Perksdom Email account documents which have not been disclosed.

220. There are several examples, aside from those already mentioned in the narrative above, in the disclosed documentary evidence of the Perksdom Email account and the Additional Accounts having been used between 2016 and 2018 for work-related WeCare/Vida purposes which were not disclosed by Mr. Perks (and accordingly which, in the case of Mr. Perks' Perksdom emails, were deleted from his Perksdom Email account within the relevant date ranges in respect of which disclosure has been given). These include:

(i) An email from Ms Davis to Mr. Perks' Perksdom Email account and Ms Reynard dated 24 February 2016 attaching a copy of Ms Wood's contract of employment.

(ii) Mr. Perks forwarding, to Mr. Jabir's Hambro Perks email, an email on 20 April 2016 sent by a Mr. Al Taylor to the Perksdom Email account which specifically refers to WeCare, which then triggered an email thread between Mr. Jabir, Mr. Taylor and Mr. Perks (with Mr. Perks again using the Perksdom Email account to respond).

(iii) On 23 May 2016 Mr. Perks created a calendar event from his Perksdom Email account entitled '*Everest Investments Management / WeCare – Conference Call*' to take place on 27 May 2016. Invites were sent to Mr. Jabir and Ms Wood on their Hambro Perks emails, and also to two external consultants. This was to pitch WeCare to external investors.

(iv) On 25 May 2015 Mr. Jabir emailed his Hambro Perks email from his perksdom.com email address, forwarding two attached documents.

(v) On 22/23 May 2016 Mr. Perks had two email exchanges with Lara Crowdey and others via his Perksdom Email account about transferring Devika Wood from Hambro Perks to DHV and moving her onto DHV's payroll.

(vi) On 27 May 2016 Mr. Jabir emailed a personal contact from his perksdom.com email address, attaching a CareAngels one-page profile and seeking their advice and mentorship. The perksdom.com email is then forwarded on to his Hambro Perks email around one hour later.

(vii) On 21 June 2016 Ms Reynard created a calendar event titled 'Lara / Naushard / Dom', with the Perksdom Email account listed as the organiser. Invites were sent out to Mr. Naushard and Ms Crowdey's Hambro Perks emails. The event was later cancelled.

(viii) On 19 July 2016 Mr. Perks amended a meeting scheduled on his Perksdom Email account calendar with Mr. Jabir and Ms Wood. This prompted an updated invite to be circulated to the latter two on their Hambro Perks email accounts.

(ix) On 27 July 2016 Mr. Jabir forwarded a document to his Hambro Perks email account from his perksdom.com email account.

(x) On 8 August 2016 Mr. Jabir emailed his Hambro Perks email account from his perksdom.com email account, setting out a to-do list in relation to Vida.

(xi) On 20 September 2016 Mr. Jabir emailed his Hambro Perks email account from his perksdom.com email account, sending over a draft of the proposed website copy for Vida's 'About Us' page.

(xii) On 30 March 2017 a prospective investor in Vida emailed Mr. Vincent Menot's Hambro Perks and perksdom.com email accounts setting out a series of detailed questions about the business. Mr. Menot forwarded on this email to Mr. Jabir and Ms Wood – all three using their Hambro Perks email accounts.

(xiii) On 31 January 2018 Mr. Perks and Ms Wood exchanged emails discussing an additional investment into Vida. Midway through the email thread, Mr. Perks transitions from using the Perksdom Email account to his Hambro Perks email account.

(xiv) On 25 May 2018 (*being after the Defendants' solicitors had been instructed in respect of Mr. Gifford's first letter before claim*), a Mr. Rizwan Kamran sent Mr. Perks an email entitled '*DIGITAL HOME VISITS TECHNOLOGIES LIMITED'*. He sent it to the Perksdom Email account. The email contained references to the Third Defendant's finalised financial statements and tax return forms. This email must have been deleted <u>after</u> Mr. Perks knew that he had a duty to preserve such emails (as he rightly accepted in cross-examination) – see further below.

221. In paragraphs 11-16 of his second witness statement dated 10 January 2025, Mr. Perks stated as follows:

> "*11. On 14 November 2024 I provided Lighthouse (an e-disclosure company) with the credentials to access the dominic@perksdom.com mailbox. Later that day, I confirmed with Joshua Potter of Lighthouse the two-factor authentication information over the phone so Lighthouse could gain access.*
>
> *12. I understand from my solicitors that Lighthouse collected documents from the mailbox (which I am told totalled 44,389 documents).*
>
> *13. I also understand that Lighthouse applied the parameters agreed in the DRD against that mailbox and that only 90 documents were responsive to the key words that the First and Fourth Defendants agreed to use as per s.2 of the DRD.*
>
> *14. Foot Anstey then reviewed those 90 documents and determined that no documents were disclosable. This was confirmed to the Claimant's solicitors on 18 December 2024.*
>
> *15. The Claimant has asked why emails contained in the March 2024 Disclosure, which copied in the dominic@perksdom.com email address, were not found following the search of the items in the dominic@perksdom.com inbox. I do not know the answer to this. All the emails that were available at the time Lighthouse searched the inbox were collected by Lighthouse.*
>
> *16. What I can say though is that, since I became aware of the potential for this claim, I believe that I have not deleted or removed any emails or documents from the dominic@perksdom.com mailbox that are relevant to the issues in dispute between the parties. As I continued to use the email address prior to learning about the potential for a claim, I would have deleted emails routinely (outside of the relevant date ranges in respect of which disclosure has been given) and in the ordinary course of business.*"
>
> (emphasis added)

222. At the beginning of his oral evidence, Mr. Perks was questioned by Mr. Sims KC at some length on the instructions he had provided to his solicitors in respect of their letter dated 5 July 2024 (at para. 213 above), and these paragraphs of his second witness statement in these proceedings.

223. Mr. Perks originally sought to maintain the position he had adopted in his second witness statement, namely that (a) the Perksdom Email account had only been used by select individuals during the *early stages/infancy* of Hambro Perks' business, before it

was branded in 2015, after which it was not used,[39] and accordingly the emails on it were not relevant to this case[40]; and (b) the Perksdom Email account was his *personal* Gmail account which was not used for work-related matters.

224. As for (a), the contemporaneous documents referred to in para. 220 above show that to be demonstrably untrue. We know from Hambro Perks' disclosure that Mr. Jabir was using his email account on the perksdom.com domain in 2016. The Perksdom email domain also continued to be actively used by (at the very least) Mr. Perks and Mr. Jabir for work-related purposes up until (at the least) 28 May 2018.

225. As for (b), that too is demonstrably untrue, as can be seen from the many emails referenced above. Mr. Perks sought to explain away these emails but his position became increasingly untenable:

(i) Mr. Perks was first taken to the email from Ms Davis dated 7 December 2015 discussing Ms Wood's offer letter. He conceded that this was a work-related email but sought to explain it away on the basis that his primary work email was his Hambro Perks email, and Ms Davis had sent it to his Perksdom Email account in error (presumably by typing his name into the 'To' section and clicking the first option which had come up)[41]. This was therefore, he said, "*an email received in error*"; and the same explanation was advanced for Ms Davis' email dated 24 February 2016.

(ii) But Mr. Perks was then taken to the email from Mr. Al Taylor (see para. 220(ii) above), at which point he suggested that Mr. Taylor was a childhood friend who had unsurprisingly emailed him on his personal email[42].

(iii) He was then taken to the email chain which <u>he</u> had started with Lara Crowdey in relation to transferring Ms Wood from Hambro Perks' payroll to WeCare's payroll (see para. 220(v) above). At this point he conceded that he had indeed used the Perksdom Email account for work-related matters, but then suggested

[39] T/3/158/9-22.

[40] T/3/153/22-24.

[41] T/3/161-162.

[42] T/3/163/13-21.

that this was owing to "*the device I was using. It's very easy to send messages on a phone and accidentally send it from the wrong email address.*"[43]. When it was put to him that there were several emails from the Perksdom Email account in this chain, he resorted to calling this "*an outlier*".

(iv) When he was next shown the '*Everest Investments Management / WeCare – Conference Call*' calendar event on his Perksdom Email account (see para. 220(iii) above), he accepted that he had used the Perksdom Email account to set up work commitments. But he then sought to suggest that this was an isolated incident. He also advanced the explanation that this was because a large number of his legacy business contacts were also social ones. It followed, he suggested, that it was unsurprising that some of these contacts would have continued to email him on the Perksdom Email account even as he, like other staff, were "*transition[ing] … away from that domain to a Hambro Perks account*"[44]. However, in response to a question from the Court, he had to concede that this was a new business contact and not a legacy contact.

(v) Despite suggesting that there had been a '*transition period*', Mr. Perks was unable to state when he had stopped receiving work-related emails on the Perksdom Email account. Instead, inconsistently, he conceded that "*I still get emails from people to perksdom.com that blur between social and work.*"[45]

(vi) Mr. Perks was then shown several examples of emails from Mr. Jabir forwarding emails between his Hambro Perks and Perksdom.com Email accounts. He stated that he was not aware of Mr. Jabir's use of the latter email domain, and that he did not know how he had used the Perksdom.com Email account address after he had obtained his Hambro Perks email.[46]

(vii) When shown the email in May 2018 from Mr. Kamran (see paragraph 220(xiv) above), Mr. Perks suggested that it was unsurprising that he received this email

[43] T/3/164/14-24.

[44] T/3/167-168.

[45] T/3/168-169.

[46] T/3/169/19-25.

at his Perksdom Email address as he enjoyed a '*legacy relationship*' with Mr. Kamran[47].

(viii) At this point, having been taken through a substantial number of emails, Mr. Perks was forced to concede that the Perksdom.com Email account had indeed been used by him throughout the material period for work-related purposes. He nevertheless sought to downplay its materiality:

> *"[I]n the context of the volume of emails and correspondence in relation to [WeCare/Vida], I suspect a tiny fraction [were sent through the perksdom.com domain]. And by accident, not by design."*[48]

226. I do not accept this explanation, and I do not accept Mr. Perks' evidence concerning the use of the Perksdom Email account. He did not disclose the existence of that account and he failed to disclose a single email or document from that account, despite the fact that it is now known that relevant documents were sent and received by him during the date ranges in respect of which disclosure was to be given. I consider that the documentary evidence strongly suggests that he deleted relevant emails from that account after 18 April 2018 to avoid giving disclosure of them.

227. This was put to Mr. Perks in cross-examination by Mr. Sims:

> *"Q. … We know that there have been documents sent and received on the perksdom.com domain, because that cropped up in disclosure by reference to Hambro Perks email addresses in disclosure; correct?*
>
> *A. Yes.*
>
> *Q. But they don't exist, according to your evidence, anymore on the perksdom.com email address, do they?*
>
> *A. As I have said before, I outsourced via our solicitors the task of reviewing all the data on the perksdom domain and email address, and we have disclosed what is there.*
>
> *MR JUSTICE CALVER: So they must have been deleted, mustn't they? Because if that exercise was done by reference to the key words, it would have brought up the documents that the*

[47] T/3/173

[48] T/3/173/9-17

> *claimants had with the perksdom.com domain, and it didn't. So they must have been deleted, mustn't they, otherwise we would have them?*
>
> *A. Yes.*
>
> *MR SIMS: They must have been deleted and they must have been deleted after you knew you had a duty to preserve these documents, mustn't they, Mr. Perks?*
>
> *A. I am unclear on the date.*"

228. However, Mr. Perks conceded that by no later than 18 April 2018 (the date on which the Defendants' solicitors responded to the first letter before claim) he was aware that he had a personal duty to preserve any relevant documents for the purposes of litigation and he denied that he had deleted any relevant emails or documents after that date. Even if it were the case that Mr. Perks deleted relevant documents from his Perksdom Email account *before* 18 April 2018, including those which Hambro Perks retained (which I do not accept), he could not explain how it was the case that the email from Mr. Kamran in May 2018, postdating 18 April 2018 (when Mr. Perks maintains that he ceased to delete relevant emails from his Perksdom Email account) was not found by Lighthouse during its search in December 2024. The obvious answer is that it was deleted by him after he became aware of his duty to preserve relevant documents.

