



Neutral Citation Number: [2024] EWHC 375 (Admin)

Case No: CO/101/2023
AC-2023-LON-000189

IN THE HIGH COURT OF JUSTICE
KING’S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22 February 2024

Before :

MRS JUSTICE LANG DBE

Between :

THE KING

Claimants

on the application of

(1) VIKRAM BHAT

(2) GEETHA BHAT

- and -

NHS LITIGATION AUTHORITY

Defendant

NHS COMMISSIONING BOARD

Interested Party

Jason Coppel KC and Oluwaseyi Ojo (instructed by Taylor Wood Solicitors) for the
Claimants

Fenella Morris KC and Rose Grogan (instructed by Capsticks) for the Interested Party

The Defendant did not appear and was not represented

Hearing dates: 30 & 31 January 2024

Approved Judgment

This judgment was handed down remotely at 10 am on 22 February 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mrs Justice Lang:

1. The Claimants seek judicial review of the Determination of the Defendant, dated 10 November 2022, that the General Medical Services Contract (“the Contract”) between the partnership (comprising the Claimants and Mrs Patel) and National Health Service England (“NHSE”) had terminated, whereupon a fixed term contract until 31 March 2022 had come into existence.
2. The Claimants and Mrs Patel were in a partnership with one another providing general medical services at Sai Medical Centre, Tilbury, Essex pursuant to the Contract with NHSE. The Contract was administered on behalf of NHSE by the local Clinical Commissioning Group (“CCG”) which became the Integrated Care Board (“ICB”) in July 2022.
3. On 8 November 2021, the Claimants served a notice of dissolution of the partnership on Mrs Patel. The Claimants and the CCG fell into dispute over the consequences of the dissolution for the Contract. The Claimants referred the dispute to the Secretary of State for Health and Social Care (“the Secretary of State”), who appointed the Defendant to adjudicate in the NHS dispute resolution procedure, pursuant to section 9 of the National Health Service Act 2006 (“the 2006 Act”) and section 83 of the National Health Service (General Medical Services Contracts) Regulations 2015 (“the 2015 Regulations”).
4. In its Determination, the Defendant accepted the CCG’s analysis. The Adjudicator found that the Contract had automatically terminated upon Mrs Patel leaving the partnership and had been replaced by an implied fixed-term contract which expired on 31 March 2022. The parties engaged in local dispute resolution on various other matters in dispute which concluded with no agreement. The matter was referred back to the Adjudicator who decided to stay the referral pending the final outcome of the judicial review.
5. On 9 October 2023, Bright J. granted the Claimants permission to apply for judicial review. The Defendant has taken no part in the proceedings. Its decision is defended by the Interested Party.

History

6. The Claimants run a medical practice at the Sai Medical Centre, 105 Calcutta Road, Tilbury, Essex, and at two additional branch sites. They are both equity partners in a two-partner partnership. Dr Bhat is a medical practitioner, and Mrs Bhat is the Practice Manager.
7. The original Contract, dated 17 September 2012, was between NHSE and the partnership trading as Dr Patel & Partners, at Sai Medical Centre, 105 Calcutta Road, Tilbury. The partners were Dr Patel and his wife, Mrs Patel, who was the Practice Manager.
8. In August 2013, Dr Bhat and Dr Jagadish joined Dr Patel & Partners as locum doctors (not partners).

9. In March 2014, Dr Bhat and Dr Jagadish became partners in Dr Patel & Partners. At that point, the partners comprised Dr Patel, Mrs Patel, Dr Bhat and Dr Jagadish. According to the findings of Fancourt J. in *Bhat & Anor v Patel & Anor* [2021] EWHC 2960 (Ch), there was a partnership agreement made in writing on 19 March 2014 between Mrs Patel, as a salaried partner, and Dr Bhat and Dr Jagadish as equity partners.
10. On a date in 2014 or 2015 (the precise date is unclear from the evidence before me), Dr Patel retired from practice and from the partnership. Following this, the partnership was re-named the Sai Medical Centre.
11. On 24 April 2015, NHSE, Mrs Patel, Dr Bhat and Dr Jagadish signed a document headed “Variation to General Medical Services Contract” which stated: “This variation amends the General Medical Services Contract in accordance with clause 460 and clause 460.1 the removal of a General Medical Practitioner, Dr P.J. Patel. The practice will be known from this date as the Sai Medical Centre. This requires an amendment to Schedule 1 Part 2 and Schedule 2”.
12. According to the findings of Fancourt J., a new partnership came into existence under a document titled “Amendment of partnership agreement by adding new partner”, dated 1 April 2016, when Mrs Bhat became a 10% equity partner.
13. On 31 May 2016, Dr Bhat, Dr Jagadish and Mrs Patel wrote to NHSE informing them that Mrs Bhat had joined the practice as a non-clinical partner.
14. On 1 July 2016, NHSE, Mrs Patel, Dr Bhat and Dr Jagadish signed a document headed “Variation to General Medical Services Contract” which amended Schedule 1 and Schedule 2 of the Contract to add Mrs Bhat as a partner, with effect from 1 July 2016.
15. With effect from 31 March 2017, Dr Jagadish retired from the partnership. On 6 April 2017, NHSE signed a document headed “Variation to General Medical Services Contract” (which had been signed earlier by Mrs Patel, Dr Bhat, Mrs Bhat, and Dr Jagadish on 7 February 2017). It amended Schedule 1 and Schedule 2 of the Contract to remove Dr Jagadish with effect from 31 March 2017. Fancourt J. found, at [35];

“d Dr Jagadish then resigned as a partner and there was a further “Amendment of Partnership agreement” made in writing between Mrs Patel and the Bhats. The Recorder did not resolve whether that was operative or a partnership at will existed, but in either case the Bhats were the sole equity partners of the partnership from 1 April 2017.”
16. In the dispute resolution procedure, it was common ground between the parties that the partnership between the Claimants and Mrs Patel was a partnership at will. At all material times, Dr and Mrs Patel have been the freehold owners of the property at 105 Calcutta Road (“the Property”) and the Claimants are the lessees of the Property, under a business lease.
17. Dr and Mrs Patel are also the owners of an adjacent site (“the Adjacent Land”) which is next to the Property in Calcutta Road. The partnership intended to develop the Adjacent Land as an extension to the Sai Medical Centre. In about August 2018, Mrs Patel applied for funds from an NHS Improvement Grant in the sum of £531,297.67 in

order to redevelop the Adjacent Land, representing 66% of the total cost of the works with the remaining 34% to be paid by the partnership. There is a conflict in the evidence as to whether the Claimants, as the equity partners, did or did not pay their share. NHSE paid additional sums to fund the refurbishment and to meet a shortfall, and an extension to the Medical Centre was constructed.

