Neutral Citation Number: [2020] EWHC 3488 (Ch)

Case No: BL-2019-000383

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
CHANCERY DIVISION
PROPERTY, TRUSTS AND PROBATE LIST

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

Date: 21st December 2020

Before :

JAMES MELLOR QC (sitting as a Deputy Judge of the High Court)

- -

Between :

(1) DR NIGEL CRANSTOUN	**Claimants**
(2) DR CLAIRE RUMLEY	
- and –	
DR GURPREET NOTTA	**Defendant**

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- -

Amardeep Dhillon (instructed by **FTA Law**) for the **Claimants**
Simon Butler (instructed by **Gunnercooke LLP**) for the **Defendant**

Hearing dates: 6th-8th & 13th October 2020

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic

Covid-19 Protocol: This judgment is to be handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date for hand-down is deemed to be 2pm on Monday 21 December 2020.

James Mellor QC (sitting as a Deputy Judge of the High Court) :

Introduction

1. This is my judgment following the trial. The purpose of the trial was to determine (a) the correct date for the valuation of a dental practice and (b) the valuation itself.

2. Those issues arose of a Dental Costs Sharing Arrangement (the 'CSA') entered into on 24 January 2014 by the Claimants and the Defendant to govern the arrangements between them for their respective dental practices carried on at 1491 Stratford Road, Hall Green, Birmingham, B28 9HT (the 'Premises'). The Premises lie close to a roundabout known as the Robin Hood roundabout. At some point, the practice at the Premises was named Robin Hood Dental. The Premises have six treatment rooms and the Claimants practise from Rooms 2 to 5, with the Defendant practising from Rooms 1 and 6.

3. The Claimants are married and together they have practised as dentists from the Premises for many years – in the case of the First Claimant for approximately 40 years. The freehold of the Premises is owned by a company, Stratford Road Management Company Ltd, which granted 999 year leases to the Claimants from 25 December 1981 for Rooms 1 to 6. In early 2014, the Defendant purchased the interest of a dentist who wished to retire from his dental practice at the Premises, and the CSA resulted along with an Underlease of the same date granted by the Claimants to the Defendant for a term of 15 years at an initial rent of £12,000 per annum.

4. Unfortunately, the relationship between the parties began to break down. Much of the history is not relevant to the matters I have to decide but I should record that the Claimants made at least two attempts to sell their interests, first, to the Defendant and second, to a Ms Holland (nee Khong), the associate working at the practice, but these attempts did not succeed. I should also record that the Claimants had a number of concerns about Dr Notta's professional conduct which resulted in a report being made about him to the General Dental Council, the Interim Orders Committee of which placed him under certain conditions. The full hearing of those matters was initially scheduled to start in June 2020 but has now been re-scheduled (due to the COVID-19 pandemic) to 22 March 2021, listed for 7 days. Dr Notta denies all the allegations. It is not my role to form any view about those matters and I have not done so. Suffice to say that there has been deep distrust between the parties for some considerable time. This has had the most unfortunate result that all attempts to agree a valuation of the Defendant's practice, including via a mediation, failed.

5. The Claimants commenced this action in February 2019. As originally formulated, the Particulars of Claim set out, in paragraph 12, a number of alleged breaches of the CSA by the Defendant which the Claimants alleged entitled them to a number of declarations:

i) First, that the Defendant was deemed to have given notice to terminate the CSA pursuant to various parts of clause 23, on either 24 April 2018, 25 June 2018 or 24 October 2018.

ii) Second, that the CSA has been or will have been terminated, at the latest, by 24 October 2018 or such other date as deemed appropriate by the Court.

iii) Third, that the Defendant was deemed to be the 'Seller' under clauses 23 and 24.1 of the CSA.

6. The Claimants also claimed specific performance of the mechanisms in the CSA relating to the sale of the Defendant's interests, including valuation and termination of the CSA, along with damages and customary relief. So the claim as originally formulated was designed to establish the Claimants' entitlement to employ the mechanisms in the CSA for valuation and sale of the Defendant's interests and termination of the CSA.

7. Before the Defence was served, a hearing took place before Master Kaye on 24 May 2019 at which certain important developments took place, resulting in an Order sealed on 3 June 2019. For present purposes, it is the content of three recitals which are important. They read as follows:

> AND UPON the Defendant admitting that he is deemed to be the seller under clause 23 pursuant to the CSA in the Particulars of Claim
>
> AND UPON the Defendant admitting that his entire interest in the dental practice, including all land and goodwill interests, are required to be valued as per clause 24 and the Schedule to the CSA
>
> AND UPON the parties agreeing to vary the requirements in the Schedule to the CSA for the relevant bodies to appoint the relevant experts required, to each party being permitted to instruct a single expert to value both the property interests and the goodwill interests of the Defendant

8. The Defence was served on 13 June 2019. It confirmed that "*the Defendant agreed to be deemed the seller under clause 23 and 24.1 pursuant to the CSA and the Defendant was deemed to have given notice to terminate the CSA pursuant to clauses 23.2.4, 23.2.4, 23.2.10, 23.2.11 and/or 23.2.12 on 24 October 2018*". The effect of the second recital quoted above was that the Defendant agreed to sell his Practice Assets to the Claimants pursuant to clauses 24.1 and 24.2 of the CSA.

9. These admissions meant that the original purpose of the claim had been achieved, and the action could have ended at that point, leaving the parties to engage with the mechanisms in the CSA for valuation and sale. However, the effect of the third recital quoted above meant that the parties agreed that the Court would undertake the valuation.

10. Subsequently, the Defendant obtained permission to instruct two experts on certain terms, one to value the property interest and the other to value his goodwill interest. The Defendant's 'property' interest under his sub-lease was valued at zero.

Issues for my determination.

11. Against that background, the parties were agreed that I have to determine the following key issues:

    i) What is the appropriate date for the valuation of the Defendant's interests?

    ii) What is the appropriate valuation of the Defendant's interests on that date?

12. At the start of trial, there was a third issue relating to the Defendant's ownership and use of the domain name www.robinhooddental.co.uk, but on the second day of trial I was told the parties had resolved that issue, with the domain name being sold to the Claimants by the Defendant.