229. In the light of Mr. Perks' inconsistent and unconvincing explanations concerning the absence of any relevant documents on the Perksdom Email account, I find that it is likely that the Kamran email was deleted after 18 April 2018, along with other relevant emails.

230. In closing, Mr. Brown KC sought to explain away the failure to disclose the Kamran email by suggesting for the first time that in fact the Kamran email is not a relevant document, so Mr. Perks did not have to disclose it. I do not accept this explanation. First, this was not the explanation given by Mr. Perks. Second, it *was* rightly disclosed as a relevant document by Hambro Perks. Third, the existence of this document should plainly have been disclosed as it shows Mr. Perks using the Perksdom Email account in May 2018; whereas he says he believed, and he had told the court in his second witness statement, that he had only used this account in the early stages of Hambro Perks' business. He failed to correct that statement. Fourth, Mr. Perks chose not to reveal the

existence of the Perksdom Email account at all in the DRD and instead unreasonably relied upon the fact that the Claimant had not identified this account as an account to be searched (of course it did not: it did not know of it); and he could not identify any steps that he took *personally* (i) to check either of his two email accounts to see whether there were any relevant correspondence or documents dating back to January-February 2016 and (ii) to preserve the emails in the account in accordance with his duty of preservation[49].

231. It follows that the overwhelming likelihood is – and I find as a fact – that Mr. Perks deleted relevant emails on his Perksdom Email account, and that he did so after he knew that litigation was in contemplation and he had a duty to preserve relevant documents. This conclusion is strengthened further in the light of the non-preservation of the Vida Code (see below).

232. It can be seen from the contemporaneous documents discussed above (and in particular the email correspondence about WeCare) that in early 2016 Mr. Perks' typical means of communication with Mr. Jabir (or certainly *a* typical means of communication with him) was via email. Despite this, there is a complete absence of email communications between them about the TVC business opportunity at the time of and after the First and Second Meetings, despite their mutual keenness to take the idea forward, as recorded in the meeting notes. It is impossible to believe that there would not have been such email correspondence between them, and that there would have been no email exchanges at all about the nature of the opportunity and then the subsequent decision not to pursue it, despite their expressed excitement about it.

233. I reject Mr. Perks' implausible suggestion in his oral evidence that it is not surprising that there was not even a single email ever in existence between him and Mr. Jabir in respect of the First Meeting because this was just one of several meetings in the day. It was far from a routine meeting. Both he and Mr. Jabir were keen to seize the opportunity presented. Moreover, Hambro Perks have disclosed email communications between Mr. Perks and Mr. Jabir in mid-February 2016, between the First and Second Meetings, in which they express their excitement about pressing forwards with WeCare; yet Mr.

[49] T/4/13-14.

Perks would have the court believe that there are no email communications between them about the similar TVC concept.

234. The only sensible conclusion is that Mr. Perks deleted his email communications with Mr. Jabir on his Perksdom Email account because they would have shown that he had decided to misuse the Confidential Information. I accordingly reject his evidence that he would only have deleted emails outside the relevant date ranges.

(i) The Vida source code

235. One obvious way to compare the Vida software with the TVC Confidential Information would have been to consider the Vida source code. However, the Vida source code for its software, which was in use by it up until April 2019[50], has not been disclosed by the Defendants in these proceedings. That is despite the fact that the Vida source code was central to one of the three issues on which this Court had granted permission to the parties to call expert evidence from software engineering experts: '*whether [the allegedly] Confidential Information was in fact copied*': see paragraph 10.2.2(2) of the Order of Dias J dated 6 July 2023.

236. In light of the Defendants' failure to disclose the Vida source code, the parties agreed to paragraph 2 of the consent order of Cockerill J dated 2 August 2024, which varied paragraph 10.2.2(2) of Dias J's order, by providing that software engineering expert evidence would be limited to the remaining two issues of (i) whether the allegedly Confidential Information was unique or copiable and (iii) what stage of development the TVC software had reached by the time of the First and Second Meetings, including whether it was ready for commercial use, "*unless prior to [the date for exchange of expert evidence] the code for the Vida Software is obtained by the Claimant and disclosed to the First and Fourth Defendants in an unencrypted form.*" That did not occur.

237. The Claimant took several steps to try and obtain the Vida source code. The liquidator of DHVT initially suggested that DHVT was in possession of the code but that it could not be provided because it was encrypted; but the liquidator subsequently confirmed

[50] Mr Perks' oral evidence was that the Vida source code existed and was used by Vida on a day-to-day basis: T/4/19-20.

that this was a misunderstanding and it was not in possession of the code. Rather, the code was said instead to exist on the cloud-based developer platform GitHub, and it was said that the password to access the code could not be found. The liquidator subsequently confirmed that the associated email address used to log into the GitHub account no longer existed and they were not aware of the relevant username. Consequently, the data associated with the account was apparently no longer retrievable, with the liquidator stating that that was because the last payment made by the Second Defendant to GitHub was made on 15 July 2019 (being long after the date of the letter before action) and no payments had been made thereafter. The liquidator subsequently confirmed that the account was linked to an email address ('administrator@vida.co.uk') but that having used this address they received an error message from GitHub indicating that the address was either invalid, not a verified primary email or not associated with a personal user account. On 26 November 2024 the Claimant approached GitHub directly but it has been unable to make any further progress in obtaining the Vida source code.

238. Mr. Perks remained a director of DHV and DHVT until 3 May 2018 (and remained director and CEO of Hambro Perks until April 2023). He failed to take any steps to preserve the Vida source code – including by simply giving an instruction to preserve all documents and materials concerning Vida before he resigned as director (i.e. between 18 April 2018 and 3 May 2018) – despite being able to do so.

239. In the cross-examination of Mr. Perks the following exchange took place:

> "*Q. You would have appreciated, as a result of the letter before action, that a key question which was being -- a key allegation, if I can put it that way, neutral terms, was that TVC information had been used in the development of Vida and its software. You appreciated that, didn't you, when you received the letter?*
>
> *A. That's what the letter outlined, yes.*
>
> *Q. So you would have appreciated, therefore, that it would have been in your interest to preserve information to show that, in fact, the software code which was developed was developed independently and not derived from any of the information that TVC provided; correct?*
>
> *A. Could you say the question again, please?*

Q. You would have appreciated that, on your case, it would have been in your interests to ensure that the software code of Vida was preserved, in order that it could be examined to show that it had been independently derived without any influence of any information provided by TVC; correct?

A. Yes.

Q. Yet, you didn't take any steps at that time, did you, to preserve the Vida code, did you?

A. I am not sure what preserving the Vida code looks like.

Q. Well, what I am going to suggest to you, Mr. Perks, is that you should have ensured that a question was asked about what Vida code existed at the time. Do you accept that?

A. Yes.

Q. And then, secondly, that you would have asked, "What steps do we need to take to ensure that code is preserved?". Correct?

A. Again, I am not sure I understand what preserving the code looks like or means.

Q. Effectively, code is a set of data, isn't it? It is a document which contains data? Yes?

A. Yes.

Q. And you understood that you had a duty to preserve documents, didn't you?

A. Yes.

Q. That included electronic documents, didn't it?

A. They are electronic, yes.

Q. So you appreciated at the time you had a duty to preserve electronic documents, and one such electronic document was the code, wasn't it?

A. Yes. And -- yes."

240. Despite its central importance to this claim which I find Mr. Perks must have known, he took no steps whatsoever to preserve the Vida source code and made no enquiries at all about its preservation.

(j) Mr. De Pace's Google Drive and Email

241. The unsatisfactory position concerning the Vida source code is exacerbated by the deletion of Mr. De Pace's Vida Google Drive and email account. On 5 July 2023, the Defendants' solicitors wrote to the Claimant's solicitors (responding to their letter of 23 June 2023) in which they explained that the Second and Third Defendants had used a Google suite of software tools to develop the Vida software, and that their usual practice up until April 2021 was to carry out the following in relation to those tools when an employee left the business:

> "*a) copy the employees' files from their individual Google Drive to an administrator account, in order to retain them; and then*
>
> *b) delete the employee's Google user account*."

242. The letter proceeds to explain that "for unknown reasons", step (a) was not followed after Mr. De Pace's departure from DHV, although the Defendants' solicitors "are instructed that" this was attributed to an inadvertent as opposed to deliberate attempt not to retain potentially relevant documents. They do not identify who gave them these instructions or the basis for saying that the destruction was inadvertent.

243. The Claimant does not rely upon this further feature to support drawing adverse inferences against Hambro Perks or Mr. Perks, but rather points out that this failure to retain documents, coupled with the failure to preserve the Vida source code, undermines the suggestion that the Vida software was derived and developed by Mr. Jabir and Mr. De Pace independently of TVC, because there exist no contemporaneous documents or materials showing this to be so. I agree.

244. Nor did the witness evidence support the suggestion that Vida was independently derived and developed by them. As the Claimant rightly points out, the Defendants failed to call a number of relevant witnesses, namely Mr. Gargum, Mr. Sangster and Mr. Fooks; and most importantly they did not call either Mr. Jabir or Mr. De Pace, who were the employees centrally involved in the technological development of Vida in 2016 (and beyond). Mr. Perks asserted that Mr. Jabir was in Sri Lanka, although there was no documentary evidence to prove that fact and it is unclear what he was said to be doing there. What is clear is that initially Mr. Jabir was in contact with the Defendants in May 2018, through his solicitors, long after he resigned as an employee and director

in December 2017. Indeed, Mr. Jabir's solicitors invited the Defendants' solicitors to coordinate their respective responses to the Claimant's proposed claim with Mr. Jabir.

245. Mr. Perks' evidence is that he, personally, was wholly uninvolved in the creation and development of WeCare. It was agreed that the evidence of Mr. Pagels and Mr. Fishwick could be read: their evidence was peripheral as there is no suggestion that they knew that Vida misused the Confidential Information. Mr. Fishwick did not join Vida as Operations Manager until October 2017 but he does state that his understanding was that the "driver of Vida" was Mr. Jabir (he also states that he thinks that Mr. Jabir contributed to the development of Vida's technology in the early days before he joined the company). Mr. Pagels was a developer employed by DHV, but he did not start work until March 2018 and he left in March 2019. In the circumstances, neither of these witnesses could give reliable evidence as to Vida's allegedly independent derivation.

246. This leaves only Ms Wood's evidence. Although Ms Wood was involved with WeCare/Vida, on the documentary evidence (as explained above) it is clear that Mr. Jabir had already started work on it before she joined Hambro Perks; that he (and not her) was responsible for its technological development along with (later) Mr. De Pace; and certain of the key features which are said to have been derived from TVC's Confidential Information were already in existence before Ms Wood joined Hambro Perks. It follows that although Ms Wood was the Defendant's sole factual witness who could give live evidence as to Vida's allegedly independent derivation, I do not consider that her evidence in that respect was reliable.