18. The Claimants and Mrs Patel fell into dispute over the Adjacent Land, and their relationship broke down. On 20 February 2019, the Claimants informed the CCG that they intended to dissolve the partnership with 2 days notice. The CCG replied to the Claimants' solicitors, Taylor Wood, stating that serving a notice of dissolution would result in the termination of the Contract. Taylor Wood wrote to the CCG on 22 February 2019 and explained that no effective dissolution had taken place and there was no requirement for the CCG to take any steps towards termination of the Contract. The Claimants entered into negotiations with Mrs Patel, which included her resignation from the partnership, but ultimately no agreement was reached.
19. During the course of 2019, Mrs Patel ceased to attend for work at the practice or have any involvement in the partnership. On 7 August 2019, Mrs Patel commenced possession proceedings against the Claimants for arrears of rent in respect of the Property. On 11 June 2021, the County Court found that there were arrears of rent and that the lease of the Property should be forfeited. However, on 5 November 2021, that decision was overturned on appeal by Fancourt J., who granted relief from forfeiture in respect of the Property, and ordered the Claimants to pay the costs, which they did. The Claimants also claimed a beneficial interest in the Adjacent Land. That claim was dismissed by the County Court and the dismissal was upheld by Fancourt J. on appeal.
20. After the appeal, on 8 November 2021, the Claimants served on Mrs Patel a document headed "Notice of Dissolution of Partnership" which gave Mrs Patel "formal notice and affirmation of the Dissolution and Termination of our Partnership at Will". The notice alleged that Mrs Patel had abandoned the partnership and acted in ways which made it clear that she no longer wished to be a member of the partnership, and the Claimants affirmed and accepted her conduct. In the alternative, the Claimants stated that they were dissolving the partnership by notice. The covering letter from Taylor Wood asked Mrs Patel if she would agree to the proposal made by Fancourt J. in paragraph 58 of his judgment to lease the Adjoining Land to the Claimants, so that it could be used for the provision of medical services.
21. On 24 November 2021, Taylor Wood notified CCG's solicitors, Capsticks, of the service of the notice of dissolution. In response, on 13 December 2021, Capsticks asked Taylor Wood to provide a copy of the notice of dissolution and further information regarding the status of the partnership and the intention for the Contract. The letter set out CCG's position that on dissolution of the partnership the Contract would be terminated by operation of law and an implied fixed-term contract would arise, expiring on 31 March 2022, with any payments strictly subject to that condition. On 31 January 2022 the CCG served a formal breach and remedial notice on the partnership alleging breaches of Contract, in failing to provide information.
22. On 7 February 2022, Taylor Wood replied and stated:

"..... we previously notified Capsticks that our clients' partnership with Mrs Patel has been dissolved and reconstituted

without Mrs Patel. That continues to be the case as our clients are no longer in partnership with Mrs Patel. We note your contention that if the partnership with Mrs Patel was dissolved and no arrangements had been made to continue with the GMS Contract, the Contract would have terminated as a matter of [law]. This position is misconceived

23. On 10 March 2022, Capsticks wrote to Taylor Wood, setting out its position by reference to the decision in *Jones v Commissioning Board* [2017] EWHC 3457 (QB). The letter further stated that the partnership had failed to comply with the remedial notice of 31 January 2022 and that the failure gave rise to a right for the NHSE to terminate the Contract, alternatively the implied contract. The letter also provided notice that the implied fixed term contract would be extended to 31 May 2022 so that the issues between the parties could be resolved, or a referral to Primary Care Appeals (the Defendant) could be made.
24. On 14 April 2022, NHSE wrote to the partnership serving formal breach, remedial and termination notices under the Contract, alternatively the implied contract. On 25 April 2022 the Claimants referred the dispute arising out of the termination of the Contract following the dissolution of the partnership to the Defendant. On 9 May 2022 the Claimants confirmed that they also wished the termination notice dated 14 April 2022 to be included in the dispute resolution procedure.
25. Mrs Patel did not participate in the dispute resolution process and has not given any indication of her position on the history of events and the status of the partnership or the Contract.
26. On 9 September 2022, she filed a civil claim against the Claimants for unpaid consultancy fees.

Determination

27. The Adjudicator (Mr Jonathan Haley, Head of Appeals NHS Resolution) received written representations and evidence from the Claimants and the CCG, and issued his determination on 10 November 2022.
28. At paragraphs 3.17-3.18 of the Determination (“D/3.17-3.18”), the Adjudicator drew a distinction between the most recent dissolution of the partnership and the departure of Mrs Patel, and the technical dissolutions which had occurred previously when partners had retired from, or been added, to the partnership, by agreement. In the case of the technical dissolutions, the Contract had continued by virtue of regulation 15 of the 2015 Regulations and Schedule 1 of the Contract, following notification of the changes to NHSE. Although Schedule 1 of the Contract referred to the expulsion of a partner, the Claimants had no power to expel a partner because this was a partnership at will, without a written partnership agreement making provision for partners to depart or to be added. Instead, the Claimants served a “Notice of Dissolution of Partnership” on Mrs Patel.
29. The Adjudicator rejected the Claimants’ submission that Mrs Patel impliedly consented to dissolution of the partnership because in or about February 2019, she ceased any

activity in the partnership or the practice, and did not challenge the notice of dissolution. On the evidence, the Adjudicator was not satisfied that she had decided to retire from the partnership.

30. The Adjudicator went on to consider the effect of the Notice of Dissolution, as follows:

“3.21 As the Applicant’s solicitors have highlighted “it is commonplace for the composition of a GP partnership to change over time, for example, through new partners joining, retirement or, as in the present case, as a result of dispute between the partners.” I am aware that partnership disputes will occur between partners and these are private matters for the partners themselves to resolve. These are not matters which will be referred for NHS dispute resolution as they are inter-Contractor disputes. These disputes may result in dissolution of the partnership (I particularly note again the position on no majority being able to expel a partner in a partnership at will) and it may also be commonplace that a number of previous partners consider that they should be able to continue the Contract with NHS England. There is no provision for “splitting” a primary medical services contract in these situations, for example, where a partnership is dissolved and each of the previous partners wishes to be awarded a new Contract by the Commissioner. Instead, there is a provision at Clause 26.3.1 of the Contract

3.22 There are also provisions on dissolution because one of the partners has died.

3.23 Clause 26.3.1 provides for the partners to agree that the Contract may continue with one of the former partners, subject to the conditions set out. This ensures that, where there is a dissolution of the partnership, the Contract may continue. This is an entirely sensible provision which creates certainty for the contractor parties on the position that must be adopted before they seek to dissolve and terminate a partnership, as is the case in this dispute. This also ensures that the Commissioner has been provided with a clear position document as to who all of the contractor parties intend the Contract to continue with. Absent such a provision, the Commissioner may be left with contractor parties in dispute over who is to continue to provide the services which cannot be right and places the delivery of medical services at risk.

.....

3.25 As set out by the Commissioner’s solicitors, I accept the position that the GMS Contract has “terminated by operation of law on the dissolution of the partnership.” I accept that “The scenario in this case is different in nature to a technical dissolution. It is not the case that a partner has joined or retired by consent, for example in accordance with the terms of a

functioning partnership agreement. Mrs Patel has effectively been expelled from the Partnership by the process of a dissolution (as acknowledged by the Applicants), and this amounts to a general dissolution. In these circumstances, the Contract provides that it may only continue if one GP partner is nominated by all partners in writing. There is no inconsistency with the Regulations. Indeed, there are understandable justifications for this, for example, a Commissioner should be fully informed of the identity of the contractor, in the well regulated field of provision of primary medical services to patients, and to avoid an intra-partnership dispute creating uncertainty and having the potential to prejudice the delivery of services to patients.”