Valuation Date

13. The pleadings do not identify the scope of the dispute on valuation date. However, the parties seemed to be well aware of their respective positions. The Defendant contends that the valuation should be determined as at 24 October 2018. The Claimant's primary case was that the appropriate date for valuation was the date of my judgment (i.e. when the valuation was actually determined).

Relevant parts of the CSA.

14. The CSA itself is a lengthy contract, apparently bespoke. Two issues of interpretation emerged, the first concerns the meaning of the expression the 'GDS Contract', which is a term defined in the CSA. The second more important issue is more nebulous but matters for the determination of the valuation date. There are some significant parts of the CSA which form the relevant factual background to those issues of construction. Accordingly, it is necessary to set out a number of provisions.

    a. Recital 0.2:
    The Practitioners shall hold the Common Assets Premises Facilities and Joint Practitioners' Bank Account on trust for themselves and subject to the powers and provisions contained in this agreement

    Definitions

    b. Common Assets:
    means assets owned jointly by the Practitioners, including Premises, the Intellectual Property, the GDS Contract, the Facilities, and the goodwill on the list of a Joint Associate but

excluding the goodwill in the patients on the list of any Sole Associate

c. Facilities:
means all of the office furniture, computers, fixtures, fittings, dental chairs and dental equipment in or about the Premises and owned, leased or hired by the Practitioners pursuant to the Working Arrangement (excluding any Personal Assets) and as listed in Appendix 2 of this Agreement

d. GDS Contract:
Means the general dental services contract entered into between Melissa Khong and the PCT on 1st January 2009 for the contractual value of £91,625.30 for 4047 UDAs

e. Own Practice:
means each practitioners own separate and independent dental practice carried on at each Practitioner's Individual Premises by the Practitioner and the goodwill and intellectual property associated therewith

f. Personal Assets:
means any assets (including the interest in any assets subject to loan hire or credit agreements) owned exclusively by one of the Practitioners which shall include the equipment in the Practitioner's Individual Premises

g. Practitioner's Individual Premises:
Means each Practitioner's entire shareholding in Stratford Road Management Company Limited and the following leasehold interests:

i. *Practitioner A* [Dr Notta]: Rooms 1 and 6 etc;

ii. *Practitioner B* [Dr Cranstoun]: Rooms 2 and 4 etc.;

iii. *Practitioner C* [Dr Rumley]: Rooms 3 and 5 etc.;

h. Premises:
means the leasehold premises from where the Practitioners practice being the surgery at 1491 Stratford Road Birmingham not including the Practitioners Individual Premises and any premises which the Practitioners acquire or lease in substitution therefor

i. Right of Pre-Emption:
means the right to purchase the Seller's Practice Assets which right is set out in clause 24

j. Seller's Practice Assets;

means the Seller's Personal Assets, their shares in Stratford Road Management Company Ltd and their share in the Common Assets and the Seller's Own Practice

k. UDAs/UOA
Means units of dental/orthodontic activity

l. Working Arrangement:
means the Working Arrangement by which the Practitioners' Own Practices operate in accordance with this Agreement

Operative Parts of the CSA

m. Clause 2.1:
The Practitioners declare that the primary and underlying purpose of this Agreement is to provide premises equipment and other facilities for the purpose of enabling the Practitioners to carry on at the Premises their individual dental practices in accordance with the provisions of this Agreement

n. Clause 2.6
The GDS Contract shall remain in the sole name of Practitioner C provided always that it is noted that Practitioner C shall hold the GDS Contract on trust for the benefit of the Practitioners

o. Clause 2.9
Each of the Practitioners shall be paid an equal 1/3 share of the NHS income pursuant to the GDS Contract after deduction of all associate fees due to Melissa Khong under her associate agreements with the Practitioners

p. Clause 3:
This Agreement shall commence on the date of this Agreement and shall continue for the joint lives of the Practitioner until determined in accordance with the provision of this Agreement Clause 23 hereof

q. Clause 6.1:
The goodwill in each of the Practitioner's Own Practice patient list (which shall not include any patients treated by a Joint Associate) shall be owned absolutely by that Practitioner

r. Clause 17.1.1:
Each Practitioner will…show the utmost good faith to the other Practitioners in all matters relating to the promotion of the Working Arrangement

s. Clause 17.1.2:
Each Practitioner will…conduct himself in a proper and responsible manner and use his best skill and endeavour to promote each Practitioner's Own Practice and the practice and best interests of the Working Arrangement.

t. Clause 17.1.6:
Each Practitioner will…each practitioner shall do all that is necessary to ensure that the Working Arrangement is conducted in accordance with the Regulations and that they and their staff (including Associates) comply with all obligations under the GDS Contract in particular having regard to and, where appropriate, complying with all relevant guidance issued from time to time by the PCT the relevant Strategic Health Authority or the Secretary of State.

u. Clause 17.1.8:
Each Practitioner will…each Practitioner shall make good to the other Practitioners any loss that they caused by their negligence, misconduct, breach of non-compliance with the terms of this Agreement or any valid resolution of the Practitioners or any act or default of his which results in a breach of the GDS Contract or other default

v. Clause 20.1:
Each Practitioner shall at all times be just and faithful to the other Practitioners in all matters relating the Working Arrangement and shall use his best skills and endeavours in relation to the efficient administration of the Working Arrangement

w. Clause 20.2.3:
Each Practitioner warrants and undertakes to and for the benefit of other Practitioners that, at all times during the continuance of this Agreement, they will…comply with all of the provisions of the Dentists Act (as modified or re-enacted from time to time) and any regulations made thereunder or pursuant thereto

x. Clause 20.2.4:
Each Practitioner warrants and undertakes to and for the benefit of other Practitioners that, at all times during the continuance of this Agreement, they will…observe all rules of professional conduct.

y. Clause 29.1:
Nothing herein contained shall imply or be deemed to imply or constitute in any way a partnership… The provisions of this Agreement relating to the joint use of the Premises and the Facilities are solely for the purpose of ensuring that neither of the Practitioners conduct themselves or their Own Practice in a manner prejudicial to or tending to the detriment of the other Practitioner's Own Practice.

z. Clause 29.4:
Neither of the Practitioners shall during this Agreement…in any way act to the detriment of the goodwill attributable to each Practitioner's Own Practice.