ADVERSE INFERENCES

247. As described above, in the present case I have found as a fact that Mr. Perks (i) destroyed relevant documents and (ii) failed to take any steps to preserve the Vida source code, after the date when he knew he was under a duty to preserve the documents/code. I also consider that Mr. Perks has been less than candid about the destruction exercise.

248. The Claimant does not need the court to draw adverse inferences in its favour in order to establish that Mr. Perks and Hambro Perks are liable for the misuse of Confidential Information because I have been willing to draw these inferences by reference to the

oral and documentary evidence in any event (as described above). However, in its written and oral closing submissions[51] the Claimant invited the Court to draw adverse inferences by reason of the destruction and lack of preservation of documents/the Vida source code.

249. I consider that it is appropriate to draw adverse inferences by reason of the destruction of documents by Mr. Perks. The adverse inferences which I consider it is appropriate to draw in that respect are as follows[52]:

(1) There was no active work being carried out by Hambro Perks in relation to what became known as WeCare during Q3 and Q4 of 2015 or before the First Meeting.

(2) After the First Meeting Mr. Perks shared the TVC Documents (or information contained therein), together with the information provided orally by Mr. Gifford at the First Meeting, with Mr. Jabir and Mr. Gargum for the purposes of their using it in relation to the development of WeCare.

(3) Having set up DHV, at some point before or after the Second Meeting[53] Mr. Perks instructed Mr. Jabir and Mr. Gargum to use the Confidential Information to aid in the development of WeCare/Vida, cutting out Mr. Gifford and Mr. Walker.

(4) Mr. Jabir and Mr. De Pace, upon the instruction of Mr. Perks[54], utilised the Confidential Information, including in particular the TVC Technical Documents, to work on the development of the Vida source code[55].

250. These inferences are strengthened by the First and Fourth Defendants' failure to call (i) Mr. Jabir to give evidence, whether written or oral, in relation to inferences (1)-(4); (ii) Mr. Gargum to give evidence, whether written or oral, in relation to inferences (2) and (3); and (iii) Mr. De Pace to give evidence, whether written or oral, in relation to inference (4). All three of them would likely have had highly relevant evidence to give on the use of the Confidential Information and I do not consider that a good reason for

[51] At [107]-[119] of its written closing submissions and at T/7/87-120 (oral submissions).

[52] Applying the approach referred to in *Active Media Services v Burmester and others* at [309] in particular.

[53] I consider on balance it is more likely to have been after the Second Meeting.

[54] Mr. Perks being a director of DHV between 28 January 2016 and 3 May 2018, and a director of DHVT between 21 November 2017 and 3 May 2018.

[55] This inference is strengthened further by the failure to preserve the Vida source code.

their non-attendance has been given[56]. However, I would have drawn the adverse inferences above regardless of this point by reason of (i) the destruction of documents alone but also (ii) the failure to preserve the Vida software code.

BREACH OF CONFIDENCE: THE LAW

251. The classic statement of the requirements for liability for breach of confidence remains that of Megarry J in *Coco v AN Clark (Engineers) Ltd* [1968] FSR 415, [1969] RPC 41 at 47, namely that the information (i) must have the necessary quality of confidence, (ii) must have been imparted in circumstances importing an obligation of confidence, and (iii) must have been used or put to a use which is unauthorised to the detriment of the person communicating it (and see also *Racing Partnership Ltd v Sports Information Services Ltd* [2020] EWCA Civ 1300, [2021] Ch 233, [2021] FSR 2 and *Kieran Corrigan and Co Ltd v Tomol* [2024] EWCA Civ 1233 at [18]).

(ii) Was the information said to have been confidential imparted in circumstances importing an obligation of confidence?

252. I will take requirement (ii) first and shortly because there was no dispute about it: all parties agree that the information said to be confidential was imparted in circumstances importing an obligation of confidence. In particular, as stated in paragraph 51 above, Mr. Perks agreed that it was in the very nature of investment business that any pitch meeting would have been treated by both parties as confidential (even if this had not been explicitly spelled out) and that this confidentiality would extend to any documents or information which had been disclosed to the potential investor. It would have been known by Mr. Perks/Hambro Perks that the information and documents should be used solely for the purposes of determining whether or not to invest in the business being pitched, and the documents and information were not to be used for any other purpose.

253. In any event, I accept the evidence of Mr. Gifford that Mr. Perks was expressly made aware that the information contained within the 11 Documents was confidential. Mr. Gifford's typed notes of the First Meeting record the fact that "*I said that these*

[56] The question whether an adverse inference may be drawn from the absence of a witness is just a matter of ordinary rationality. So far as possible, tribunals should be free to draw, or to decline to draw, inferences from the facts of the case before them using their common sense without the need to consult law books when doing so: per Lord Leggatt JSC in *Royal Mail v Efobi* [2021] UKSC 33 at [41].

documents cannot be used anywhere because [Mr. Perks] was the only investor we had seen and we were concerned about the exposure. He agreed…"[57]

(i) Did the information imparted by Mr. Gifford at the First and Second Meetings have the necessary quality of confidence?

254. The Claimant's case as to the information which is said to have been confidential is set out in paragraphs 23-24 above.

255. The First and Fourth Defendants correctly observed that the starting point in any confidential information case is to identify with precision the information which is alleged to be confidential (see Arnold J in *Racing Partnership Ltd v Done Bros Ltd* [2021] Ch 233 at [49]). They maintained that the Claimant has failed to plead with sufficient particularity the information said to be confidential. I do not accept that criticism. I consider that the First and Fourth Defendants were fully aware of the case which they had to meet (by reference to paragraphs 19-20 and 31.3 of the Particulars of Claim and Annex 1 thereto), as refined by Mr. Sims KC (in paragraph 24 above), and they have had no difficulty in articulating their case which they have done, ably, through Mr. Brown KC.

256. Moreover, as the editors of Toulson & Phipps on Confidentiality (4th edn) state at 4-012:

> "*Other categories of situation in which a claimant may not be required to identify with specificity every item of information alleged to be confidential include:*
>
> *(a) where it is apparent that the entirety of a collection of information falls within the scope of a contractual obligation of confidence, but the defendant argues that some of the information is governed by the terms of a contractual exception (for example, an exception for information in the public domain);*
>
> *(b) where confidentiality is asserted in relation to a collection of information based upon the skill, effort, time and/or money expended on the collation of the information (even if individual*

[57] It is not to Mr. Perks and Hambro Perks' credit that in their Defence they deny that this was so: see paragraph 23.

> *parts of the collection could not be described as confidential in themselves);*
>
> *(c) where evidential difficulties have been caused by the defendant's own wrongdoing (such as the destruction of documents)."*

257. In the present case, both factors (b) and (c) above are present. The Claimant submits that confidentiality exists in respect of the 7 USPs taken as a whole, albeit that some of them may fairly be said not to be confidential when looked at individually. I accept that submission. Confidential information about the TVC software/system devised by Mr. Gifford was contained in the collection of information contained within the 11 Documents as a whole which was based upon the skill, effort, time and money expended by him. I find as a fact that Mr. Perks and Mr. Jabir were fully aware that the information provided to them at the First and Second Meetings about the TVC software/system *as a whole* was based upon the skill, time and effort of Mr. Gifford and was confidential to him. Moreover, had Mr. Perks not destroyed relevant documents and had the Vida source code been preserved as it ought to have been, I consider that it would have been apparent from that material that (i) the First and Fourth Defendants knew that this was valuable, confidential information which was based upon Mr. Gifford's skill and labour, which (ii) the Defendants had used the Confidential Information to create a task-based care system for Vida, saving themselves a great deal of time and money which they would otherwise have had to incur in order to devise their own software/system.

258. So far as the substance of the Confidential Information is concerned, the system devised by Mr. Gifford was a *task and time-based* system rather than simply rota based. As Mr. Gifford explained in evidence, at the time when he was developing his software, the care industry was built on rotas: if a particular person needed care, they would be assigned to a particular carer to give that care. If that carer was ill, the care manager would have to "*run around and find people to be able to cover those tasks… The difference with TVC is it doesn't work in shifts to people. It works on tasks… all of the different elements of [the] particular care plan [of a patient] is what is covered… this is the assessment of what that person needs at that particular time and everything runs off a digitised care plan…*".

259. He then explained how the tasks themselves are categorised in that there is a score allocated for each task and the carers' attributes also generate a score for them. In that way carers are matched to the tasks. He gave an illustration of this:

> "*A typical example of that is, if somebody was giving care, but they were always late in giving that care, they may be really good in the skills perspective and may be really good in an experience perspective, but, if it was a care task that was needed at an absolute time given, such as giving somebody blood thinners, like warfarin, that particular person wouldn't be chosen because their efficiency is not as good, even though they are quite a high rank. So it takes many different parameters into question. But, also, it works -- the more data is there, the more that it works. So it also works on the history. So it is also the empirical data. So the idea behind it is that it always tries to get the best person*."

260. As Dr Young put it, "TVC embodies years of knowledge and experience gained while developing and using an early version of the program in a care home".

261. This task and time-based system was implemented by Mr. Gifford through the TVC software which he devised and which he had worked on for some 8 years. That software contained the 7 pleaded "USP" features of the product as a whole, as described in the 11 Documents handed over by Mr. Gifford at the two meetings and elaborated upon in those two meetings (as recorded in the meeting notes). I accordingly accept the submission of Mr. Sims KC that features (2), (4) and (5) in paragraph 23 above were both individually confidential, and confidential as a whole when taken in combination with features (1), (3), (6) and (7) (in paragraph 24 above). I am fortified in reaching that conclusion by the contemporaneous reactions of both Mr. Perks and Mr. Jabir at the time of the First and Second Meetings: they both considered the TVC software and concept as a whole to be "*unique*", "*brilliant*" and "*exciting*".

262. I therefore find as a fact that the information about the TVC software and the concept taken as a whole, which had been developed by Mr. Gifford and which was handed over by him to Mr. Perks and Mr. Jabir in the form of the 11 Documents, undoubtedly had the necessary quality of confidence. Whilst it is the case that certain individual aspects of the information in the 11 Documents provided to Mr. Perks and Mr. Jabir might be said to be public knowledge, looked at as a whole the information was undoubtedly

confidential and Mr. Perks and Mr. Jabir knew that. As Megarry J stated in *Coco v AN Clark (Engineers) Ltd* [1968] FSR 415, [1969] RPC 41 at 47:

> "*First, the information must be of a confidential nature. As Lord Greene said in the Saltman case at page 215, 'something which is public property and public knowledge' cannot per se provide any foundation for proceedings for breach of confidence. However confidential the circumstances of communication, there can be no breach of confidence in revealing to others something which is already common knowledge. But this must not be taken too far. Something that has been constructed solely from materials in the public domain may possess the necessary quality of confidentiality: for something new and confidential may have been brought into being by the application of the skill and ingenuity of the human brain. Novelty depends on the thing itself, and not upon the quality of its constituent parts. Indeed, often the more striking the novelty, the more commonplace its components … whether it is described as originality or novelty or ingenuity or otherwise, I think there must be some product of the human brain which suffices to confer a confidential nature upon the information.*"

263. The digitisation of task-based care plans, created and developed by Mr. Gifford via the TVC system, was indeed something new which was brought into being by the application of the skill and ingenuity of Mr. Gifford's brain, albeit that certain individual aspects of that system could be said to have been public knowledge.