3.26 I am satisfied that the Contract may subsist until it is terminated in accordance with its terms or by the operation of law. The termination arises from s32(c) of the Partnership Act [1890]. As there is no longer a partnership (the Contract is to be treated as made with the partnership in accordance with Regulation 15 of the Regulations), the Commissioner cannot hold the contract with the entity which does not exist.”

31. The Adjudicator considered that he was not bound by the judgment of Soole J. in the case of *Jones* because it was an injunction application, not a final ruling after full argument (D/3.28).
32. The Adjudicator then went on to conclude that an implied fixed term contract had come into existence after the dissolution and termination of the partnership and the termination of the Contract. He said, at D/3.35 – 3.37:

“3.35 I am satisfied that an implied contract has been in place since the dissolution and termination of the partnership and the termination of the Contract. The implied contract is a fixed term GMS Contract to 31 March 2022, as the Commissioner indicated in their letter dated 13 December 2021 and which states:

“For the avoidance of any doubt, should the partnership have dissolved and the GMS Contract have terminated, any continued delivery of services at the practices and/or any payment made by the commissioner shall not constitute agreement to the GMS Contract continuing or waive any of its rights. If the GMS Contract has terminated and/or to the extent that any implied or other GMS Contract may arise or have arisen it shall be on the basis of a fixed term GMS Contract (following termination of a contract) to 31 March 2022. All payments made by the commissioner in relation to services provided at the practices shall be strictly subject to this condition.”

3.36 It is evident that the Applicant has continued to provide services following 31 March 2022 and on 25 April 2022 they applied for NHS dispute resolution. By email and letter dated 9 May 2022, the Applicant confirmed that they also wished the termination notice dated 14 April 2022 to be included in the application for NHS dispute resolution.

3.37 It is clear that the Commissioner has sought to terminate the arrangements between the parties and has taken steps to ensure that the notices cover the two alternatives of the Contract or the implied contract being in force at the point of service of the termination notice.”

Legal framework

The 2006 Act

General Medical Services contracts

33. Part 4 of the 2006 Act gives NHSE the power to enter into a General Medical Services contract (“GMS contract”) for the provision of primary medical services. GMS contracts are the usual means by which NHSE contracts with GPs for their services to be provided to members of the public.
34. Section 84(5) provides that the “contractor” means the person entering into the GMS contract with NHSE. Section 86 provides that the persons eligible to enter into a GMS contract with NHSE are: (a) a medical practitioner; (b) two or more individuals practising in partnership; or (c) a company limited by shares. In the case of a contractor which is a partnership or a company, at least one partner or shareholder must be a medical practitioner. Any partner who is not a medical practitioner must fall within one of the classes of persons listed in section 86(2)(b). Mrs Bhat and Mrs Patel, who are not medical practitioners, fell within sub-paragraph (iv), described as an individual falling within section 93(1)(d) of the 2006 Act.
35. Section 89(1) of the 2006 Act provides that a GMS contract must contain such provisions as are prescribed. Section 84(3) provides that a GMS contract may make such provision as may be agreed between NHSE and the contractor.

The 2015 Regulations

36. The 2015 Regulations were made under the 2006 Act to prescribe certain matters relating to GMS contracts. The 2015 Regulations repealed and replaced the National Health Service (General Medical Services Contracts) Regulations 2004 (SI 2004/291, “the 2004 Regulations”).

Conditions

37. Regulation 5 sets out conditions relating to the status of medical practitioner who may contract with NHSE. By regulation 6, NHSE must not enter into a contract with any class of person listed therein.

Parties to the contract

38. Regulation 13 requires that a contract must specify the names of the parties to the contract, and “in the case of a party to the contract which is a partnership” the names of the partners.

Changes in the membership of a partnership which is party to a GMS contract

39. Section 86(4) of the 2006 Act provides that regulations may make provision as to the effect, in relation to a GMS contract entered into by individuals practising in partnership, of a change in the membership of the partnership.
40. Regulation 15 of the 2015 Regulations provides as follows:

“Contracts with individuals practising in partnership

15. Where a contract is with two or more individuals practising in partnership—

(a) the contract is to be treated as made with the partnership as it is from time to time constituted, and the contract must make specific provision to this effect; and

(b) the terms of the contract must require the contractor to ensure that any person who becomes a partner in the partnership after the contract has come into force is automatically bound by the contract whether by virtue of a partnership deed or otherwise.”

41. This is a required term of the GMS contract (Part 5: Contracts: required terms).

Duration of GMS contracts

42. Regulation 16(1) of the 2015 Regulations states that, except as provided in paragraph (2), a GMS contract must provide for it to subsist until it is terminated in accordance with the terms of the contract, or by virtue of the operation of any other legal provision. This is a required term of the contract (Part 5: Contracts: required terms).
43. Regulation 16(2) provides that the Board may enter into a temporary contract for a period not exceeding 12 months for the provision of services to the former patients of a contractor following termination of that contractor’s GMS contract.

Variations to GMS contracts

44. Regulation 29(1) of the 2015 Regulations provides that, subject to certain exceptions which are not relevant for present purposes, a variation of or amendment to a GMS contract may only be made in the circumstances provided for in Part 8 of Schedule 3 to the 2015 Regulations. Equivalent provisions must be included in the contract (see regulation 32(1)).
45. Paragraph 57 of Schedule 3 provides that a variation of, or amendment to, a contract is not effective unless it is made in writing and signed on behalf of NHSE and the contractor (subject to the circumstances in which NHSE may vary a contract without the contractor's consent).
46. Paragraph 58 of Schedule 3 makes provision for a contractor to change its status from an individual medical practitioner to that of a partnership.
47. Paragraph 59 of Schedule 3 sets out "variation provisions specific to a contract with two or more persons practising in partnership". It provides:
 - "(1) Subject to sub-paragraph (4), where a contractor consists of two or more persons practising in partnership and that partnership is terminated or dissolved, the contract may only continue with one of the former partners if that partner is—
 - (a) nominated in accordance with sub-paragraph (3); and
 - (b) a medical practitioner who satisfies the condition in regulation 5(1)(a),and only if the requirements in sub-paragraphs (2) and (3) are met.
 - (2) A contractor must give notice in writing to NHS England of the intention to change its status from that of a partnership to that of an individual medical practitioner under sub-paragraph (1) at least 28 days before the date on which the contractor proposes to change its status.
 - (3) A notice given under sub-paragraph (2) must –
 - (a) specify the date on which the contractor proposes to change its status from that of a partnership to that of an individual medical practitioner;
 - (b) specify the name of the medical practitioner with whom the contract is to continue, which must be one of the partners in the partnership; and
 - (c) be signed by each partner in the partnership.

(4) Where a contractor consists of two persons practising in partnership and the partnership is terminated or dissolved because of the partners has died, the remaining partner in the partnership must give notice in writing to [NHS England] of that death and, in that case, sub-paragraphs (5) and (6) apply.

