

- By the time I got involved, there were 4 separate elements of a potential deal that has been on the table at various stages of the separation discussion. (They also appear from annexure **AW209**):
 - Oxford: Athol had proposed that Bain fund his tuition and accommodation at Oxford for two years whilst he finished his PhD. That would enable him to remove himself from the media attention, and continue his studies. He was finding the relentless questions (from media, students, NGOs and his own social circle) draining and overpowering. He believed time away from South Africa would be in his own best interest. It was also in Bain's interest as the decreased media coverage would give Bain South Africa an opportunity to rebuild. Bain frequently funds further education opportunities of its employees – albeit on the understanding that they will return to full employment. This was a special case (because Athol was not undertaking to return as a permanent employee) but was not far outside what Bain routinely does for employees across the world.
 - Corporate Responsibility and Governance Institute: Athol proposed that Bain provide seed funding for a corporate ethics institute that he intended to establish after completing his Oxford studies. The money was to go to the institute not to Athol, and Bain was interested because corporate governance and ethics is increasingly a focus of our clients (globally and in South Africa). We also believed that this aligned well with our aim to remediate the faults in our handling of SARS. I should add that it is not unusual for Bain to partner with thought leaders or institutions that share its values and vision.
 - Guaranteed work hours as an advisor: Athol pointed out that his return to Bain had come at the expense of his own consultancy practice. He also expressed

the need and desire to continue paid-for advisory work on a part time basis, especially if he locates to the UK for his studies. Bain proposed to employ him as an advisor in the UK for a minimum number of days per month, on Corporate Responsibility topics, effectively guaranteeing him a minimum level of compensation during his time in the UK. I must stress that this was to be payment for services, only paid when they are in fact rendered and not a gratuity of any kind. Bain uses advisors on specialised topics extensively across the world.

- Sign-on and other bonuses: Finally, there was the question of Athol's repayment of his sign-on bonus (and other amounts due under the contract). He wanted to be relieved or partially relieved of the obligation to repay.
- We discussed these elements on a call on 21 November 2019. Athol was genuinely interested and excited about the potential of this deal – particularly the Oxford element. It is simply not true that Bain was pushing this onto him. It was his idea at the start and he was keen to find a way to make it work.
- It is also not true that Athol turned down Bain's offer on 21 November 2019 (as he claims in paragraph 283). As my WhatsApps with him show, we had a further call on 22 November 2019 to discuss a separation agreement, and the elements set out above. He must have reported back on that call to his wife (who had previously been reluctant to move to the UK) because, at 15h53 on 22 November, he sent me a WhatsApp saying: "*[Name Redacted]'s initial response: "Interesting". I can work with that . . . Will be in touch!*". It is clear that he was very seriously considering the proposal.

- It is similarly misleading for Athol to claim that Bain demanded his absolute silence in return for the deal.
 - The separation discussions did envisage that Athol would stop engaging with the media about Bain – something we both wanted at the time, and which was mutually beneficial. Bain also wanted to hold Athol to the confidentiality undertakings that he had given in his employment agreements (including by returning or destroying confidential or privileged documents in his possession).
 - Athol’s existing confidentiality undertakings that the proposed Separation Agreement refers to were always subject to Bain’s understanding and agreement that Athol was free to fully cooperate with the Zondo Commission (and any other investigations) that required information from him. I said as much to him on the phone and confirmed it by email in response to a direct emailed question to me, dated 29 November 2019. *“My biggest uncertainty is how such an agreement would relate to me being called to testify in court or commissions such as the Zondo commission. I imagine that I would not be in breach?”* I replied in the affirmative.

- We also afforded him access to Baker McKenzie to prepare for his meeting with the Commission’s investigators. (Contrary to his claims in the affidavit, Athol requested and was grateful for Darryl Bernstein’s assistance – as his WhatsApps to me of 25 and 26 November 2019 show.)

- Ultimately, Athol and I reached an in-principle separation agreement on the terms set out above during a call on 24 November 2019. (The elements thereof are set out in my email of 29 November 2019, **AW209**).

- But on 25 November 2019, Athol was contacted by this Commission’s investigators and met with them shortly thereafter, on 27 November 2019. At the time, Athol was still considering following through with the separation agreement. He WhatsApped me that day and said he was “*hoping [I’d] have first draft*” but expressed that the “*Zondo development made things very uncertain*”.
- I provided him with a copy of the draft terms of the separation agreement on 29 November 2019. It was only on 30 November 2019 that he told me, via WhatsApp, that he thought “*it best that we part ways with a clean break*”. He also sent the mail attached as **AW210** and referred to in paragraph 289 of his affidavit.
- On 1 December 2019, I called him to understand what he meant and what changed (and not, as he claims, to “*plead him to reconsider*”). Athol explained that the involvement of the Zondo Commission had changed everything for him, and that he was concerned about how a generous separation package would be perceived by the Commission and the press. He wanted to be seen to be wholly independent of Bain and draw a line under his involvement with Bain.