264. Mr. Brown KC also submitted that certain aspects of the TVC software/system amounted to trivial or useless information. Even if that is so, as Arnold J (as he then was) observed in *Force India Formula One Team Ltd v 1 Malaysia Racing team* [2012] RPC 29 at [223]:

> "*Trivial information. Confidentiality does not attach to trivial or useless information. The information need not be commercially valuable, but the preservation of its confidentiality must be of substantial concern to the claimant… This is not a high threshold, however.*"

265. In any event, I find as a fact that the information contained in the 11 Documents as a whole was both commercially valuable to Mr. Gifford and its confidentiality was of substantial concern to him. I also find as a fact that Mr. Perks and Mr. Jabir knew this. Whilst others might have had access to certain parts of this information, and whilst certain parts might arguably be said to be trivial (e.g. that TVC utilised a cloud-based

system), the TVC software/system created and developed by Mr. Gifford as a whole was most certainly not trivial, and nor was it generally accessible / in the public domain. Mr. Gifford's task-based care matching and time scheduling concept, coupled with the Care Plan Tracker and Relative Portal, had a significant element of originality which was not in the realm of public knowledge. This is why in his evidence Mr. Perks said, for example, that he was "*not surprised*" that he and Mr. Gifford talked about the "*interesting*" feature of the Relative Portal at the First Meeting because "*the idea of a relative function is attractive*."

266. Whilst some competitors in early 2016 might have developed software programmes which offered *some* of the features of the TVC software programme, none had put together all of the features of TVC, and in particular had not put together the combination of the Relative Portal, task-based care matching and time scheduling: see Dr Young's expert report at para. 41 and table 3[58].

267. Moreover, the TVC software devised by Mr. Gifford was commercially attractive to participants in the care industry generally and capable of being realised as an actuality in either a care home context or a domiciliary context[59], which is why Mr. Perks was interested in it.

268. Indeed, the originality and commercial attractiveness of Mr. Gifford's TVC software was such that (a) Mr. Perks himself attended the First Meeting with Mr. Gifford despite the fact that, he agreed, this was unusual and his practice was only to attend second pitch meetings; and (b) Mr. Perks accepts that he said at the First Meeting that "*the idea was fantastic, refreshing and unique*", and "*the concept was brilliant*" [60]. He then made Mr. Gifford an offer to invest in TVC as co-founders for 30% of the starting equity. Mr. Perks himself, at the time, regarded the information as unique, valuable and accordingly confidential, and that in itself lends strong support to the Claimant's case that the information was indeed confidential. It was valuable because at the time the care market

[58] This information was generally inaccessible and it is not necessary for a claimant to show that no one else knew of or had access to the information: *CF Partners (UK) LLP v Barclays Bank Plc* [2014] EWHC 3049 (Ch) at [124] per Hildyard J.

[59] See *De Maudsley v Palumbo* [1996] EMLR 460 at 467 per Knox J, applying *Talbot v General Television Corp* [1981] RPC 1; and see, in this case, the evidence of Dr Young.

[60] T/4/78/12 to T/4/79/3.

was a hot topic: indeed at the time Hambro Perks was itself researching the possibility of entering the care market (albeit domiciliary care).

269. Contrary to Mr. Brown KC's submission, the TVC software/system thus went well beyond amounting merely to an aspiration which can be captured in the phrase "wouldn't it be great if…".

270. The confidential nature of the information provided to Mr. Perks and Mr. Jabir is reinforced by the fact that the 11 Documents handed over to them also contained valuable *technical information* collated and devised by Mr. Gifford using his skill, effort and time as follows[61]:

    (i) A workflow diagram which distilled Mr. Gifford's years of research into the best ways of organising the workflows of different categories of worker in a care home (what Dr Young succinctly described as "*the accumulated knowledge of how a care home operates*");
    (ii) An Application Engines document (with the tasks engine and the alerts engine being particularly important); and
    (iii) A Database Schema which was less significant from a technical perspective, but in Dr Young's view it still provided potential utility to a competitor in understanding what might be relevant fields for including in a database in a care home, even if they may have created their own database schema.

271. I accept Mr. Gifford's evidence that the workflow diagram was created by him as a result of the collaboration sessions that he had with care industry professionals, and that it was confidential to him. The information contained in the TVC Technical Documents may have been, at least in part, publicly available if a competitor wished to expend the time, effort and money in collating it in the way that Mr. Gifford had done. But to suggest that as a result these documents, containing the accumulated knowledge of how

[61] As Lord Greene M.R. stated in *Saltman Engineering Co Ltd v Campbell Engineering Co Ltd* (1948) 65 R.P.C. 203, CA at 215: "*It is perfectly possible to have a confidential document, be it a formula, a plan, a sketch, or something of that kind which is the result of work done by the maker upon materials which may be available for the use of anybody: but what makes it confidential is the fact that the maker of the document has used his brain and thus produced a result which can only be produced by somebody who goes through the same process*."

a care home works and how the workflows could best be managed, were not confidential to Mr. Gifford – who had spent time, effort, money and his brainpower in collating it – is absurd.

272. I also find as a fact that these Technical Documents contained information that would assist a competitor to develop their own software containing the unique features of Mr. Gifford's software. As Dr Young explained in evidence:

> "*Well, the workflows represent a particular way of working for a care home. They represent an understanding of how a care home works and they have analysed all the processes in a care home and how that care home works. Now, another care home, a manager of another care home might review this and hopefully understand it and then say, "Well, yes, we work in the same way" or "No, we don't work in the same way", and if we don't work in the same way, we would review that chart and then modify it or amend it. So it might well be a very useful starting point for another developer. A great deal of work has gone into this to state what the workflows are in one particular care home, which the claimant certainly would hope would be useful in another. Now, since I am not -- I do not know the variations in the care industry, I can't say to what extent that is the case.*"

273. Indeed, as Dr Young stated:

> "*Q. In terms of your technical expertise, would you be able to assist the court as to whether or not the information on this document would assist someone to identify what they may need to include in their database?*
>
> *A. Well, it might do. For example, I see there are tables for -- simply the names of the tables might well assist someone in including information on, for example -- I can't quite read it now -- appointments, night checks, abuse, contacts, key workers. You can see that there are areas where this could well be useful.*"

274. In all the circumstances, I find that the information imparted by Mr. Gifford at the First and Second Meetings did indeed have the necessary quality of confidence.

(iii) Was the information used or put to a use which is unauthorised to the detriment of the person communicating it?

275. I find as a fact that the information was indeed used or put to an unauthorised use by both Mr. Perks personally and Hambro Perks, to the detriment of Mr. Gifford. The Defendants sought to deny this by contending (i) that they were operating in a different

market entirely (namely the provision of care to the domiciliary market, not to care homes) and (ii) that the design of Vida is substantially different from that of TVC. I reject both of these arguments. It is clear that the Confidential Information could be – and was – used by Vida in a domiciliary care setting, and the design features of Vida draw heavily upon the Confidential Information.

276. In *Seager v Copydex* [1967] 1 WLR 923 at 931, Lord Denning stated as follows:

> *"I start with one sentence in the judgment of Lord Greene M.R. in Saltman Engineering Co. v. Campbell Engineering Co.:*
>
> *"If a defendant is proved to have used confidential information, directly or indirectly obtained from the plaintiff, without the consent, express or implied, of the plaintiff, he will be guilty of an infringement of the plaintiff's rights."*
>
> *To this I add a sentence from the judgment of Roxburgh J. in Terrapin Ltd. v. Builders' Supply Co. {Hayes) Ltd. which was quoted and adopted as correct by Roskill J. in Cranleigh Precision Engineering Ltd. v. Bryants:*
>
> *"As I understand it, the essence of this branch of the law, whatever the origin of it may be, is that a person who has obtained information in confidence is not allowed to use it as a spring-board for activities detrimental to the person who made the confidential communication, and spring-board it remains even when all the features have been published or can " be ascertained by actual inspection by any member of the public." The law on this subject does not depend on any implied contract. It depends on the broad principle of equity that he who has received information in confidence shall not take unfair advantage of it. He must not make use of it to the prejudice of him who gave it without obtaining his consent. The principle is clear enough when the whole of the information is private. The difficulty arises when the information is in part public and in part private. As, for instance, in this case. A good deal of the information which Mr. Seager gave to Copydex was available to the public, such as the patent specification in the Patent Office, or the " Klent " grip, which he sold to anyone who asked. If that was the only information he gave them, he could not complain. It was public knowledge. But there was a good deal of other information he gave them which was private, such as the difficulties which had to be overcome in making a satisfactory grip; the necessity for a strong, sharp tooth; the alternative forms of tooth; and the like. When the information is mixed, being partly public and partly private, then the recipient must take special care to use only the material which is in the public*

> *domain. He should go to the public source and get it: or, at any rate, not be in a better position than if he had gone to the public source. He should not get a start over others by using the information which he received in confidence. At any rate, he should not get a start without paying for it. It may not be a case for injunction or even for an account, but only for damages, depending on the worth of the confidential information to him in saving him time and trouble*."

277. I consider that to be precisely this case: DHV and DHVT got a head start over others by using the information which it received in confidence from Mr. Gifford – initially in the WeCare deck, and then as Vida in particular in the Laing Buisson presentation and beyond – and it should not have got that head start without paying for the value of the Confidential Information thereby obtained, which saved it the cost, time and trouble of developing the software from scratch itself.

278. I have no doubt, and find as a fact, that in developing WeCare, which became Vida, Mr. Perks and Hambro Perks (through Mr. Perks, Mr. Jabir and Mr. Gargum in particular) misused Mr. Gifford's Confidential Information. That they may then have developed a product, via Vida, which built on the TVC design and then differed from it in certain respects, or that they may have used the Confidential Information in a domiciliary context rather than a care home context, does not lead to the conclusion that they did not misuse Mr. Gifford's confidential information: they did. Indeed, in fundamental respects the Vida design closely reflects the TVC design.

279. As Roxburgh J said in *Terrapin Ltd v Builders Supply Company (Hayes) Ltd [1967] RPC* 375 at p. 390[62]

> "*There is no better way of really understanding something [than] to try and improve it, and if you produce a different result it is absurd to say that you made no use of the thing which you set out to improve... information is none the less used if it serves as a starting point for a new design, because in the end the design wholly or partially discards the information from which it was originally built up*."

280. That is so in the present case. I find as a fact that:

[62] Cited with approval by Lewison LJ in *Force India Formula One Team Limited v Aerolab SARL* [2013] EWCA Civ 780 at [75].

(1) Mr. Perks and Mr. Jabir used the Confidential Information contained in the TVC Documents to devise the initial WeCare presentation deck as described in paragraphs 84-88 above.

(2) At some point around 18 February 2016, Mr. Perks decided to misuse TVC's Confidential Information for his and Hambro Perks' own benefit.

(3) Mr. Jabir obtained the TVC Technical Documents (and Document 3.2) at the Second Meeting and established that Mr. Gifford had not registered the IP in TVC. The CareAngels/Vida software and business concept was then developed from March 2016, through Mr. Perks and Mr. Jabir, by the misuse of the Confidential Information (and in particular through the misuse of the 11 Documents, as described in paragraphs 111-194 above, which is best illustrated by the Laing Buisson presentation at paragraphs 167-179).

281. Hambro Perks, acting through (i) Mr. Perks, who was a director and the CEO of Hambro Perks between November 2013 and April 2023 and (ii) its employee Mr. Jabir up until his employment ceased in December 2016, also misused the Confidential Information in the ways described above[63].