(5) If the remaining partner in the partnership is a general medical practitioner, the contract is to continue with that general medical practitioner.

(6) If the remaining partner in the partnership is not a general medical practitioner, NHS England

(a) must enter into discussions with that partner and use reasonable endeavours to reach an agreement to enable the provision of clinical services to continue under the contract;

.....

(7) If NHS England reaches an agreement, NHS England must give notice in writing to the remaining partner in the partnership confirming-

(a) the terms upon which NHS England agrees to the contract continuing....

(8) If –

(a) the remaining partner in the partnership does not wish to employ or engage a medical practitioner;

(b) an agreement in accordance with sub-paragraph (6) cannot be reached; or

(c) the remaining partner in the partnership would like to withdraw from the agreed arrangements

NHS England must give notice in writing to that partner terminating the contract with immediate effect.

.....

(11) Where a contractor gives notice to NHS England under sub-paragraph (2) or (4), NHS England may vary the contract but only to the extent that it is satisfied it is necessary to reflect the change in status of the contractor from that of a partnership to an individual medical practitioner.

.....”

Termination of GMS contracts

48. Regulation 31(1) of the 2015 Regulations provides that a GMS contract may only be terminated in the circumstances provided for by Part 8 of Schedule 3 to the 2015 Regulations.
49. Paragraph 60 of Schedule 3 provides for termination by agreement between NHSE and a contractor. Paragraph 62 provides for termination on notice by the contractor.
50. Paragraph 64 of Schedule 3 provides:
- “A contract may only be terminated by NHS England in accordance with the following provisions of this Part.”
51. Paragraph 67(1)(a) of Schedule 3 provides that the Board may give notice in writing to a contractor terminating the contract with immediate effect, or from such date as may be specified in the notice, if sub-paragraph (3) applies to the contractor during the existence of a contract.
52. Sub-paragraph 67(3) sets out a long list of circumstances which may give NHSE power to give notice to terminate a contract, such as the conduct of the contractor or its insolvency. The list includes at paragraph 67(3)(t):
- “(t) the contractor is a partnership and—
- (i) a dissolution of the partnership is ordered by any competent court, tribunal or arbitrator, or
- (ii) an event happens that makes it unlawful for the business of the partnership to continue, or for members of the partnership to carry on in partnership;”
53. NHSE has a further power of termination, conferred by paragraph 71 of Schedule 3 to the 2015 Regulations, which may be exercised where the membership of a partnership changes during the life of a contract and NHSE considers that the change is material to the performance of the partnership’s obligations under the contract. Paragraph 71(2) states:
- “Where the contractor consists of two or more persons practising in partnership and one or more of those persons has or have left the partnership during the existence of the contract, the Board may give notice in writing to the contractor terminating the contract on such date as may be specified in the notice if, in the Board's reasonable opinion, the change in the membership of the partnership is likely to have a serious adverse impact on the ability of the contractor or the Board to perform its obligations under the contract.”
54. Paragraphs 68 to 71 of Schedule 3 make provision for termination by NHSE in other circumstances.

Notifications

55. Part 7 of Schedule 3 sets out requirements for contractors to notify NHSE of certain specified matters.
56. Paragraph 51 of Schedule 3 provides:
- “(1) Where a contractor is a partnership, the contractor must give notice in writing to NHS England as soon as -
- (a) any partner in the partnership -
- (i) leaves the partnership, or
- (ii) informs the other partners in the partnership that they intend to leave the partnership; or
- (b) a new partner joins the partnership.
-”

The GMS Contract

57. The Contract entered into by the parties is the NHS England Standard General Medical Services Contract 2017/2018.
58. Schedule 1 Part 2 of the Contract sets out the name and address of the Contractor, in the following terms:
- “The Contractor is a partnership under the name of Sai Medical Centre carrying on business at 105 Calcutta Road, Tilbury, Essex RM18 7QA”

It then lists the names of the individual partners, and states:

- “The Contract is made with the partnership as it is from time to time constituted and shall continue to subsist notwithstanding:
- (1) the retirement, death or expulsion of any one or more partners; and/or
- (2) the addition of any one or more partners.

The Contactor shall ensure that any person who becomes a member of the partnership after the Contract has come into force is automatically by the Contract whether by virtue of a partnership deed or otherwise.”

59. Thus, Schedule 1 Part 2 includes the provisions of regulation 14 of the 2015 Regulations, and goes further than regulation 14 by explicitly confirming that the

Contract will continue to subsist notwithstanding the retirement, death or expulsion of any of the partners.

60. Clause 1.3 provides that where there is any dispute as to interpretation of the Contract, the parties shall so far as possible interpret it consistently with *inter alia* regulations made under the 2006 Act.
61. Clause 2.1.7 provides that the contractor shall not give, sell, assign or otherwise dispose of the benefit of any of its rights under the Contract.
62. Clause 4.2.1 provides that the Contract shall subsist until it is terminated in accordance with the terms of this Contract or by virtue of the operation of any other legal provision. It reflects regulation 16(1) of the 2015 Regulations.
63. Clause 16.14 sets out requirements for contractors in a partnership to give notice of changes in the composition of the partnership, reflecting paragraph 51 of Schedule 3 of the 2015 Regulations.
64. Clause 23.1 provides that the contractor must comply with all relevant legislation and have regard to guidance issued in respect of their functions under the 2006 Act.
65. Part 26 makes provision for variation and termination of the Contract.
66. Clause 26.1 makes general provision for variation of the Contract, to be made in writing and signed by the Contractor and the Board.
67. Clause 26.3 reflects paragraph 59 of Schedule 3 of the 2015 Regulations:

“Variation provisions specific to a contract with a Partnership

26.3.1 Subject to clause 26.3.3, where the Contractor consists of two or more persons practising in partnership, and that partnership is terminated or dissolved, the Contract may only continue with one of the former partners if that partner is—

(a) nominated in accordance with clause 26.3.2; and

(b) a medical practitioner who satisfies the condition in regulation 5(1)(a) of the Regulations,

and only if the requirements in clause 26.3.2 are met.

26.3.2 The Contractor must give notice in writing to the Board of the intention to change its status from that of a partnership to that of an individual medical practitioner under clause 26.3.1 at least 28 days before the date on which the Contractor proposes to change its status. The notice given must:

(a) specify the date on which the Contractor proposes to change its status from that of a partnership to that of an individual medical practitioner;

(b) specify the name of the medical practitioner with whom the Contract is to continue, which must be one of the partners in the partnership; and

(c) be signed by each partner in the partnership.

26.3.3 Where the Contractor consists of two persons practising in partnership and the partnership is terminated or dissolved because of the partners has died, the remaining partner in the partnership must give notice in writing to the Board of that death and, in that case, clause 26.3.4 and clause 26.3.5 apply.

.....

26.3.10 Where a Contractor gives notice to NHS England under clause 26.3.2 or 26.3.3, NHS England may vary the Contract but only to the extent that it is satisfied it is necessary to reflect the change in status of the contractor from that of a partnership to an individual medical practitioner

.....”