15. Before I discuss the key clauses 23 and 24, I observe that the CSA includes provisions for mediation under clause 23 entitled 'Alternative Dispute Resolution' prior to a referral under clause 28 entitled 'Arbitration' to a single arbitrator of any dispute arising under the CSA, except, it appears (because the exception is poorly drafted), for a valuation under clause 24 and/or the Schedule to the CSA.

16. Clause 23 is entitled Termination. The grounds for termination fall into two categories. By clause 23.1 'Either party may terminate this agreement upon the expiry of at least six (6) months written notice served on the other Practitioner or earlier by mutual agreement'.

17. Then clause 23.2 provides a long series of 'Events', on the occurrence of one or more of which '*the person to whom the Event relates (or his personal representatives) shall be deemed to have given notice to terminate this agreement as provided for in clause 23.1'*. Although these words do not make it clear whether the deemed notice is 6 months notice or a notice which takes immediate effect, the nature of the Events mean that this provision only makes any commercial sense if the deemed notice is an immediate notice. Those of the Events which have relevance are:

> 23.2.1 the death of a Practitioner;
>
> 23.2.2 the permanent incapacity of a Practitioner;
>
> 23.2.4 [sc. a Practitioner] wilfully and persistently neglecting to perform their duties and obligations under this Agreement
>
> 23.2.10: a Practitioner doing anything or neglecting to do anything which results in the Practitioners being in material breach of their obligations under the GDS Contract or CQC registration
>
> 23.2.11: a Practitioner being guilty of any fraud dishonesty or serious misconduct
>
> 23.2.12: a Practitioner being guilt of any act of conduct calculated or which would injure the Working Arrangement

18. Clause 24 is entitled Consequences of Termination. Clause 24.1 is important and provides as follows (in which I have underlined the phrase in dispute):

> For the purposes of this clause the term "Seller" shall mean the Practitioner ceasing or wishing to cease practising under the terms of this Agreement ("the Seller"). <u>Upon the termination of this Agreement</u> either consequent upon a Practitioner serving notice in writing to terminate under clause 23.1 or pursuant to the provisions of clause 23.2 (save in the circumstances set out in clauses 23.2.1 and 23.2.2) (whichever is the earlier) the Practitioners shall forthwith take all reasonable steps to procure that the values of the Common Assets and the Seller's

> Individual Practice and the Seller's entire shareholding in Stratford Road Management Company Limited (together referred to as "the Seller's Practice Assets" and which are to be valued separately) are agreed by the Practitioners or in default of agreement, within 2 weeks are determined in accordance with the provisions of the Schedule. The costs of such valuations shall be met by the Seller.

19. Later sub-clauses in clause 24 set out three different modes of sale of the Seller's Practice Assets. First, the Seller may sell to the 'Remaining Practitioners' under clause 24.2. Second, the Seller may sell to another dental surgeon (the 'Purchaser') under clause 24.4. Third, the Seller may sell his Practice Assets on the open market, under clause 24.5. Clause 24.2 is invoked here and I set it out, together with 24.3 and 24.6:

> 24.2 Following agreement of the values or receipt of the valuations of the Seller's Practice Assets and if the Seller is not effecting a sale of his Individual Practice under clause 24.4 the other Practitioners ("the Remaining Practitioner") shall have the option to purchase the Seller's Practice Assets at the respective values agreed by the parties or in default of agreement the values set out in the valuations, such transaction to be completed within twelve weeks of the date of such agreement between the Practitioners or valuation being received by the Practitioners
>
> 24.3 On completion of the sale of the Seller's Practice Assets to the Remaining Practitioner this Agreement shall be deemed terminated without prejudice to any antecedent rights or claims either party may have against the other.
>
> 24.6 Pending the sale of the Seller's Practice Assets, or the termination of the agreement by virtue of the notice giving in clause 23.2 (whichever is the later), the Practitioners shall continue to operate the Working Arrangement and faithfully discharge their responsibilities in accordance with this Agreement as if this Agreement had not been terminated.

20. Finally, I mention that to facilitate and protect the assets sold by the Seller to the Remaining Practitioners, clauses 24.7 to 24.10 contain a variety of provisions including restrictive covenants on the Seller and various conditions to ensure a smooth handover of the interest.

21. The Schedule is entitled 'Valuation of Seller's Practice Assets'. In paragraph 1 it sets out a definition of 'Market Value' as meaning:

> An opinion of the best price at which the sale of an interest in the Seller's Practice Assets would have been completed unconditionally and for a cash consideration on the date of valuation assuming:

a. A willing buyer and willing seller

b. That prior to the date of valuation there had been a reasonable period (having regard to the nature of the assets and the state of the market) for the proper marketing of the same and for the agreement of the price and terms and for completion of the sale;

c. That the state of the market level of values and other circumstances were on any earlier assumed date of exchange of contracts the same as on the date of valuation;

d. That no account is taken of any additional bid by a prospective purchaser with a special interest;

e. That there is no discount allowed on account of the fact that any asset is jointly owned;

f. That all parties to the transaction had acted knowledgeably prudently and without compulsion;

g. That any premises are used as a dental surgery in the same manner as at the time of the market value assessment or immediately prior to it (including an assumption that the planning use of the Premises (or that part used for the dental practice) is for use as a dental surgery but disregarding:

(i) Any element of personal goodwill which may attach to the Premises as a result of the occuptation of them by the Practitioners

(i) Any rights of occupation or possession which the Practitioners might have

h. That in respect of the goodwill of the Seller's Own Practice any purchaser has the benefit of the Restrictive Covenants.

2. In the event that the value of the Seller's Practice Assets cannot be agreed between the Practitioners within a reasonable period then any Practitioner shall be entitled to refer the matter for determination by the various persons specified in Paragraph 3. The persons nominated under the provisions of this Schedule shall act as an expert and not as an arbitrator. The decision of such person shall be final and binding upon the Practitioners except in the case of manifest error.

22. Paragraph 3 of the Schedule then provides for valuation of the Seller's interest in the Premises by a Chartered Surveyor with certain characteristics. The

other Practice Assets of the Seller are to be valued by a specialist dental practice valuer.