282. So far as Mr. Perks' personal liability is concerned, as Lord Leggatt JSC explained in *Lifestyle Equities CV v Ahmed* [2024] 2 WLR 1297 at [34]-[35][64]:

> "*34. In the terminology coined by Lord Hoffmann in Meridian Global Funds Management Asia Ltd v Securities Commission [1995] 2 AC 500, the rules of law that determine which acts of individuals are attributed to a company are known as "rules of attribution". These rules comprise what Lord Hoffmann called the company's "primary" rules of attribution contained in its constitution and implied by company law, as well as "general" rules of attribution which apply equally to living persons: in particular, general principles of agency and vicarious liability. In some contexts, "special" rules of attribution apply: see pp 506-507.*
>
> *35. These rules of attribution do not, however, operate in reverse to cause acts attributed to the company to be treated as if they*

[63] Applying the well-known test in *Meridian Global Funds Management Asia Ltd v Securities Commission* [1995] 2 AC 500.

[64] And see further, *ibid* [36]-[40].

> *were not acts of the individual who actually did those acts. It does not follow that, because an act done by a director or other individual is treated as the company's act for which the company can be held liable, the director is immunised from liability. As numerous commentators have pointed out, such reasoning is fallacious…*"

283. Mr. Perks was the person who saw the opportunity to exploit the Confidential Information and who did seek to exploit it as described above, for his and Hambro Perks' benefit. So far as his personal benefit is concerned:

Mr. Perks' shareholding in Hambro Perks

(1) As at the time of the First Meeting, Mr. Perks held 50% of the ordinary shares in Hambro Perks.

(2) At the time of the Second Meeting, Mr. Perks held 55% of the ordinary shares in Hambro Perks and 50% of the preference shares in the company.

(3) Up to and beyond the date of the Laing Buisson presentation in respect of Vida (13 October 2017), he held 55% of Founder Shares in Hambro Perks, 21% A Ordinary shares; 12.4% B Ordinary shares; and 3.88% of C Ordinary shares.

Mr. Perks' shareholding in DHV

(1) Between 28 January 2016 and 8 June 2016, Mr. Perks held 100% of the shares in DHV[65];

(2) On 9 June 2016 Mr. Perks transferred 300,000 of his shares in DHV to Hambro Perks with the result that he held 27.5% of the shares and Hambro Perks held 30% (and Mr. Jabir held 27.5%). That remained the position until 26 January 2017.

284. In short, it is clear that Mr. Perks stood to benefit personally financially from the misuse of the Confidential Information.

[65] Mr. Perks accepted in cross examination that he obtained free shares in DHV because of his "active role in its creation": T/4/147/1-2.

285. In all the circumstances, Mr. Perks is personally liable for the breach of confidence, together with Hambro Perks, who also acted in breach of confidence through Mr. Perks and Mr. Jabir.

COMMON DESIGN / UNLAWFUL MEANS CONSPIRACY

286. The case was argued in the main by the Claimant on the basis of breach of confidence by Mr. Perks personally and by Hambro Perks. Very little time was spent in argument on the case of common design or unlawful means conspiracy. The Claimant's written submissions were also scant so far as these two alleged causes of action are concerned: see paragraphs 101-108 of its written opening and paragraphs 248-250 of its written closing. The First and Fourth Defendant's written opening submissions only addressed this aspect in one paragraph at paragraph 137, and they added nothing further in their written closing submissions. The court has accordingly been afforded little assistance in respect of these two aspects of the Claimant's case.

Common design

287. The Claimant's pleaded case as to common design is set out at paragraph 49 of its Particulars of Claim as follows:

> "Further, the First and/or Fourth Defendants are liable as joint tortfeasors with the Second and/or Third Defendants for their unlawful use of the Confidential Information owing to:
>
> (i) the assistance they provided to the Second and/or Third Defendants, including by providing them with all or part of the Confidential Information with a view to it being used by the Second and/or Third Defendants for a purpose which was not authorised by Mr. Gifford; (ii) they shared a joint or common design with the Second and/or Third Defendants that the Confidential Information should be so used; and (iii) the said use was a breach of confidence and/or misuse of the Confidential Information".

288. The doctrine of common design was considered by the Supreme Court in *Fish & Fish v Sea Shepherd UK* [2015] AC 1229. It is a principle of accessory liability. In summary, to establish that a person (A) is liable as an accessory on this principle, three conditions must be satisfied: first, another person (B) must commit a tort; second, A must have done an act which assisted B to commit the tort; and, third, A's act must have been done pursuant to a common design between A and B to do the act which constitutes the tort.

289. Whilst *Fish & Fish* concerned tortious wrongdoing, in *Vestergaard Frandsen v Bestnet Europe* [2013] UKSC 31 at [33] the Supreme Court accepted that common design can, in principle, be invoked against a defendant in a claim based on misuse of confidential information. At [34], the Court stated that in order for a defendant to be party to a common design, (s)he must share with the other party (or parties) to the design each of the features of the design which make it wrongful. If, and only if, all those features are shared, the fact that some parties to the common design did only some of the relevant acts, while others did only some other relevant acts, will not stop them all from being jointly liable. But in order to be liable for common design, the defendant must know that the confidential information is being misused.

290. In paragraph 118 of *Lifestyle Equities* (supra) the Supreme Court explained as follows:

> "*Lord Sumption and Lord Neuberger each made further observations about what is involved in acting pursuant to a "common design". Lord Sumption summarised his conclusion, at para 44, in this way:*
>
> *"What the authorities, taken as a whole, demonstrate is that the additional element which is required to establish liability, over and above mere knowledge that an otherwise lawful act will assist the tort, is a shared intention that it should do so. The required limitation on the scope of liability is achieved by the combination of active co-operation and commonality of intention. It is encapsulated in Scrutton LJ's distinction [in The Koursk [1924] P 140, 156] between concerted action to a common end and independent action to a similar end, and between either of these things and mere knowledge of the consequences of one's acts."*
>
> *There is a large philosophical literature on what it means for two or more people to act together - a concept sometimes referred to as shared agency. One thing that is clear is that to act in concert in pursuance of a common end, the parties must have interrelated intentions which each understands the other to share. To achieve such active co-operation and commonality of intention, some form of communication between the parties is required. As Mustill LJ noted in Unilever at p 609, this does not call for any finding that the parties explicitly mapped out a plan. The communication need not even involve words. To illustrate how actions may be coordinated without any express agreement, the philosopher David Hume gave an example of two men who pull the oars of a boat together in time: see A Treatise of Human Nature (1740), ed LA Selby-Bigge, at p 490. The significance from a normative point of view of concerted action in pursuit of*

> *a shared aim that it confers collective responsibility on the parties who combine to bring about the commission of the tort*".

291. In the present case, I find that Mr. Perks and Hambro Perks were indeed party to a common design with DHV and DHVT that the Confidential Information should be used by DHV and DHVT so as to render them jointly liable for that misuse. Mr. Perks was the sole director of DHV upon its incorporation on 28 January 2016 and Mr. Jabir joined him on the board on 6 June 2016. Their knowledge was DHV's knowledge, and DHV was the vehicle through which the Confidential Information was misused via the development of WeCare/CareAngels/Vida. They acted in concert pursuant to a common end, which was to misuse the Confidential Information, which they knew to be confidential to Mr. Gifford, for their own benefit. Contrary to the submission of the First and Fourth Defendants in paragraph 137 of their written opening submissions, DHV and DHVT were aware of the misuse of the Confidential Information through Mr. Perks and Mr. Jabir as directors of DHV (which owned DHVT), and they had access to that Confidential Information which they misused. Mr. Perks and Hambro Perks accordingly assisted in the misuse of the Confidential Information by DHV and DHVT and they are liable as accessories.

Unlawful means conspiracy

292. The Claimant's plea in this respect was in paragraph 50.2 of the Particulars of Claim as follows:

> "Further or alternatively, the Defendants, by themselves or with the assistance of others, including Messrs Jabir and Gargum, intended to cause loss by unlawful means, and (if, which is denied, it is necessary to so aver) knowing that those means were unlawful or reckless as to whether they were unlawful. Insofar as is necessary to do so, the Claimant will rely on the matters pleaded in paragraphs 18, 21, 31.3 (final sentence), 31.5, 32, 36, 37, 40, 41, 42 and 49 above in support of the plea(s) of knowledge."

293. In paragraph 249 of its written closing submissions, all that the Claimant says about this is:

> "*Yet further, insofar as is necessary, Mr. Perks and HPL were party to an unlawful means conspiracy as pleaded at PoC 50.2, for substantially the same reasons. Their purpose was to benefit themselves and they knew this would be to the detriment of Mr. Gifford.*"

294. I adopt Cockerill J's summary of the key elements of the cause of action of unlawful means conspiracy in *FM Capital Partners Ltd v Marino*, [2018] EWHC 1768 (Comm) at [94] (which was in turn adopted by Butcher J in *Iranian Offshore Engineering and Construction Co v Dean Investment Holdings SA* [2019] EWHC 472 (Comm)):

> "*The elements of the cause of action are as follows:*
>
> *i) A combination, arrangement or understanding between two or more people. It is not necessary for the conspirators all to join the conspiracy at the same time, but the parties to it must be sufficiently aware of the surrounding circumstances and share the same object for it properly to be said that they were acting in concert at the time of the acts complained of: Kuwait Oil Tanker at [111].*
>
> *ii) An intention to injure another individual or separate legal entity, albeit with no need for that to be the sole or predominant intention: Kuwait Oil Tanker at [108]. Moreover:*
>
> *a) The necessary intent can be inferred, and often will need to be inferred, from the primary facts – see Kuwait Oil Tanker at [120-121], citing Bourgoin SA v Minister of Agriculture [1986] 1 QB: "[i]f an act is done deliberately and with knowledge of the consequences, I do not think that the actor can say that he did not 'intend' the consequences or that the act was not 'aimed' at the person who, it is known, will suffer them".*
>
> *b) Where conspirators intentionally injure the claimant and use unlawful means to do so, it is no defence for them to show that their primary purpose was to further or protect their own interests: Lonrho Plc v Fayed [1992] 1 AC 448, 465-466, [1991] B.C.C. 641; see also OBG v Allan [2008] 1 AC 1 at [164-165].*
>
> *c) Foresight that his unlawful conduct may or will probably damage the claimant cannot be equated with intention: OBG at [166].*
>
> *iii) In some cases, there may be no specific intent but intention to injure results from the inevitability of loss: see Lord Nicholls at [167] in OBG v Allan, referring to cases where:*
>
> *"The defendant's gain and the claimant's loss are, to the defendant's knowledge, inseparably linked. The defendant cannot obtain the one without bringing about the other. If the defendant goes ahead in such a case in order to obtain the gain he seeks, his state of mind will satisfy the mental ingredient of the unlawful interference tort."*
>
> *[…]*

> *v) Use of unlawful means as part of the concerted action. There is no requirement that the unlawful means themselves are independently actionable: Revenue and Customs Commissioners v Total Network [2008] 1 AC 1174 at [104].*
>
> *vi) Loss being caused to the target of the conspiracy."*

295. I agree with Mr. Brown KC that the Claimant failed properly to plead or advance at trial a case of unlawful means conspiracy, and it would be wrong for the court to seek to articulate one for it. Whilst a breach of confidence can constitute an unlawful act[66], the Claimant failed to plead or articulate its case as to: (i) the combination, arrangement or understanding relied upon, when it was said to be reached and when it was concluded and (ii) the intention to injure Mr. Gifford. It is not clear, for example, whether the Claimant seeks to advance an "other side of the coin" case on intention: see paragraphs 487-489 of *ED&F Man Capital Markets Ltd v Come Harvest Holdings Ltd* [2022] EWHC 229 (Comm) per Calver J.

296. As Mr. Brown KC rightly submitted, this is a serious allegation which required to be properly particularised and articulated at trial. In the circumstances, I am not willing to conclude that Mr. Perks and Hambro Perks were party to an unlawful means conspiracy.