68. Clauses 26.4 to 26.15 make provision for termination of the Contract. Clause 26.7.1 provides:

“The contract may only be terminated by the Board in accordance with the provisions of Part 26 of this Contract.”

69. Clause 26.10 reflects paragraph 67 of Schedule 3 of the 2015 Regulations. It provides that the Board may give notice in writing to a contractor terminating the contract with immediate effect, or from such date as may be specified in the notice, if clause 26.10.3 applies to the contractor during the existence of a contract.

70. Clause 26.10.3 sets out a long list of circumstances which give NHSE power to give notice to terminate a contract, such as the conduct of the contractor or its insolvency. The list includes at sub-paragraph (t):

“(t) the Contractor is a partnership and—

(i) a dissolution of the partnership is ordered by any competent court, tribunal or arbitrator, or

(ii) an event happens that makes it unlawful for the business of the partnership to continue, or for members of the partnership to carry on in partnership;”

71. Clause 26.15 reflects paragraph 71 of Schedule 3 of the 2015 Regulations. It gives the Board power to terminate a contract with a partnership following a change in the composition, as follows:

“Where the Contractor consists of two or more persons practising in partnership and one or more of those persons has or

have left the partnership during the existence of the Contract, the Board may give notice in writing to the Contractor terminating the contract on such date as may be specified in the notice if, in the Board's reasonable opinion, the change in the membership of the partnership is likely to have a serious adverse impact on the ability of the Contractor or the Board to perform its obligations under the Contract.”

The Primary Medical Care Policy and Guidance Manual

72. The Primary Medical Care Policy and Guidance Manual (“the Manual”) describes contract variations in section 8. Paragraph 8.5.21 provides:

“Changes to the contracting parties may occur where a partnership dissolves or terminates or where the composition of the partnership changes. Both scenarios are explained below.”

73. At paragraphs 8.5.22 to 8.5.29, it summarises paragraph 59 of Schedule 3 of the Regulations and paragraph 26.3 of the GMS contract.
74. Paragraph 8.5.30 provides for a variation of the GMS contract, signed by all parties to the GMS contract, where the composition of the partnership changes without the partnership terminating. As Ms Morris KC submitted, this is intended to apply to partnerships with a written partnership agreement which makes provision for partners to leave or join the partnership without dissolution of the partnership.

The Public Contracts Regulations 2015

75. NHSE is a “*contracting authority*” and GMS contracts are “*public service contracts*” within the definition in regulation 2(1) of the Public Contracts Regulations 2015 (“PCR 2015”). This means that where NHSE wishes to conclude a new GMS contract, the remuneration under which is likely to exceed the threshold in regulation 5 PCR 2015 (currently £663,540, including VAT), it is required to advertise the contract and conduct a public tender process to select the contractor (see regulation 76 PCR 2015).

Disputes in relation to GMS contracts

76. Section 9(1) of the 2006 Act defines an “NHS contract” as an arrangement under which one health service body arranges for the provision to it by another health service body of goods or services which it reasonably requires for the purposes of its functions.
77. By section 90(3) of the 2006 Act and regulation 10(1) of the 2015 Regulations, a person who proposes to enter into a contract with the Board may elect, by giving notice in writing to the Board prior to entering into the contract, to be regarded as a health service body for the purposes of section 9 of the Act. A GMS contract in relation to which such an election has been made is therefore an NHS contract.

78. Section 9(5) of the 2006 Act provides that whether or not an arrangement which constitutes an NHS contract would, apart from that subsection, be a contract in law, it must not be regarded for any purpose as giving rise to contractual rights or liabilities.
79. Section 9(6) of the 2006 Act provides that if any dispute arises with respect to such an arrangement either party may refer the matter to the Secretary of State for determination. Section 9(8) provides that where a reference is made to the Secretary of State under subsection (6) or (7), he may determine the matter himself or appoint a person to consider and determine it in accordance with regulations.
80. Regulation 83 of the 2015 Regulations makes provision for what is known as the “NHS dispute resolution procedure”. Regulation 83(1) relevantly provides that the procedure specified applies to a dispute arising out of or in connection with the contract which is referred to the Secretary of State or an adjudicator appointed by the Secretary of State in accordance with section 9(6) of the 2006 Act.
81. The effect of these provisions is that contractual disputes arising in relation to NHS contracts cannot be litigated in the Courts but must be referred to the Secretary of State for determination under the NHS dispute resolution procedure. The Defendant is the adjudicator appointed by the Secretary of State for the purposes of section 9 of the 2006 Act and regulation 83 of the 2015 Regulations. There is no right of appeal from a determination of the Defendant. The only remedy is, therefore, judicial review.

Partnership law

82. In my judgment, in interpreting the 2006 Act and the 2015 Regulations, it is helpful at the outset to consider the law relating to the partnership. Mr Coppel KC referred me to Chapter 25 of *Bennion, Bailey and Norbury on Statutory Interpretation* (8th ed.) as authority for the general principle that legislation should be read and applied in the context of the general body of law into which it is assimilated.
83. The leading textbook *Lindley and Banks on Partnership* (21st ed.) explains, at 3-05, that a partnership is not generally recognised as an entity distinct from the partners composing it.
84. At 3-07, it cites “the helpful statement of principle” made by Eichelbaum CJ in *Hadlee v Commissioner of Inland Revenue* [1989] NZLR 447, at 455:

“In law the retirement of a partner or the admission of a new partner, constitutes the dissolution of the old partnership, and the formation of a new partnership. Here upon the happening of such events there were no overt signs of dissolution; the partnership’s financial structure and arrangements were such that none was required but that does not alter the underlying legal significance of any retirement or new admission.”
85. The distinction between a technical and a general dissolution is explained in *Lindley and Banks* at 24-03 to 24-05:

“Distinction between a technical and general dissolution

24.03 It does not necessarily follow from the fact that a partnership has been dissolved that its affairs will fall to be wound up in the manner prescribed by the Partnership Act 1890. It has already been seen that, as a matter of law, a change in the composition of a partnership results in a dissolution of the existing firm and the creation of a new firm; in such a case, the new firm will usually take on the assets and liabilities of the old, without any break in the continuity of the business. This is often referred to as a “technical” dissolution and is usually, but not always, the result of agreement. Such a dissolution will almost inevitably require the taking of accounts to ascertain the entitlement of the outgoing or deceased partner.

24.04 In contrast, the expression “general” dissolution is used to denote a dissolution involving a full scale winding up, which may well have been brought about at the instance of one partner against the wishes of the others. When a firm is referred to as “in dissolution”, this usually indicates that a general dissolution has taken place, but that the winding up of its affairs is still continuing. Once the winding up is complete and the accounts are finally settled as between the partners, there will be nothing left which could properly be referred to as a partnership, whether in dissolution or otherwise.