The "GDS Contract"

23. The issue arises in the following way. Although the definition refers to a specific contract dated 1st January 2009 for 4,047 UDAs, it is common ground that when the CSA was made, the only GDS contract at the practice was a GDS contract from 2012 in the name of the Second Claimant (i.e. Practitioner C). It is clear from clause 2.6 that the parties understood that Practitioner C held the GDS contract.

24. The evidence was that Ms Khong did not want the responsibility of an individual CQC registration, when such registration was introduced in around 2012 for provider contract holders. Dr Rumley, the Second Claimant, was the only other NHS provider at the practice (with 3,277 UDAs), and the PCT agreed to the transfer of Ms Khong's GDS contract to Dr Rumley's with the result that as from about 2012, Dr Rumley held the only GDS contract at the practice with a total of 7,324 UDAs. It will be noted that 3,277 + 4,047 = 7,324.

25. The Defendant's argument is that the definition in the CSA is wrong and therefore must be ignored. The only GDS contract held at the practice was that held by Dr Rumley dating from 2012, and that the effect of clause 2.9 is that the Defendant is entitled to 1/3 of the NHS income from that contract after deduction of all associate fees due to Melissa Khong.

26. Quite apart from the difficulty that this argument requires the definition to be ignored in its entirety, I find it deeply unattractive. Furthermore, it does not make any commercial sense. It would mean that although Melissa Khong's fees should be deducted before the three-way split occurs, it would mean that Dr Rumley's gross earnings under her 3,277 UDAs would be split 3 ways and she would have to recover her expenses from her one-third share.

27. In essence, the combination of clause 2.6 and the definition means that the definition actually refers to *that part* of the GDS Contract held by Practitioner C representing the contract between Melissa Khong and the PCT dating from 1st January 2009 for the contractual value of £91,625.30 for 4,047 UDAs.

<u>The termination and valuation provisions of the CSA</u>

28. Before I address the actual provisions, there are one or two important points to make clear.

29. First, it is clear that the valuation and sale provisions of the CSA are designed to ensure that the Seller's Practice Assets are sold on a going concern basis and are to be valued on that basis as well. This makes perfectly good business common sense. The terms of the CSA reflect the fact that the goodwill of the practice of an individual dentist will atrophy relatively quickly if the practice is not maintained and continued. Any purchaser would want to purchase and continue a practice without any break, or with the shortest break possible.

30. Second, the termination provisions seem to envisage the following steps or stages, into which I have inserted the provisions *in italics* which cause some difficulty:

    i) First, the provision of a notice to terminate, either a written notice under clause 23.1 or the occurrence of one or more of the Events in clause 23.2 (some of which might be hotly disputed). The provision of notice (whether actual or deemed) establishes who is the Seller. The period of notice is evidently variable: it could be six months (or more or less by mutual agreement) or it could be a notice with immediate effect (e.g. on the sudden death or permanent incapacity of one of the Practitioners, or if a Practitioner is removed from the Register or disqualified from practicing).

    ii) *Upon the termination of this Agreement either consequent upon a Practitioner serving notice in writing to terminate under clause 23.1 or pursuant to the provisions of clause 23.2 (save in the circumstances set out in clauses 23.2.1 or 23.2.2) (whichever is the earlier)…*

    iii) Second, the Practitioners are then obliged forthwith to take all reasonable steps to agree the value of the Seller's Practice Assets.

    iv) Third, if that cannot be achieved within 2 weeks, then the valuation of the Seller's Practice Assets is determined in accordance with the provisions in the Schedule and the costs of such valuations are met by the Seller. Apart from the fact that the Valuers contemplated in the Schedule would require time to carry out their valuations, they also need to give each of the Practitioners an opportunity to make written representations and counter-representations but subject to those points, in my view it is clear that when engaging in the valuation mechanism in the Schedule, the Practitioners remain under the obligation in 24.1 to 'forthwith take all reasonable steps to procure' the determination of the valuations under the Schedule. So the CSA contemplates valuations under the Schedule being carried out relatively speedily. The conclusion of this step is that the valuations are received by the Practitioners.

    v) If the Remaining Practitioner exercises the option to purchase under clause 24.2, then the transaction must be completed within 12 weeks of the agreement on the value or receipt of the valuation(s).

    vi) On completion of the sale, then the Agreement is *deemed terminated* – clause 24.3.

    vii) By clause 24.6, pending the sale of the Seller's Practice Assets (which, it seems to me is virtually always later than 'the notice giving in clause 23.2'), the Practitioners must continue to operate the Working Arrangement in accordance with this Agreement *as if this Agreement had not been terminated*.

31. It seems to me that the draughtsman of the CSA failed to grapple adequately with two related issues:

    i) The first is the period of time between the notice of termination and when the agreement actually terminates i.e. upon the Sale of the Seller's Practice Assets. In this period, it would be necessary at least (a) to resolve any disputes over whether an Event had occurred (b) to resolve any disputes over the valuation; but (c) to ensure that the Seller (if still able to practise) would continue until the disputes had been resolved and the Sale of the Seller's Practice Assets had been made. Necessarily, this period might vary widely in its duration.

    ii) The second issue (which probably stems from his or her first failing) is to distinguish clearly between the *initiation* of the termination process and the actual termination itself. As I stated above, however the termination process was initiated, it was always going to take some period of time to agree or set a valuation and to complete the Sale of the Seller's Practice Assets and this was always going to be the case even with Events which gave rise to a notice of termination having immediate effect.

32. Against this backdrop (which in my view is the only way to make commercial sense of the various provisions in clauses 23 and 24), the meaning of the somewhat troublesome phrases in clause 24 is clear and I make the following findings:

    i) The phrase in clause 24.1 which begins '*Upon the termination of this Agreement…*' means "Upon the initiation of the termination of this Agreement…"; and

    ii) In clause 24.3, the phrase '*is deemed terminated*' simply means it is terminated;

    iii) In clause 24.6, the phrase '*as if this Agreement had not been terminated*' means 'as if notice of termination of this Agreement had not been given'.

    iv) These meanings help to preserve the overall commercial purpose of these provisions, which is to ensure a valuation and sale of the Seller's Practice Assets as a going concern.