THE CLAIMANT'S LOSS

297. The liability of Mr. Perks and Hambro Perks having been established, it is necessary to assess the damages (if any) payable to the Claimant. What is the proper measure of loss and damage which the Claimant suffered, and what (if any) compensation is the Claimant entitled to?

298. Mr. Perks and Hambro Perks are at a distinct disadvantage in this respect for which they have only themselves to blame, which is (as explained above) that they were not permitted to adduce any expert quantum evidence, unlike the Claimant, who adduced the expert evidence of Mr. Stephen Skeels, a partner in the forensic accountancy firm Forvis Mazars LLP. I found Mr. Skeels to be an impressive expert witness, who gave evidence in a fair and measured way.

[66] *Vestergaard Frandsen v Bestnet Europe* [2013] UKSC 31.

Claimant's submissions

299. In its Particulars of Claim, the Claimant originally advanced four alternative bases for the assessment of its loss (see paragraphs 52-57). By the time of trial, this had been reduced to two alternative approaches to assessing its loss.

300. The Claimant's primary case is that but for the Defendants' breach of confidence, Mr. Gifford would have gone on to exploit the Confidential Information by completing TVC's development and subsequently taking it to market. Vida's entry into the market (as a result of the misuse of the Confidential Information) deprived him of the opportunity to do so (see its written opening at paragraphs 146-147). Consequently, its loss is said to be the estimated value of the (now-unrealisable) TVC business opportunity ("**the Business Opportunity Valuation**").

301. In the alternative the Claimant argues that it is entitled to seek damages on the basis of a hypothetical negotiation of the price a willing buyer would have paid to obtain a licence from the Claimant to use the Confidential Information on or around the date of the breach on 9 March 2016 (**"the Business Concept Valuation"**). Whilst Mr. Skeels calls this the Business Concept Valuation, this is what is known to lawyers as "negotiating damages".

302. As to the Business Concept Valuation, in the First and Fourth Defendants' written closing submissions, they suggested at paragraph 303 that "*[t]here is no case regarding valuation of the confidential information or any part thereof*" and that Mr. Skeels was not asked to consider this. However, that is wrong. It is clear from paragraph 1.2.14(b) that Mr. Skeels did indeed value the Business Concept as his alternative calculation, which is "*the price that a willing buyer would have paid a willing seller <u>for the Confidential Information</u> and the right to use and disclose <u>that information</u>*" (emphasis added). He further makes clear, in paragraph 5.3.1 of his expert report, that "*Mr. Gifford's Business Concept is intellectual property ("IP") and thus my Business Concept Valuation is akin to the valuation of a single asset, rather than a whole business which owns and exploits that asset, generating cash flows from it*."

Mr. Skeels' expert valuation evidence

303. In his expert report (at paragraph 2.2.1), Mr. Skeels reviewed the Confidential Information and considered that the following TVC Documents were relevant to his instructions:

    i) Documents (1) ('TVC – Overview') and (2) ('TVC – Investors Introduction'), which included details about the proposed investment required from the Defendants, together with certain high level metrics;

    ii) Documents (3) ('TVC – Presentation e2e') and (6) ('TVC – Business Model and Projections'), which included certain financial projections for a Three-Year Forecast Period, and which were presented at the First Meeting to Mr. Perks; and

    iii) Document (4) ('TVC – The Business'), which included Mr. Gifford's assessment of TVC's potential competitors.

304. The financial projections included in Document (3) were based on Mr. Gifford's financial model as set out in an Excel file named '*TVC- CASH FLOW (Care platform implementation only)*' (**"the TVC Cashflow Document"**), which Mr. Skeels referred to extensively as the basis of his cash flow forecasts. In particular, he relied upon Mr. Gifford's assumptions as to the number of users per care facility (five care staff per care facility) and the annual subscription fee of £1,000/user (paragraphs 4.4.2-4.4.4), which he said in cross examination he had no reason to doubt. He clarified that he had also carried out his own independent analysis to cross-check these figures, and had also made certain adjustments to the assumptions underpinning the TVC Cashflow Document, particularly concerning market size and market share (paragraphs 2.3.1, 4.4.5-4.4.12). As TVC had no historic operations to validate the cost projections set out in the TVC Cashflow Document, Mr. Skeels analysed the trading performance of comparable companies in the three-year period prior to 9 March 2016 to identify a median adjusted operating profit margin for his calculations. I consider that Mr. Skeels' analysis was careful and persuasive.

Mr. Skeels' alternative calculations of the Claimant's loss

305. In his **Business Opportunity Valuation**, Mr. Skeels assumed that (a) Mr. Gifford had received the necessary investment (c. £580k) to complete TVC's development in return for a 35% shareholding in the business;[67] and (b) that investment would have allowed TVC to be taken to market as intended. Applying the income approach, he concluded that the total value of the TVC business would have been £19,456,586; and Mr. Gifford's share of this (i.e. 60% of the total) would have been £11,673,951.

306. In his **Business Concept Valuation**, Mr. Skeels used the income approach (on the basis that the Business Concept would generate the majority of its value from its income generating capacity) and applied the relief-from-royalty method as the most appropriate valuation methodology to adopt in the income approach to valuing the Business Concept.

307. Mr. Skeels explains the 'relief from royalty' approach at paragraphs 5.4.1-5.4.2 of his report as follows:

> "*A relief from royalty approach is based on the theoretical assumption that a company owns no IP and needs to license it from an IP owner company. The license agreement would require a royalty to be paid, which is typically based on the revenue generated from the use of the IP.*
>
> *The value of owning the IP is considered to be the present value of the royalty costs avoided, net of the tax savings generated, plus the present value of the tax relief available on the amortisation charges (known as the tax amortization benefit). The relief from royalty calculation requires:*
>
> *(a) an estimate of future revenue (sales) using the IP;*
>
> *(b) an appropriate royalty rate to be identified and applied to these future sales forecasts;*
>
> *(c) the post-tax royalties to be discounted to present values using an appropriate discount rate; and*
>
> *(d) a calculation of the present value of the tax relief available on the amortisation charges.*"

[67] A further 5% shareholding had been promised to, or was held by, Mr. Walker, leaving Mr. Gifford with 60% shareholding in the business in this counterfactual narrative.

308. Utilising an intellectual property royalty rate database, he carried out a search for comparable market transactions concerning healthcare software. This showed a median royalty rate of 12.5%, and he accordingly selected a conservative 10% royalty rate in his assessment of the Business Concept Valuation. He then applied a conservative discount rate of 50%, being the higher end of the range of returns typically required by venture capitalists for companies in the second stage of development, which Dr Young suggested was the case here, and which I accept was the case (despite Mr. Brown KC's cross-examination of Dr Young in which he pressed Dr Young on this point).

309. In this way, Mr. Skeels conservatively valued Mr. Gifford's Business Concept on 9 March 2016 at £2,993,059. (paragraph 5.5.2)[68]. This figure he considered to be robust, when he applied the following sense check to it in paragraph 5.5.8 of his expert report:

> "*Seven months after the Valuation Date, in an email dated 28 October 2016, Naushard Jabir (of Hambro and Vida) … was seeking to raise £1 million of funding for Vida based on a pre-money valuation of £7 million. While I understand there are differences in the business model of Vida and TVC, the £7 million pre-money valuation of Vida shortly after the Valuation Date suggests my Business Concept Valuation is not overstated.*"

310. I accept Mr. Skeels' evidence that this is a useful sense check generally in respect of his Business Concept Valuation. However, Mr. Skeels also gave evidence as follows in paragraphs 5.5.3 – 5.5.5 of his expert report:

> "*5.5.3 I have considered the valuation of TVC implied by the investment Mr. Gifford was seeking. I understand that Mr. Gifford was seeking an investment of £580,000 in return for a 35% (minority) shareholding in TVC.*
>
> *5.5.4 On the basis that the 35% shareholding would have represented a minority shareholding in TVC, I consider that a control premium should be applied when assessing the value of 100% of the business.*
>
> *5.5.5 In my experience, a control premium of 30% is appropriate to reflect the ability of the buyer to have full control over the business they are acquiring. Therefore, I consider that the valuation of TVC implied by the Potential Transaction was*

[68] See his table at 5.5.1 (in evidence Mr Skeels explained that the reference in that table to a royalty rate of 12.5% was a typographical error: it should of course read 10%).

> *£2,154,285*[69]*. This is broadly in line with my Business Concept Valuation. I consider this is an appropriate cross-check as the funding was sought to take TVC from a Business Concept through to market as intended*."

311. Mr. Skeels was not cross-examined by Mr. Brown KC on this sense check and in particular was not challenged in respect of these three paragraphs of his expert report, which I accept. Accordingly, and adopting a cautious approach to the calculation of negotiating damages in this case (which I consider to be appropriate because this is not a precise science and Mr. Skeels fairly accepted that there were a number of errors and omissions in Mr. Gifford's cashflow forecasts, albeit that he sought to allow for them in his valuation[70]), of the two figures, namely £2,993,059 and £2,154,285, I consider that the latter figure[71] is likely to be the best indicator of the fair level of compensation for Mr. Gifford's (and therefore the Claimant's) loss, consisting as it does of the valuation of TVC implied by the actual investment Mr. Gifford was seeking at the relevant time [72].

Mr. Skeels allows for flaws in Mr. Gifford's calculations

312. However, it is also necessary to consider whether Mr. Skeels' valuation is supportable in the light of the skilful cross-examination of Mr. Gifford and Mr. Skeels by Mr. Brown KC, when Mr. Brown heavily criticised Mr. Gifford's TVC Cashflow Document[73]. During Mr. Gifford's cross-examination, he fairly conceded that he had made several omissions in his calculations, including for legal costs, costs for developing licensing agreements, company set-up costs, liability insurance, VAT liability, training costs for employees, cleaning, security, waste, tender, and third-party licensing costs. He also accepted that some of the figures utilised by him were (significantly) understated, such as the wages and the number of staff required to operate a 24-hour helpdesk, office accommodation costs from month 13 onwards and insurance premiums.

313. Mr. Gifford was also challenged by Mr. Brown on his proposed annual fee of £1,000 per user. It was suggested that this figure was conjecture and was unsupported by any market

[69] £580,000 x (100%/35%) x 130%.

[70] See further paragraph 320 below.

[71] Relied upon by the Claimant in paragraph 275 of its written Closing Submissions.

[72] In paragraph 275 of its written Closing Submissions, the Claimant put this forward as an alternative case for assessing compensation for its loss.

[73] T/3/58-80.

research. It was put to him that if the pricing model was flawed, it followed that TVC's projected growth figures were also similarly flawed. Mr. Gifford disputed this, on the basis that in fact his proposed growth figure was actually a conservative estimate which had been reached on the basis of TVC's own research in care homes[74]. He did concede however that he did not know whether the proposed annual fee of £1,000 per user was VAT-inclusive[75], although as Mr. Skeels pointed out in his evidence, the effect of that was either neutral or minimal and any impact would have already been accounted for in the adjustments he made to the costs base in the model[76].

314. In his cross-examination, Mr. Skeels acknowledged the various omissions and concessions of Mr. Gifford, but pointed out that these would only have had a material impact on the accuracy of his calculations if he had failed to spot them and make appropriate adjustments, but he had not failed to do this[77]. He considered that Mr. Gifford's projected user growth rate was in fact reasonably conservative[78]. He also considered that there was no reason to doubt Mr. Gifford's knowledge of the market in arriving at the proposed annual fee[79].