24.05 The above distinction between a technical and a general dissolution was accepted without demur in *HLB Kidsons v Lloyd’s Underwriters*, when considering the potential application of section 38 of the Partnership Act 1890 on a change in a firm, and again in *Boyle v Burke*. It was also accepted by the Supreme Court of Western Australia in *Rojoda Pty Ltd v Commissioner of State Revenue*, albeit that Murphy JA correctly observed that:

“The reference to a ‘technical’ or ‘notional’ dissolution is somewhat of a misnomer, because it is not the dissolution itself, but, at most, the winding up of the partnership which is notional. The partnership practising after the retirement of a partner is a different partnership than prior to that partner retiring, but the assets and responsibility for liabilities of the partnership are taken over by the remaining partners.”

86. The analysis in *Lindley and Banks* was cited in *HLB Kidsons v Lloyd’s Underwriters* [2009] 1 All ER (Comm) 760.
87. Where there is a general dissolution, each equity partner is normally entitled to insist that all the partnership property is sold. The Court has power to make a *Syers v Syers* order i.e. an order permitting a majority of partners to buy out a minority’s share in the partnership on a dissolution. However, such orders are rarely made.
88. The following provisions of the Partnership Act 1890 (“PA 1890”) are relevant in this case.

89. Section 25 of the PA 1890 provides:

“No majority of the partners can expel any partner unless a power to do so has been conferred by express agreement between the partners.”

90. Section 26(1) PA 1890 provides:

“Where no fixed term has been agreed upon for the duration of the partnership, any partner may determine the partnership at any time on giving notice of his intention to do so to all the other partners.”

91. Section 32 PA 1890 provides:

“Subject to any agreement between the parties, a partnership is dissolved –

(a) If entered into for a fixed term, by the expiration of that term;

(b) If entered into for a single adventure or undertaking, by the termination of that adventure or undertaking;

(c) If entered into for an undefined time, by any partner giving notice to the other or others of his intention to dissolve the partnership

.....”

92. Section 33(1) PA 1890 provides:

“(1) Subject to any agreement between the partners, every partnership is dissolved as regards all the partners by the death or bankruptcy of any partner.

.....”

Third party contracts

93. The effect of a partnership dissolution on a third party contract has been considered in several cases. In broad terms, dissolution of a partnership is capable of bringing to an end a contract between the firm and a third party. In particular, if the contract is only to be performed by the individual partners, then a change in the firm will render its performance impossible. If on a true construction the contract is to be performed by the firm as from time to time constituted, a change in partners will not necessarily terminate the contract or constitute a breach.

94. In *Brace v Calder and Others* [1895] 2 QB 253, a partnership of four businessmen hired an office manager to run their whisky merchant business as their agent for a period of two years. Before the end of the two year period, two of the partners retired and the partnership was re-constituted and carried on the business. The manager sued for

wrongful dismissal on the basis that the new partnership was not who he had agreed to work for. The court held that the partnership had dissolved and a new partnership took its place and that the manager had been wrongfully dismissed, or that there was a breach of his contract of employment.

95. In *Briggs v Oates* [1990] ICR 473 it was held that a contract of employment between a solicitor's firm and an employee came to an end when the partnership dissolved due to one of the partners leaving. The terms of the contract of employment referred to "the partners" which the court held to be the two original partners, not the partnership as constituted from time to time. The court held that in an employment contract between two partners and an employee, clear words would be required which would permit the employee, without consent, to become the employee of different persons than those with whom he had contracted. The decision not to continue the partnership was a breach of the contract of employment.

NHS contracts – previous cases

96. In *Bue & Anor v Worcestershire PCT* [2010] EWHC 1123 (Admin), the court held that the rights and obligations in a Personal Dental Services contract between a dentist and the Primary Care Trust were personal in nature (per Beatson J. at [35]).
97. In *Jones v NHS Commissioning Board* [2017] EWHC 3457 (QB), Dr Jones applied for an injunction to restrain NHSE from terminating the GMS contract with Dr Jones and his former partners who were in dispute. Soole J. concluded that there was a serious issue to be tried on the question of whether the GMS contract had automatically terminated when the partnership dissolved and granted the injunction. He said, at [38] – [41]:

"38. As for automatic termination upon general dissolution, Mr Sachdeva points to Lindley and Banks, which states at paragraph 3-49:

"Similarly, if the contract is of a personal character, which is only to be performed by the individual partners who have entered into it or is otherwise dependent on their particular attributes, a change in the firm will determine the contract by rendering its performance impossible."

By way of analogy he cites *Bue & Anor v Worcestershire PCT* [2010] EWHC 1123 (Admin) where Beatson J, as he then was, emphasised the personal rights in a Personal Dental Services contract between an individual dentist and a PCT (paragraph 26).

39. Clause 16 of the NHS contract provides that:

"Subject to clause 17, the contract shall subsist unless it is terminated in accordance with the terms of this contract or the general law."

Mr Sachdeva submits that the effect of the general law is to terminate this NHS contract upon a general dissolution.

40. The first difficulty with that submission lies in clause 560.10, relied upon for the first notice, which entitles NHSE to terminate this NHS contract in the event that the Court orders dissolution of the partnership. That provision would be unnecessary if general dissolution resulted in automatic termination. Furthermore, clauses 538-539 are under the 'Variation' conditions of the NHS Contract: cf. the termination provisions in Part 25. These considerations reflect the principle that the effect of general dissolution upon contracts with third parties is ultimately dependent on the construction of the contract in question : see also Lindley & Banks at para.23-207.

41. In this case, there is no dispute that the NHS Contract continues to subsist if there is e.g. a reduction of the partnership from 5 to 4 members by retirement or removal. The question is whether there is a different consequence if a 5-person partnership is dissolved and immediately replaced by a partnership of four. Whilst this is evidently a more difficult question than the notice issues, I consider that, particularly bearing in mind clause 560.10, the Claimants have a good argument on the point.”

98. Soole J. also concluded that the equivalent of clause 26.3 (variation from a partnership to a sole practitioner practice) provided “no more than an option for the partners (before dissolution) to nominate one of the partners to continue the Contract” (at [35]). He also referred to the “erroneous belief that a partnership is a legal entity and so that upon dissolution it ceases to exist”.
99. The dispute between Dr Jones and partners and NHS England was subsequently determined in an adjudication under the dispute resolution procedure on 30 January 2018. The adjudicator held as follows:

“3.16 From the information provided to me by the parties, I am satisfied that a partnership at will existed between the Applicants and Dr Cheema. I am satisfied that this partnership was dissolved on 14 October 2016.

3.17 I have considered clause 538 of the GMS Contract which I have set out below: -

"538. Subject to clause 540, where the Contractor consists of two or more individuals practising in partnership, in the event that the partnership is terminated or dissolved, the Contract shall only continue with one of the former partners if that partner is-

538.1 nominated in accordance with clause 539; and

538.2 a medical practitioner who meets the condition in regulation 4(2)(a) of the Regulations,

and provided that the other requirements in clause 539 are met."

3.18 I am satisfied that clause 538 of the GMS Contract provides an option for the partners in a partnership which is deemed to hold a GMS Contract, in advance of the dissolution (or termination) of the partnership, to nominate one of the partners to continue the contract.