33. My findings as to the true construction of clauses 23 and 24 mean that I reject the Defendant's argument that the correct date for valuation is 24 October 2018. The correct date for valuation is therefore the date of this judgment.

<u>The Valuation of the Defendant's Practice Assets.</u>

34. This part of the case turns on the instruction I received from each side's valuation expert and, to a certain extent, on the evidence from the parties.

35. Both Dr Cranstoun and Dr Rumley gave their evidence in a straightforward manner, although very little of it impinged on the valuation exercise I have to undertake. Counsel for the Defendant expressed incredulity that Dr Cranstoun could not remember what his annual turnover was to the year ended March 2018 but since there was no particular reason why Dr Cranstoun should have had that figure in mind, it does not seem to me to be at all surprising either that he could not remember it or that he was not willing to guess at a figure without having the ability to check.

36. Much of Dr Notta's written evidence was directed to answering the various allegations made against him in the Particulars of Claim, which have very little to do with the valuation exercise and that evidence was fair. As for financial matters, I regret to say that I found Dr Notta to be a somewhat evasive witness. Although it was clear that the quality of the financial information presented on his behalf was distinctly variable, he sought to absolve himself of any responsibility. In effect, he was saying he gave the accountants all the information and they presented the various sets of accounts and summaries presented to the Court. As I explain later, I found the financial information provided about the performance of his practice to be unsatisfactory. I consider it likely that at least a major cause was the adversarial nature of the dispute between the parties and this litigation.

37. The Claimants called Ms Wendy Webber as their valuation expert. She was a careful and considered witness who, in the main, satisfied me that she was doing her best to assist the Court and she was well qualified to do so. I consider she somewhat exaggerated the effects on her valuation of (a) the break in Dr Notta's practice which I detail below and (b) the effects of the COVID-19 pandemic but I feel she was rightly suspicious of some aspects of the financial information provided as to Dr Notta's practice.

38. The Defendant called Ms Leah Turner as his valuation expert. Ms Turner and her firm have a lot of experience in valuing and facilitating the transfer of dental practices across the country. Overall, whilst I commend her for engaging in useful discussions with Ms Webber over their differences and the production of the two Joint Stratements, there were aspects of her evidence and valuations where I felt she was trying too hard to maximise the valuation in favour of the Defendant. I detail instances of this below.

The appropriate valuation methodology

39. The primary (and perhaps the sole) purpose of the expert evidence was to educate the Court as to the appropriate methodology to adopt in making the relevant valuation(s) in accordance with the Schedule to the CSA. In this regard, although the experts took differing approaches, the evidence which emerged presented a relatively clear picture.

40. First, the experts were in agreement on the following points:

    i) The 'profits' method of valuation is the most appropriate when valuing a dental practice as a fully operation trading entity;

ii) A 'sole principal' approach is the most appropriate in this case. This approach is typically adopted when valuing smaller dental practices, particularly an expense sharing practice of the size and nature as that under consideration.

iii) The 'profits' approach requires the valuer to ascertain the sustainable net profit achievable by the busiess. Ms Webber assessed the Fair Maintainable Operating Profit ('FMOP') of the practice based on her assessment of Fair Maintainable Trade ('FMT'), whereas Ms Turner assessed an Adjusted Net Profit ('ANP') figure, although the experts agreed that the FMOP and ANP were effectively one and the same. The experts differed as to the FMOP/ANP figures they reached, largely based on their taking differing figures as to the level of fee income sustainable by a sole principal.

iv) The experts took similar operating costs into account such that Ms Webber's FMOP was 41.5% of her FMT. Ms Turner's ANP figure represented about 46% of fee income (after adopting a lower figure for NHS income from the GDS contract).

v) The FMOP/ANP figure is then subjected to a Multiplier or Years Purchase ('YP') to take account (on a discounted cash flow basis) of the profits to be earned in the future. The experts differed as to the appropriate Multiplier to adopt.

vi) The Market Value is the product of the FMOP/ANP multiplied by the Multiplier or Years Purchase after deduction of any Adjustment. Ms Webber made a series of Adjustments as her reports developed, whereas Ms Turner made no Adjustments. I discuss this issue below. From what I have said above, it will be clear that there was a considerable difference between the experts as to their end figures for Market Value.

vii) That the major areas of disagreement were as to (i) the level of fee income sustainable by a sole principal; (ii) the appropriate multiplier and (iii) the valuation itself.

41. I am grateful to both experts for meeting to discuss the differences between their reports. The product of their first meeting was a very useful Joint Statement dated 25 October 2019 which yielded the points of agreement I have set out above.

42. Each expert then served a Supplementary report on 23 January 2020, following which they met again and produced a second Joint Statement dated 21 February 2020. This was again a helpful document highlighting the differences between them and some of the reasons for those differences. Ms Webber raised certain errors in Ms Turner's reports, which Ms Turner acknowledged. The major areas of disagreement remained the actual and sustainable trade, the basis of the valuation to be adopted, the valuation(s) and the need to inspect the dental practice premises for the purpose of ascertaining sustainability of trade and profit.

43. In her first report dated 25 September 2019, Ms Turner set out her valuation of the Defendant's practice as at 24 October 2018. In terms of methodology, she explained that for a 'group' buyer who is looking to run the practice on an associate-led basis, the most appropriate method for valuing is to calculate the appropriate EBITDA of the business, and apply a multiple to the EBITDA by reviewing numerous factors including business risk, location, business type and demand. For individual buyers, she explained the most appropriate method is to use the owner occupier model, in which she said the EBITDA figure is added to a predicted clinical salary of a new full-time principal to give an ANP.

44. In her report, she illustrated the practice as if it was 'fully associate led to determine an EBITDA' and then 'added back clinical earning which calculates a Fair Maintainable Trade profit which takes into account an owner occupier'. This approach yielded an ANP of £229,301 to which a multiplier of 1.8 was applied to give a Market Value as at 24 October 2018 of £412,742. I remain unconvinced that the approach adopted by Ms Turner in this report is the correct one, particularly since she later agreed with Ms Webber that the 'sole principal' approach was the appropriate one for the situation in hand. Notwithstanding that agreement Ms Turner contined to present valuations in her subsequent reports based on the 'associate-led' approach to achieve her Adjusted Net Profit figure.