315. Mr. Brown KC also challenged Mr. Skeels' practice of cross-checking the cost projections by looking at publicly available data for comparable companies to TVC at the relevant time[80]. He criticised Mr. Skeels for choosing to adopt established, well-capitalised entities in the same market with substantial assets as his comparators, as opposed to start-ups capitalised with an initial investment of £580k (which, it was said, was the correct comparator). In response, Mr. Skeels explained that the reason for his choice of comparators was his assumption (based on the counterfactual posed) that TVC would have successfully gone to market and grown to at least Year 3 as set out in the TVC Cashflow Document. I accept that explanation.

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[74] T/3/45-49.

[75] T/3/49/10-21.

[76] T/6/119-124.

[77] T/6/97/15-19.

[78] T/6/106/10-25.

[79] T/6/112-113.

[80] T/6/145-153.

316. In paragraph 4.5.8 of his report, Mr. Skeels also explained that in his Business Opportunity Valuation, he had applied a 30% discount rate to the cash flows to reflect their present value. This was based on his experience of the expected rate of return of venture capitalists for companies in the 'second stage' of development, which typically ranged between 30-50%. His discount rate therefore fell at the lower end of this range. In contrast (and as noted above), he had applied a 50% discount rate (i.e., the upper end of the range) in his **Business Concept Valuation** to reflect the greater risk attached to ownership of the business concept as a single intangible asset, compared to ownership of the business as a whole.

The Business Opportunity Valuation: First and Fourth Defendants' submissions

317. The First and Fourth Defendants argue that the Claimant's primary case on quantum should fail, as on the Claimant's own evidence there was no viable business opportunity for TVC, and it would have failed on the assumed counterfactual of the investment being made in it. The correct valuation of the business opportunity is therefore nil. In support of this, it is argued that:

    i) Messrs Gifford and Walker lacked the business acumen to bring TVC to market, in a space where other established market operators were already pushing ahead with similar products and stronger backing. TVC also had no regard to compliance or regulatory obligations and failed to account for the costs of training care home staff. Further, Mr. Gifford's 'workflows' (which were used to develop TVC) had been customised to La Finquita's specific needs, and there was no evidence that it was fit for purpose in any other care home, much less other care settings.

    ii) The TVC Cashflow Document was the centrepiece of Mr. Skeels' calculations, but this had included material omissions to the cost base. It was also based on unrealistic demand and growth figures; including a proposed user price point which was unsupported by market research.

    iii) Although Mr. Skeels asserted that he had carried out his own cross-checks of the figures he had arrived at, this was unrealistic. TVC had inadequate capital as against its projected costs, and no relevant comparison could be made as against listed, well-capitalised competitors with established trading records. The

material omissions in the TVC Cashflow Document simply showed that TVC, on its own figures, would have run out of cash by Year 2 at the very latest.

318. I consider that there is force in the First and Fourth Defendants' submission that there are too many speculative elements to the Business Opportunity claim to make it a reliable basis for calculating the Claimant's loss.

319. However, I do not consider that Mr. Brown's criticism of Mr. Gifford's pricing figure of £1,000 per user is justified. So far as that is concerned, as Mr. Skeels convincingly explained:

> "The £1,000 per user is a key assumption that Mr. Gifford has made and I don't think there is any reason to doubt that… I think he is very valid to look at his knowledge, but the other thing just to bear in mind is I have been asked to value the business as it has been taken to the market as per the confidential information… The key thing is Mr. Gifford is the one who had a business plan and Mr. Gifford is the one who has done the market research, so I understand it, and Mr. Gifford is the one who came up with the assumption which, when it was put to Mr. Perks and Mr. Hambro in the first meeting, they were enthusiastic about that. So I don't think it is unreasonable to make that assumption."

I agree.

Business Concept Valuation: First and Fourth Defendants' submissions

320. As Mr. Skeels' Business Concept Valuation was also based on the TVC Cashflow Document, Mr. Brown KC submitted that the same criticisms in paragraphs 317(ii)-(iii) above applied to the Claimant's alternative basis for calculating quantum. However, I consider that Mr. Skeels' higher 50% discount rate is an appropriate and conservative discount rate to adopt (and adequately takes account of the criticisms of the TVC Cashflow Document for this purpose) in the light of my cautious approach to the award of negotiating damages in this case as set out in paragraph 311 above.

321. Mr. Brown KC also argued, more fundamentally, that the Business Concept Valuation is an inappropriate measure of the Claimant's loss as a matter of principle. The remedy of *negotiating damages* (to adopt the term used by Lord Reed JSC in *One Step* [2018] UKSC 20) is only available where a claimant has suffered substantial loss that cannot be precisely quantified. However, he submitted, there was nothing in the evidence to suggest

that Mr. Gifford had actually suffered substantial loss. If anything, Mr. Gifford's failed attempts to obtain investment after the Second Meeting simply proved that TVC (as a product and a business opportunity) was not investable or marketable. That TVC's business concept was valued by Mr. Skeels at £2.9m (or, as I have found, £2.1m on a more conservative basis) was/is at odds with the fact that Mr. Gifford had completely failed to obtain any investment funding for it: either the concept was un-investable and its value was nil; or Mr. Gifford had wholly failed to mitigate his loss by obtaining alternative finance. At best, the Claimant should only be awarded nominal damages. That is the appropriate remedy where breach of confidence is established, but there is no evidence of any financial gain/loss: *Marathon Asset Management LLP v Sneddon* [2017] 2 CLC 182.

322. I do not accept these submissions. I find that TVC became un-investable or unmarketable by reason of Mr. Perks' and Hambro Perks' breaches of confidence. As Mr. Gifford explained and I accept, once Vida was marketed and investment in it sought utilising TVC's Confidential Information, TVC lost its attractiveness and value in the marketplace. That is the important point, although I would add that I also accept Mr. Gifford's evidence that he had no expertise and no contacts in the venture capital market, and so he did not know to whom to turn once Hambro Perks let him down. I do not accept Mr. Brown KC's submission that Mr. Gifford ought to have but failed to mitigate his losses.

323. In consequence, I find that the sum of £2,154,285 is a fair valuation of Mr. Gifford's Business Concept on 9 March 2016. Accordingly, that is the sum to which the Claimant is entitled by way of negotiating damages.

The law on negotiating damages

324. Finally[81], I consider whether there is any legal impediment to the Claimant recovering negotiating damages (or Business Concept Valuation damages) in this case.

[81] Although very little argument was addressed on this point.

325. In my judgment, there is not and I consider that in this case the Claimant is indeed entitled to claim negotiating damages: Mr. Gifford (and now the Claimant) has in substance been deprived by Mr. Perks and Hambro Perks of a valuable asset, and his loss can be measured by determining the economic value of the asset in question.

326. As Arnold J (as he then was) stated in *Force India v 1 Malaysia Racing Team* [2012] EWHC 616 (Ch) at [424]:

> "*I conclude there is nothing in the authorities which prevents me from adopting the approach which, as a matter of principle, I consider to be correct. The same approach is to be adopted to the assessment of damages or equitable compensation whether the obligation of confidentiality which has been breached is contractual or equitable. Where the claimant exploits the confidential information by manufacturing and selling products for profit, and his profits have been diminished as a result of the breach, then he can recover his loss of profit. Where the claimant exploits the confidential information by granting licences to others, and his licence revenue has been diminished as a result of the breach, he can recover the lost revenue. Where the claimant would have "sold" the confidential information but for the breach, he can recover the market value of the information as between a willing seller and a willing buyer. Where the claimant cannot prove he has suffered financial loss in any of these ways, he can recover such sum as would be negotiated between a willing licensor and a willing licensee acting reasonably as at the date of the breach for permission to use the confidential information which has been misused in the manner in which the Defendant has used it*."

327. The leading authority on "negotiating damages" of this kind is now Lord Reed's judgment in the Supreme Court decision in *One Step (Support) Ltd v Morris-Garner* [2018] UKSC 20. Whilst that case concerned damages for breach of contract and not for the equitable wrong of misuse of confidential information, the distinction is not material. As Lord Sumption JSC explained in his concurring judgment (at [120]):

> *"…a notional royalty (or its capitalised value) is commonly awarded as damages for breach of a duty not to misuse confidential information, whether that duty arises from contract or from equitable doctrines: Seager v Copydex Ltd (No 2) [1969] 1 WLR 809, 813; Force India Formula One Team Ltd v 1 Malaysia Racing Team Sdn Bhd [2012] RPC 29, paras 383-387, 424, approved without consideration of this point, [2013] EWCA Civ 780; [2013] RPC 38. This is not because of some principle*

> *peculiar to equitable relief. Nor is it because the claims were in reality for restitution. These were expressed to be, and in fact were awards of compensatory damages.*"

328. In the leading judgment, Lord Reed JSC also expressly recognised that negotiating damages are appropriate as a remedy for breach of an equitable duty of confidentiality, stating:

> *"[84] There have also been cases in which negotiating damages have been treated as available at common law in cases of breach of contract. An example is the case of Vercoe v Rutland Fund Management Ltd [2010] EWHC 424 (Ch); [2010] Bus LR D1414 which also concerned the breach of a joint venture agreement, where the Defendants used the information provided by the claimants about a commercial opportunity without including them in the transaction. There were breaches both of a confidentiality agreement and of an equitable duty of confidentiality. It was agreed that damages should be assessed on the basis of a hypothetical release fee. In effect, the court awarded damages based on the commercial value of the information which the Defendants misused, as in a number of earlier cases concerned with breach of confidence. These cases can be understood as proceeding on the footing that the result of the breach of contract was that the claimants lost a valuable opportunity to exercise their right to control the use of the information…*
>
> *[91] The use of an imaginary negotiation can give the impression that negotiation damages are fundamentally incompatible with the compensatory purpose of an award of contractual damages. Damages for breach of contract depend on considering the outcome if the contract had been performed, whereas an award based on a hypothetical release fee depends on considering the outcome if the contract had not been performed but had been replaced by a different contract. That impression of fundamental incompatibility is, however, potentially misleading. There are certain circumstances in which the loss for which compensation is due is the economic value of the right which has been breached, considered as an asset. The imaginary negotiation is merely a tool for arriving at that value. The real question is as to the circumstances in which that value constitutes the measure of the claimant's loss.*
>
> *[92] As the foregoing discussion has demonstrated, such circumstances can exist in cases where the breach of contract results in the loss of a valuable asset created or protected by the right which was infringed, as for example in cases concerned with the breach of a restrictive covenant over land, an intellectual property agreement or a confidentiality agreement.*

Such cases share an important characteristic with the cases in which Lord Shaw's "second principle" and Nicholls LJ's "user principle" were applied. The claimant has in substance been deprived of a valuable asset, and his loss can therefore be measured by determining the economic value of the asset in question. The Defendant has taken something for nothing, for which the claimant was entitled to require payment.

[93] It might be objected that there is a sense in which any contractual right can be described as an asset, or indeed as property. In the present context, however, what is important is that the contractual right is of such a kind that its breach can result in an identifiable loss equivalent to the economic value of the right, considered as an asset, even in the absence of any pecuniary losses which are measurable in the ordinary way. That is something which is true of some contractual rights, such as a right to control the use of land, intellectual property or confidential information, but by no means of all. For example, the breach of a non-compete obligation may cause the claimant to suffer pecuniary loss resulting from the wrongful competition, such as a loss of profits and goodwill, which is measurable by conventional means, but in the absence of such loss, it is difficult to see how there could be any other loss.