3.19 I am satisfied that it is clear that the GMS Contract shall only (my emphasis) continue with one of the former partners if (my emphasis) that partner is nominated, is a medical practitioner who meets the necessary conditions and provided the requirements in clause 539 are met. The requirements of clause 539 require a notification to the PCT (now NHS England) at least 28 days in advance of the date on which the Contactor proposes to change its status.

3.20 It is clear that the Applicants and Dr Cheema did not nominate in accordance with the requirements of clause 538.

3.21 I am satisfied that the GMS Contract terminated as a matter of law on 14 October 2016, on the dissolution of the partnership. NHS England cannot hold a contract with an entity which does not exist."

Grounds of challenge

100. The issues in the claim were as follows:

- i) Did the Defendant err in determining that the Contract between the Claimants and Mrs Patel on the one hand, and NHSE on the other, terminated by operation of law upon the dissolution of the partnership between the Claimants and Mrs Patel?
- ii) Did the Defendant err in determining that, following the termination of that Contract, there was an implied fixed term GMS contract to 31 March 2022, between the Claimants and NHSE?

101. The Claimants contended that the Adjudicator made a number of errors of law which led to the erroneous conclusion that the Contract automatically terminated. NHSE submitted that the Adjudicator's analysis and conclusions were correct in law.

102. As the Adjudicator recognised at D/3.17, it is commonplace for the composition of a GP partnership to change over time, for example, through new partners joining, partners retiring, or as a result of a dispute between the partners. The Adjudicator accepted that it would be surprising and inconvenient if any change to the identity of GP partners automatically brought an end to the contractual arrangements between the practice and NHSE, requiring NHSE to start afresh with a tender process for a new contract. I add that it would be burdensome for the partners to have to compete for the renewal of the GMS contract for their practice in an open tendering exercise.

103. The Adjudicator recognised that regulation 15 of the 2015 Regulations and Schedule 1 of the Contract make specific provision for contracts to continue in such circumstances, despite the changes in constitution of the partnership. As Schedule 1 of the Contract states:

“The Contract is made with the partnership as it is from time to time constituted and shall continue to subsist notwithstanding:

(1) the retirement, death or expulsion of any one or more partners; and/or

(2) the addition of any one or more partners.”

104. The effect of these provisions can be seen from the wording of Schedule 1. Following the changes in composition of the partnership in 2016, it identified the contracting party as follows:

“The Contractor is a partnership under the name of Sai Medical Centre carrying on business at 105 Calcutta Road, Tilbury, Essex RM18 7QA.

.....

The names of the partners at the effective date of signature of this contract variation are Dr V. Bhat, Dr N. Jagadish, Mrs S. Patel, Mrs G. Bhat.”

105. Following the changes in composition of the partnership in 2017, Schedule 1 continued to identify the Contractor as the partnership under the name of Sai Medical Centre. However, the names of the partners changed and became as follows:

“The names of the partners at the effective date of signature of this contract variation are Mrs S. Patel, Dr V. Bhat, Mrs G. Bhat.”

106. Although as a matter of partnership law, the changes in the partners had resulted in the dissolution of one partnership and the creation of a new partnership in its place, the newly-formed partnership was still the “partnership under the name of Sai Medical Centre carrying on business at 105 Calcutta Road”, with whom NHSE had contracted.

107. The Adjudicator accepted that the Contract subsisted in 2016 and 2017 despite the changes in the composition of the partners, by operation of regulation 15 of the 2015 Regulations and Schedule 1 of the Contract. However, he concluded regulation 15 and Schedule 1 of the Contract applied because those changes were made by consent and resulted in technical dissolutions only. In contrast, in November 2021, there was a general dissolution by operation of law because Mrs Patel did not agree to leave the partnership and Dr Bhat and Mrs Bhat served a notice of dissolution of the partnership upon her. Therefore regulation 15 and Schedule 1 of the Contract did not apply.

108. In my judgment, the Adjudicator’s reliance upon the distinction between a technical and a general dissolution was ill-founded. As the extracts from *Lindley & Banks* explain, the distinction is based upon the consequences of the dissolution, not the

circumstances in which the dissolution occurred. Where the partnership continues in business without a break, it is described as a technical dissolution. In practice, this will usually be with the agreement of all the partners, but agreement is not an essential ingredient of a technical dissolution. Where there is a full scale winding up of the partnership, it is described as a general dissolution.

109. In this case, there was never a full scale winding up of the partnership. At all material times, the Claimants were the only equity partners, and they were the lessees of the surgery building on behalf of the partnership. Mrs Patel was only a salaried partner. From 2019, when Mrs Patel ceased working in the practice, the Claimants were the only active partners. They continued to run the practice, at the Sai Medical Centre, pursuant to the Contract, after the dissolution of the partnership in November 2021, in the same way as before. The assets and liabilities of the partnership were retained in their ongoing partnership. There was a landlord/tenant dispute in the County Court between Dr Patel and Mrs Patel, who owned the site of the surgery, and a dispute as to whether the Claimants had a beneficial interest in the Adjacent Land owned by the Patels, but this did not result in a full scale winding up of the partnership. Mrs Patel did not seek a winding up order, presumably because she was merely a salaried partner and had no entitlement to a share of the partnership assets.
110. As this was a partnership at will, the partners had no power to expel a fellow partner (section 25 PA 1890). By dissolving the partnership on notice, in accordance with section 26(1) PA 1890, and forming a new partnership at will, the Claimants were able to continue the practice at the Sai Medical Centre without interruption.
111. Ms Morris KC appeared to go further than the Adjudicator when she submitted that regulation 15 and Schedule 1 did not apply to the dissolution in November 2021 because the partnership was merely a partnership at will, whereas there were written partnership agreements in existence at the time of the changes in composition of the partnerships in 2016 and 2017. She relied upon a passage in the judgment of Fancourt J. dated 5 November 2021, in which he allowed the Claimants' appeal against forfeiture of the lease of the surgery. Fancourt J. said, at [23]:

“The undisputed facts (many of which are established by contemporaneous documents) are the following:

a There was a partnership agreement made in writing on 19 March 2014 between Mrs Patel, as a salaried partner, and Dr Bhat and Dr Jagadish as equity partners.

b A new partnership came into existence under a document titled “Amendment of partnership agreement by adding new partner” dated 1 April 2016, when Mrs Bhat became a 10% equity partner.

c A lease dated 15 April 2016 was signed, by which the Property was let by the Patels to the Bhats The only permitted use under the lease was as a medical practice, to be carried on under the name Sai Medical Centre and the Property was required to be kept continually in use.

d Dr Jagadish then resigned as a partner and there was a further “Amendment of Partnership agreement” made in writing between Mrs Patel and the Bhats. The Recorder did not resolve whether that was operative or a partnership at will existed, but in either case the Bhats were the sole equity partners of the partnership from 1 April 2017.

.....”