<u>Years Purchase and Adjustments</u>

45. The experts differed as to the appropriate Years Purchase to apply to an expense sharing practice valued on a sole principal basis. Ms Webber considered the broad range of appropriate multipliers for practices valued on a sole principal basis to be between 2.5 and 4.5/5.0, with expense sharing practices achieving multipliers at the lower end of that range. Ms Webber applied a YP figure of 2.75.

46. Ms Turner considered a multiplier of 1.8 times ANP to be appropriate and considered it rare for a multiplier beyond 2.0 to be achieved for an expense sharing practice, except in the case of a very large NHS practice with a large associate element.

47. Perhaps the most difficult and uncertain part of the methodology was how to take account of unusual factors. To the extent that unusual factors were to be taken into account, the experts appeared to agree that it should largely be reflected in the appropriate Years Purchase to apply to the FMOP/ANP.

48. In her reports, Ms Webber sought to reflect her concerns about the sustainability of trade, the rather dated appearance of the premises and equipment, her perception that any buyer would need to rebuild the practice, the lack of initial income (due to the effects of the pandemic) to support the purchase etc. in an goodwill Adjustment to the calculated value. Her Adjustments increased as more unusual factors came to light, increasing from a deduction initially of £150,000 (which halved the value) to a deduction of £250,000 (which brought the end figure down to £50,000), and then to £270,000 (yielding a value of only £30,000). Ms Webber explained the size of

each Adjustment in her various reports, but I was struck by the fact that these are round and large numbers. Although they were explained in terms of various Years Purchase figures (e.g. 1.4 , 2.25 & 2.5) times FMOP, they appear to be largely based on gut feel.

49. By contrast, Ms Turner's approach generally involved no Adjustment, in the sense of any deduction from the calculated value. In her written reports, this might be explained by the fact that she seemed to disagree that there were any unusual factors which required to be taken into account (save possibly for a deferred element due to the effects of the pandemic (see below)).

50. The reason for Ms Turner's approach was revealed in the second Joint Statement. It records her opinion that the valuations should disregard the impact of the ongoing dispute, and that 'the valuations must be considered as a market value at the time of valuation and separate to the ongoing proceedings between the parties, as they should represent the valuation in a resolved state.'

51. Ms Turner did agree that her valuation could be subject to change based on the assumptions made, the impact of the dispute and the trading information provided. She suggested that she might seek to reflect the impact of the dispute on the valuation by using a reduced figure for the valuation multiplier – her 'normal' multiplier was 1.8 and she indicated she might reduce it to 1.2. The impact of this reduction on her 'Up to date' valuation was to bring the value down to just over £200,000.

52. I turn to consider the major areas of disagreement between the experts.

<u>The financial information concering the Defendant's practice.</u>

53. Unfortunately the experts were not able to agree on the basic financial information as to the Defendant's own trading history and turnover.

54. Since a valuation as at the date of judgment in this action was always in issue, in my view the parties failed to apply their minds adequately as to what would be needed for such a valuation to be carried out.

55. Absent the influences of litigation, I consider that a Seller under the CSA ought to be able to and would normally produce up to date financial information down to a date fairly close to the date of the valuation, normally with the assistance of his or her accountants. In this case, I find that the Defendant, at the very least, ought to have been able to provide his accountants with the underlying financial information down to one month before the date of trial, to enable them to provide some form of organised turnover figures down to that date.

56. Unfortunately this did not occur.

57. After the initial hearing before Master Kaye on 30 May 2019, what turned out to be initial expert's reports were exchanged on or about 27 September 2019. At a hearing on 7 November 2019, the Master heard submissions as to the correct date of valuation under clause 24.1 and made an Order for

supplementary experts reports addressing both valuation dates in issue, including 'an up to date valuation for the purpose of assessing the value at the date of trial' by 4pm on 24 January 2020. For that purpose, the Master also ordered the Defendant to serve additional financial information, including: i) the records of patients described by the Defendant in the Schedule served on 28 August 2019 as 'active' patients in the last 18 months; ii) a document setting out the gross income which he has received from general dentistry, implant work, orthodontic work and Invisalign work during the last 12 months and iii) a document, prepared by his accountant, setting out his income and expenditure from 31 March 2019 to 7 November 2019.

58. As I have already mentioned supplementary expert's reports were duly served by Ms Webber and Ms Turner in late January 2020. This was still 9 months before trial and by the date of trial, the latest financial information provided by the Defendant was going to be 11 months old. Ms Webber exhibited to her report as Appendices 1 and 2 the additional financial information produced by the Defendant. Appendix 1 comprised a single sheet of A4 on which the breakdown of work was provided for two periods: the first was for the last 12 months (7 November 2018 – 7 November 2019), where the total turnover was given as £108,278; the second was for 24 October 2017 to 24 October 2018, where the total turnover amounted to £467,369. Appendix 3 was a set of unaudited financial statements for the period 29 March 2019 to 7 November 2019 prepared by 'accountants4dentists'. These statements revealed a sales figure of £108,278 and expenditure of £129,342. I analyse this information below.

59. As the trial date approached, the Claimant made an application seeking additional documents and permission to serve a supplementary expert report on the impact of COVID-19. This application came before Deputy Master Hansen on 7 September 2020. In the result, the Deputy Master ordered supplementary expert reports limited to the impact of COVID-19 but otherwise dismissed the application. Without having seen all the material and arguments considered by the Deputy Master, my impression is that the Claimants were probably asking for too much material, which the Defendant resisted.

60. The two experts duly produced their further supplementary reports on 25 and 28 September 2020. About 4 weeks after the hearing before the Deputy Master, on the day before the trial commenced, the Defendant produced a series of bank statements from November 2019 to 1st October 2020. This was a very unsatisfactory way to produce information, since it turned out that the *relevant* information in the bank statements could only be identified and understood during Dr Notta's live evidence during the trial – this revealed that the first schedule which purported to have extracted relevant financial information had erroneously included some £54,000 odd.