[94] It is not easy to see how, in circumstances other than those of the kind described in paras 91—93, a hypothetical release fee might be the measure of the claimant's loss. It would be going too far, however, to say that it is only in those circumstances that evidence of a hypothetical release fee can be relevant to the assessment of damages. If, for example, in other circumstances, the parties had been negotiating the release of an obligation prior to its breach, the valuations which the parties had placed on the release fee, adjusted if need be to reflect any changes in circumstances, might be relevant to support, or to undermine, a subsequent quantification of the losses claimed to have resulted from the breach. It would be a matter for the judge to decide whether, in the particular circumstances, evidence of a hypothetical release fee was relevant and, if so, what weight to place upon it. However, the hypothetical release fee would not itself be a quantification of the loss caused by a breach of contract, other than in circumstances of the kind described in paras 91—93 above.

[95] The foregoing discussion leads to the following conclusions:

(1) Damages assessed by reference to the value of the use wrongfully made of property (sometimes termed "user damages") are readily awarded at common law for the invasion of rights to tangible moveable or immoveable property (by detinue, conversion or trespass). The rationale of such awards

> *is that the person who makes wrongful use of property, where its use is commercially valuable, prevents the owner from exercising a valuable right to control its use, and should therefore compensate him for the loss of the value of the exercise of that right. He takes something for nothing, for which the owner was entitled to require payment.*
>
> …
>
> *(8) Where the breach of a contractual obligation has caused the claimant to suffer economic loss, that loss should be measured or estimated as accurately and reliably as the nature of the case permits. The law is tolerant of imprecision where the loss is incapable of precise measurement, and there are also a variety of legal principles which can assist the claimant in cases where there is a paucity of evidence.*
>
> …
>
> *(10) Negotiating damages can be awarded for breach of contract where the loss suffered by the claimant is appropriately measured by reference to the economic value of the right which has been breached, considered as an asset. That may be the position where the breach of contract results in the loss of a valuable asset created or protected by the right which was infringed. The rationale is that the claimant has in substance been deprived of a valuable asset, and his loss can therefore be measured by determining the economic value of the right in question, considered as an asset. The defendant has taken something for nothing, for which the claimant was entitled to require payment*."

329. A convenient summary of the applicable principles in a breach of confidence case such as the present, which is derived from the foregoing, is to be found in the judgment of HHJ Cadwallader in *Kieran Corrigan & Co Ltd v OneE Group Ltd* [2024] EWHC 2146 (Ch) at [29]. In summary:

(a) Negotiating damages are available where what had been lost is a valuable opportunity to exercise the right to control the use of the information;

(b) The loss for which compensation is due is then the economic value of the right which has been breached, considered as an asset;

(c) The imaginary negotiation is merely a tool for arriving at that value;

(d) Circumstances in which that value constitutes the measure of the claimant's loss can exist in cases where the breach of contract or equitable duty results in the loss of a valuable asset created or protected by the confidentiality;

(e) The right needs to be of such a kind that its breach can result in an identifiable loss equivalent to the economic value of the right, considered as an asset (even in the absence of any pecuniary losses which are measurable in the ordinary way);

(f) Negotiating damages in this context are still compensatory.

330. The correct approach to then assessing those negotiating damages is, I consider, as set out by Arnold J in *Force India* at [386]:

> *"i) The overriding principle is that the damages are compensatory: see Attorney-General v Blake [2001] 1 AC 268 at 298 (Lord Hobhouse of Woodborough, dissenting but not on this point), Experience Hendrix LLC v PPX Enterprises Inc [2003] EWCA Civ 323, [2003] EMLR 25 at [26] (Mance LJ, as he then was) and WWF-World Wide Fund for Nature v World Wrestling Federation Entertainment Inc [2007] EWCA Civ 286, [2008] 1 WLR 445 at [56] (Chadwick LJ).*
>
> *ii) The primary basis for the assessment is to consider what sum would have [been] arrived at in negotiations between the parties, had each been making reasonable use of their respective bargaining positions, bearing in mind the information available to the parties and the commercial context at the time that notional negotiation should have taken place: see Experience Hendrix LLC v PPX Enterprises Inc [2003] EWCA Civ 323, [2003] EMLR 25 at [45], WWF-World Wide Fund for Nature v World Wrestling Federation Entertainment Inc [2007] EWCA Civ 286, [2008] 1 WLR 445 at [55], Lunn Poly Ltd v Liverpool & Lancashire Properties Ltd [2006] EWCA Civ 430, [2007] L&TR 6 at [25] and Pell Frischmann Engineering Ltd v Bow Valley Iran Ltd [2009] UKPC 45, [2011] 1 WLR 2370 at [48]-[49], [51] (Lord Walker of Gestingthorpe).*
>
> *iii) The fact that one or both parties would not in practice have agreed to make a deal is irrelevant: see Pell Frischmann Engineering Ltd v Bow Valley Iran Ltd [2009] UKPC 45, [2011] 1 WLR 2370 at [49].*
>
> *iv) As a general rule, the assessment is to be made as at the date of the breach: see Lunn Poly Ltd v Liverpool & Lancashire Properties Ltd [2006] EWCA Civ 430, [2007] L&TR 6 at [29]*

> *and Pell Frischmann Engineering Ltd v Bow Valley Iran Ltd [2009] UKPC 45, [2011] 1 WLR 2370 at [50].*
>
> *v) Where there has been nothing like an actual negotiation between the parties, it is reasonable for the court to look at the eventual outcome and to consider whether or not that is a useful guide to what the parties would have thought at the time of their hypothetical bargain: see Pell v Bow at [51].*
>
> *vi) The court can take into account other relevant factors, and in particular delay on the part of the claimant in asserting its rights: see Pell Frischmann Engineering Ltd v Bow Valley Iran Ltd [2009] UKPC 45, [2011] 1 WLR 2370 at [54*]."

331. To this analysis may be added the additional points referred to in *Kieran Corrigan & Co Limited v OneE Group Limited* at [33] as follows:

> "*33. To this may be added the following points from Irvine v Talksport [2003] EWCA Civ 423, [2003] FSR 35, CF Partners v Barclays Bank [2014] EWHC 3049 (Ch) and Rose J's judgment in Vestergaard Frandsen v Bestnet [2014] EWHC 3159 (Ch):*
>
> *a. The fee is not the fee that the Defendant could have afforded to pay or was in actual fact willing to pay, but that which it would have had to pay to obtain lawfully that which it took unlawfully: Irvine at [106].*
>
> *b. Whether the scale and nature of the use made by the Defendant would affect the fee the claimant would reasonably have accepted is a matter of evidence and it may, on the facts, be that a low value deal is simply one that would not have reasonably interested the claimant (it "would not have bothered to get out of bed" for): Irvine at [108], [111].*
>
> *c. The assessment is ultimately an objective one, albeit that the hypothetical negotiation may be informed by evidence as to what factors and negotiating arguments the parties say (subjectively) they would have advanced – CF Partners [1205]-[1210].*
>
> *d. The price to be paid is the "release price" and covers all the information provided and intended to be freed from restriction: CF Partners [1213]-[1215]. Where a body of information has been absorbed by the wrongdoers, as here, one cannot fillet out information as used: the whole has added to their stock of knowledge and steered their behaviour.*
>
> *e. Where the profit-making opportunity would not have been identified at all without the confidential information then the entire value of its achievement is referable to the information*

> *and the release fee must be judged accordingly: CF Partners at [1222].*
>
> *f. The parties are taken to have been willing to make a deal even if one or both of them would not in reality have been prepared to do so and they are taken have acted reasonably regardless of whether that would in fact have done so (particular character traits of the parties should therefore be disregarded, for example whether they are easy-going or aggressive): Vestergaard at [82].*
>
> *g. If (but obviously only if) alternative routes to the end achieved by the wrongdoing are available to the defendant, these may be taken into account in the negotiation: Vestergaard at [83]. That is by way of contrast with the position where loss of revenue is claimed, when it is not open to a Defendant [to] defeat a claim for infringement by arguing that he could have achieved the same result without infringing the claimant's rights. This is the principle established in The United Horse Shoe and Nail Company Ltd v John Stewart & Co (1988) LR 13 App Cas 401."*

332. The present case is a case where the release fee should be judged against the fact that the whole body of information concerning TVC has been absorbed by the wrongdoers, and so one cannot fillet out information as used: the whole has added to their stock of knowledge and steered their behaviour. Moreover, I consider that the profit-making opportunity (which Mr. Perks and Hambro Perks sought to exploit through Vida) would not have been identified at all by Mr. Perks and Hambro Perks without the Confidential Information. Whilst Vida was ultimately not a success (despite the fact that very substantial investment was raised in Vida), I consider that that was likely as a result of the in-fighting which took place within Vida at the time and because Mr. Jabir, its CEO, had no experience in building or managing the technology side of the business, and not because the Confidential Information was not valuable. The best illustration of this is contained in Ms Burns' internal email of 7 November 2016, which is set out above, and the relevant passage of which is as follows:

> *"[Jabir] has not let Claudio fully run with his ideas on product strategy - to the detriment of the roadmap. Crazy - as [Jabir] has no experience building tech or a consumer product.*
>
> *[Jabir] has withheld key information and wrestled a majority of business control from Devika. [Jabir] manages Tech, Product, Marketing, Ops and Finance - he has no management experience in this!*

> *Dev has little understanding of current business data and future projections. [Jabir]has built all financial models on his own (or with input from Hunt - a junior team member).*
>
> *The investor deck is grossly misleading - there is no solid or well thought out current / long term business strategy."*

333. It follows that, contrary to Mr. Brown KC's submission, this case is factually very different from *Marathon Asset Management LLP v Sneddon* [2017] 2 CLC 182 and the First and Fourth Defendants' reliance upon that case is of no assistance here.

334. In *Marathon*, two former employees (D1 and D3) of an investment management company (Marathon) had copied and retained various confidential documents from their former employer, in breach of a confidentiality clause in their employment contracts. They subsequently set up a competing business. The copied files were stored on a USB drive, but only some of them were used by D3, and in any event there was no evidence that their use had caused Marathon any financial loss. Marathon subsequently brought proceedings against the two employees alleging breach of their contractual duties of confidentiality, the equitable duty of confidence, and an implied duty of fidelity to Marathon when copying/retaining the documents.

335. At trial, the two main issues were (a) whether D1 was liable for copying some of the files (D3 having admitted liability), and if so (b) what damages were payable by D1 and D3. As to (b), Marathon sought negotiating damages assessed by reference to the fee that would have reasonably been agreed between the parties to license the defendants' wrongful activity. Leggatt J (as he then was) found the defendants liable for the breaches, but ultimately awarded Marathon only nominal damages.

336. The distinction between that case and the present case is, however, that in *Marathon*, Marathon had not sought to argue – and in fact the evidence disproved – that the defendants had actually made use of the confidential information in the files (other than very few of them) and it did not identify the value of those few files that were used. Its case was that the extent of the misuse was irrelevant to its claim for damages (see [243]-[244]). The files were disparate documents with values that were likely to have differed greatly and many of which would have been useless to the defendants. Hence, on the way the claimant's case was presented, the licence was treated as one of copying and returning

all of the files but without any use of them. That is why Leggatt J held that the value of such a licence would be nominal[82].

CONCLUSION ON THE CLAIMANT'S LOSS

337. In all the circumstances, I consider that the Claimant is entitled to recover compensation by way of negotiating damages in the sum of £2,154,285 (together with interest on that sum) in respect of the First and Fourth Defendants' breaches of confidence, for which they are each jointly and severally liable to the Claimant.

[82] See the analysis of Marathon on this point, with which I agree, in *McGregor on Damages (22nd edn (2024)), paras. 15-024–15-025.*