112. In the dispute resolution procedure in respect of the Contract, it was common ground before the Adjudicator that the partnership between the Claimants and Mrs Patel was a partnership at will, and that there had been technical dissolutions of the previous partnerships. The Adjudicator did not consider in his Determination whether there had previously been written partnership agreements. I do not have the partnership agreements referred to by Fancourt J. and it does not appear that the Adjudicator had them either.
113. In any event, in my judgment, there is no lawful basis for implying into regulation 15 of the 2015 Regulations and Schedule 1 of the Contract, a requirement that any change in composition of the partnership must be with the agreement of all the partners, or that it should be a technical not a general dissolution, or that there must be a written partnership agreement, not a partnership at will, or that these provisions will not apply where a partner has served notice of dissolution of the partnership. No such requirements are to be found, either expressly or impliedly, in the wording of these provisions, nor are they necessary to make the provisions effective. Therefore, even if, contrary to my primary finding, there was a general dissolution, it would make no difference to my conclusion.
114. The contractor is required to notify NHSE of the changes in composition of the partnership (paragraph 51 of Schedule 3 of the 2015 Regulations and clause 16.4 of the Contract), but it does not have to seek the approval or permission of NHSE for any change. NHSE does not have either the power or the responsibility for adjudicating on internal partnership disputes.
115. Therefore, I consider that the Adjudicator erred in law when he said, at D/3.25, “As set out by the Commissioner’s solicitors, I accept the position that the GMS Contract has “terminated by operation of law on the dissolution of the partnership””. In my judgment, the correct position was that, on the dissolution of the partnership, and the creation of a new partnership, the relevant law - regulation 15 of the 2015 Regulations and Schedule 1 of the Contract - provided that the Contract was to subsist and “to be treated as made with the partnership as it is from time to time constituted”.
116. The Adjudicator expressed concern about a partnership dispute which could create uncertainty and potentially prejudice the delivery of services to patients. Regulation 71 of the 2015 Regulations and clause 26.15 of the Contract provide a mechanism by which NHSE may address such concerns by service of a notice terminating the contract “if, in the Board’s reasonable opinion, the change in the membership of the partnership is likely to have a serious adverse impact on the ability of the Contractor or the Board to perform its obligations under the Contract”. NHSE has not sought to terminate this Contract under Regulation 71.

117. Furthermore, it is implicit in regulation 71 of the 2015 Regulations and clause 26.15 of the Contract that the Contract has not automatically terminated following dissolution of the partnership, but that steps may be taken to terminate it in certain circumstances.
118. Similarly, the notion that a dissolution of the partnership automatically terminates a GMS contract is at odds with paragraph 67(3)(t) of Schedule 3 of the 2015 Regulations and paragraph 26.10.3(t) of the Contract. A GMS contract may only be terminated in the circumstances provided for by Part 8 of Schedule 3. Paragraph 67(3)(t) provides that NHSE may terminate a GMS contract where the contractor is a partnership, and a court has ordered the dissolution of the partnership. This provision is reflected in clause 26.10.3(t) of the Contract. A court-ordered dissolution would undoubtedly be a “general dissolution”. The fact that NHSE has the option to terminate a GMS contract following such a dissolution undermines the notion that the contract is automatically terminated by such a dissolution. I am not persuaded by Ms Morris KC’s submission that the explanation for this provision is that the court may treat the GMS contract as a partnership asset which may need to be transferred.
119. Soole J. took the same view in *Jones*, at [40] where he responded to NHSE’s submission that a general dissolution automatically terminates a GMS contract as follows:
- “The first difficulty with that submission lies in clause 560.10... which entitles NHSE to terminate this NHS contract in the event that the Court orders dissolution of the partnership. That provision would be unnecessary if general dissolution resulted in automatic termination.”
120. The Adjudicator also fell into error at D/3.26 when he concluded:
- “3.26 I am satisfied that the Contract may subsist until it is terminated in accordance with its terms or by the operation of law. The termination arises from s32(c) of the Partnership Act 1890. As there is no longer a partnership (the Contract is to be treated as made with the partnership in accordance with Regulation 15 of the Regulations), the Commissioner cannot hold the contract with the entity which does not exist.”
121. Partnerships are not legal entities and so NHSE’s counterparty has never been an “entity” in and of itself. It has always consisted of the individuals who from time to time make up the partnership under the name Sai Medical Centre carrying on business at 105 Calcutta Road. A change in the membership of such a partnership is the very situation regulation 15 of the 2015 Regulations is intended to deal with. Its effect is that, despite the previous partnership being dissolved (or “ceasing to exist”), the GMS contract is treated in law as being made between NHSE and the new partnership carrying on the same practice.
122. At D/3.23, the Adjudicator accepted NHSE’s interpretation of paragraph 59 of Schedule 3 of the 2015 Regulations and clause 26.3 of the Contract to mean that, following the dissolution of a partnership, the only basis upon which the Contract could continue would be with a sole practitioner as the contractor, nominated by the partners. In my judgment, this is a misinterpretation of these provisions. They provide contractors in partnership with an option to vary the status of the contractor from a partnership to a

sole practitioner, upon dissolution of a partnership. They do not require members of a partnership to adopt that course, on pain of losing their contract entirely. I agree with the observations of Soole J. in *Jones*, at [35]:

“In my view [the clauses] provide no more than an option for the partners (before dissolution) to nominate one of the partners to continue the Contract. I do not think it arguable that the provision can be construed as an obligation; nor therefore that a failure to exercise the provision can be a breach of contract.”

123. This option to vary would be useful where, for example, one partner intends to retire from a two partner practice. In those circumstances regulation 15 of the 2015 Regulations would not apply because there would no longer be a partnership following the retirement. A variation has the advantage that the prospective contractor does not have to compete for the contract in a tendering process.
124. The second half of paragraph 59 of Schedule 3 provides an option to vary where one of the partners in a two person partnership dies. Regulation 15 of the 2015 Regulations would not be operative in this situation either.
125. Sub-paragraph (11) applies to both situations, and provides “NHS England may vary the contract but only to the extent that it is satisfied it is necessary to reflect the change in status of the contractor from that of a partnership to an individual medical practitioner”, thus confirming that paragraph 59 merely makes provision for a variation of the status of the contractor.
126. Paragraph 58 of Schedule 3 provides another option to vary, namely, where a sole practitioner wishes to practise in partnership.
127. All these provisions are to be found together in the sections of the Contract and of Schedule 3 of the 2015 Regulations which deal with variations. Their overriding purpose appears to be to provide continuity of contractual relations where there is a specific change in the identity and/or status of the contractor and where regulation 15 of the 2015 Regulations and Schedule 1 of the Contract are not engaged.
128. In my view, the change in the identity of the partners in this Contract was governed by regulation 15 of the 2015 Regulations and Schedule 1 of the Contract. Paragraph 59 of Schedule 3 of the Regulations and clause 26.3 of the Contract were not applicable to this partnership.
129. Therefore my conclusion on the first issue is that the Defendant did err in determining that the Contract between the Claimants and Mrs Patel on the one hand, and NHSE on the other, terminated by operation of law upon the dissolution of the partnership between the Claimants and Mrs Patel.
130. In the light of my conclusion on the first issue, there is no need for me to go on to consider whether the Defendant erred in determining that there was an implied fixed term GMS contract which arose upon termination of the Contract (the second issue).
131. The claim for judicial review is allowed for the reasons set out above.