61. Against this backdrop, one of the submissions made on behalf of the Defendant was that the Court is unable to make a valuation as at the date of judgment based on the lack of documents and information after November 2019, because there was no Order requiring the Defendant to produce information. I reject that submission. In my view, the Defendant should have

co-operated with the Claimants at an earlier stage so that up to date financial information was available for the purposes of valuing his practice as at the date of trial or judgment. It is this sort of co-operation which is required under the Overriding Objective to enable the Court to decide cases justly.

62. The end result is that I have been presented with what I regard as a very mixed bag of financial information concerning the Defendant's practice.

63. When it suited him and his case, the Defendant produced a detailed, but unaudited set of Financial Statements, for the year ended 24 October 2018, which showed a turnover in that year of £427,000, including Management Information which featured a detailed list of expenses, including a figure of £41,338 spent on advertising. For the purposes of valuing his practice at any other date, the information provided was less than satisfactory. I summarise the information regarding the Defendant's turnover as follows:

Period	Turnover	Observation
Year to 31.03.16	£181,313	Abbreviated accounts[1]
Year to 31.03.17	£251,879	Abbreviated accounts
Year to 31.03.18	£341,570	Abbreviated accounts
Year to 24 Oct 18	£427,917	Unaudited accounts prepared by Humphrey & Co, but with Management Information which included details of expenditure[2]
24.10.17-24.10.18	£467,369	Sheet provided by 'D's accountant'[3]
Year to 31.03.19	£361,528	Abbreviated accounts
7.11.18-7.11.19	£108,278	Sheet provided by 'D's accountant'[4]
29.03.19-7.11.19[6]	£108,278	Unaudited accounts prepared by accountants4dentists[5]
2.11.19-1.4.20[7]	£97,742	
Year to ~31.3.20	£205,910	Being the total of the two previous figures
April 2020	0	These figures from the bank statements
May 2020	0	
June 2020[8]	£6,431	
July 2020	£14,430	
August 2020	£17,928	
September 2020[9]	£28,542	
6 months to 30.9.20	£67,332	

64. Certain entries in the table above require some further explanation or observation, as follows:

1. The abbreviated accounts provided a turnover figure but no details of expenditure.

2. By contrast, the Management Information produced for the year to 24 October 2018 did include details of expenditure, including a figure for advertising of £41,338. However, this overall turnover figure included

£25,643 as 'NHS fees receivable', added to Dr Notta's private income of £402,274 (a figure which included his share of the hygienist income of £25,207) giving a total of £427,917. Thus the figure to compare with the rougher later turnover figures (which as I understand it do not include his shares of hygienist income and his share of the NHS income) is £348,067.

3. This sheet formed Appendix 3 to Ms Webber's report dated 23 January 2020 and was provided to her, apparently as a document disclosed by the Defendant pursuant to the Order of Master Kaye dated 7 November 2019.

4. This sheet formed Appendix 1 to Ms Webber's report dated 23 January 2020, again provided pursuant to the Order just mentioned. Dr Notta told me it was a document prepared by his accountant. He was unable to explain any of the contradictions with other sets of accounts provided. His explanation was that he had given all the papers to the accountant and this sheet was what was produced. It provides a breakdown in the type of work undertaken by Dr Notta during the two identified periods. These breakdowns were as follows (rounded to the nearest £), to which I have added my totals:

Type of Work \ Period	24.10.17-24.10.18	7.11.18[sic]-7.11.19
General Dentistry	£337,169	£71,741
Implant Work	£99,000	£7,567
Orthodontic Work	£30,850	£28,220
Invisalign Work	£350	£750
Totals	£467,369	£108,278

Although this sheet identified the start of the second period as 7.11.18, this must be a mistake, particularly in view of the turnover figure of £361,528 in the abbreviated accounts to 31.03.19 and the fact that the same total is given for the period from 29.03.19-7.11.19. The other inconsistency is more serious and remains unexplained. The audited accounts to the year ended 24 October 2018 provide a total sales figure of £427,917, yet the figures on the sheet for the same period total £467,369.

5. This set of accounts record sales of £108,278 over the period from 23 March 2019 to 7 November 2019, a period of just over 7 months, with advertising costs of £11,086.

6. Without giving any warning, Dr Notta closed his practice on 25th April 2019, circulating a letter of that date to at least some of his patients informing them, inter alia, "*As of 25th April 2019 I have left Robinhood Dental Practice and sold my practice. Dr Cranstoun and Dr Rumley have acquired my practice assets*." Although the Defendant had left, he had neither sold his practice nor had the Claimants acquired his practice assets. Furthermore, the Claimants did not know what to say to the Defendant's patients when they attended the practice for treatment. Telephone contact was made with the Defendant on 30 April 2019 in which he indicated that all his patients were now the responsibility of the Claimants, including all emergency care. On 3rd May 2019, the Defendant repeated this by email sent to the receptionists at the practice, further threatening that if the Claimants failed to comply with their '*contractual and professional obligations'* to his patients, it would be brought

to the attention of the relevant regulatory authorities. As Dr Cranstoun said in his evidence, the next few weeks left them in turmoil. Some 43 days later, the Defendant resumed his practice on 6th June 2019 although it is not clear how. Presumably he must have engaged in some advertising to generate fresh patient interest, and this would seem to be confirmed by the sum spent on advertising mentioned in note 5 above.

7. It remains unclear to me as to why the Defendant was not able to provide accounts for the year ended 31 March 2020. Those accounts could easily have been prepared and provided in time for the trial and I so find. However, adding together the two figures provided above, gives an approximate annual total for the year to end March 2020 of £205,000 – impacted in the final two weeks by the start of the COVID-19 lockdown.

8. Dental practices were permitted to re-open on a restricted basis on 8 June 2020, after the first lockdown ended.

9. The Defendant's Counsel placed very significant emphasis on this single monthly figure, characterising it as indicating that Dr Notta's practice had bounced back to 'normal'. I do not think such a conclusion can be drawn from this single monthly figure.

65. In each of her reports, Ms Webber commented on the lack of up to date financial information from Dr Notta (a situation she described as 'unusual') and also a lack of transparency in certain aspects of the financial information provided, such that she was unable to verify a number of points – something she also considered unusual. Furthermore, when she visited the practice to make an inspection on 27 June 2019, Dr Notta was unable to provide her with a copy of his fee list or patient list. As to the former, she was subsequently supplied with a fee list. For the patient list, Dr Notta referred her to the Claimants. Subsequently, as I mentioned above, the Order of Master Kaye dated 7 November 2019 required him to provide 'the records of the patients described by the Defendant in the Schedule served on 28 August 2019 as 'active' patients in the last 18 months'. Ms Webber noted that 51 records were provided and that the Claimants disputed whether these actually related to active patients. A patient is 'active' if they have visited the practice within the past 18-24 months. She concluded that the information provided was 'inconclusive' and noted that if the practice in fact had no or low 'active' patients, that would have a significant effect on the valuation. I have reviewed the list for myself. It actually contains 54 entries, but the list would not make for happy viewing by a prospective purchaser, with many being marked FTR (Failed to Return) or "Over 18 months" or "Lapsed" or "Gone elsewhere".

66. Overall, I find that the financial information as to Dr Notta's practice to be unsatisfactory. I consider that any potential purchaser would share that view and, as Ms Webber observed, this undoubtedly impacts on the valuation of his practice.

67. Ms Webber was not prepared to base her valuation on the turnover figures provided by Dr Notta. Instead, she based all her valuations on her experience that sole principal dentists, undertaking mostly GDS work, are typically able

to generate annual fee income of £200,000 to £250,000. She accepted that where a dentist is able to provide more specialist treatments, including cosmetic work, their income can be higher and significantly higher in some cases. She prepared her valuations using a figure at the low end of her range, due to the dated appearance of the premises and equipment at the practice.

68. Ms Turner thought Ms Webber's range to be low and said that, in her experience, it would be rare for a principal's personal fee income to be less than £300,000. In the main, Ms Turner was prepared to use Dr Notta's turnover figures as the basis for her valuations.

69. I consider that any potential purchaser (the 'willing buyer') would have concerns over his or her ability to achieve some of the higher turnover figures in Dr Notta's sets of annual figures, for three main reasons. First, because it appears that Dr Notta undertook a varying but significant amount of one-off dental work. Second, because the sums which were revealed as to his advertising costs would be considered to be very high by any potential purchaser. It seems that these high advertising costs are generally incurred to attract one-off treatment work. By contrast, Ms Webber indicated a normal annual advertising spend to be around £1,000 for a dentist with a GDS (General Dental Services) practice. Third, because of the potentially long-lasting effects of Dr Notta abruptly closing his practice on 25th April 2019 and effectively instructing all his patients to go to the Claimants or elsewhere.

Additional factors

70. In her Adjustments, Ms Webber took account of what she termed the adverse impact on the overall practice of the ongoing dispute, which included the concerns and issues surrounding the conditions placed on the Defendant's GDC registration. In my view, a willing purchaser would visit and inspect the practice and could not avoid detecting an aura of conflict between the practitioners. I have to say that the willing purchaser would be likely to attribute that conflict largely at the Defendant's door, meaning that it would disappear on completion of the purchase. Likewise with the Defendant's GDC conditions – those would be attributed to the Defendant, but the willing purchaser would have a residual concern about the effect on the practice he or she was purchasing.

The effects of the COVID-19 pandemic

71. All routine dental care in England was suspended from 25th March 2020. It was allowed to resume as from 8th June 2020, albeit under restrictive working conditions which significantly reduced the number of patients which a dentist could see each day.

72. The final reports from each expert were served in September 2020 in which they were to address the effects of the COVID-19 pandemic. Ms Turner addressed the effects at a general market level. She indicated that some sales already arranged by her firm prior to lockdown had completed, one with a greater deferred element to allow for pre-COVID income to return. Over the period of pandemic down to her final report, some 28 agreed sales fell

through, for a variety of reasons. As to their current status, a very mixed picture was presented: three had been agreed at a higher price, five at the same price, one with a price reduction, other were being remarketed, four had been removed from the market with a view to remarketing in the next 12 months etc. Generally, the picture appears to be that the restricted working arrangements have curbed income but not patient interest. So the majority of sales agreed since lockdown started have been valued and agreed on pre-COVID turnovers, with a deferred element held back post-completion to allow time for income to return to pre-COVID levels, for periods between 6 and 12 months post-completion. Her overall conclusion was that there was no reason to assume that in a post-COVID world, values will not remain at current levels. So, in the medium to longer term, a willing buyer would expect to be able to return to something like normal turnover levels.

73. I did not form the impression that Ms Webber disagreed. She indicated that NHS dental activity has continued to be supported through the pandemic, with only an abatement of 16.75% being applied to total contract values across the period 1 April to 7 June 2020, with 0% abatement thereafter provided that practices deliver at least 20% of activity. Ms Webber concentrated more on the effect of the pandemic on the valuation of the Defendant's practice. She made the point that any purchaser of a practice would be required to rebuild trade because of the impact of the pandemic, but that a purchaser of the Defendant's practice would face the added difficulty of rebuilding the trade and reputation of the business following the Defendant's absence and the erratic trading profile. It is clear that Ms Webber considered the pandemic had the effect of further reducing the value to be attributed to the Defendant's practice. I propose to take account of the effects of the pandemic in a very modest reduction to the Years Purchase figure.

74. I am conscious that slightly more than two months has elapsed since the conclusion of the trial, but that I am tasked with deciding a valuation of the Defendant's practice interests as at the date of my judgment, 21st December 2020. I keep in mind that previous cases have addressed the potential for difficulties to arise where a valuation is required on possibly out of date evidence and submissions. My attention was drawn to the judgment of His Honour Judge Purle QC in *Redlawn Land Limited v Cowley* [2010] EWHC 766, in which the Judge dealt with an issue of such difficulties by quoting the following passage from Buckley LJ in *W&S (Long Eaton) Ltd v Derbyshire County Council* (1975) 31 P&CR 99:

> 'The claimants point out that the valuation evidence can never relate precisely to the date of the award since the tribunal's rules require that its decision shall be given in writing and the award is consequently and necessarily in the nature of a reserved judgment. We think there is nothing in this. The award must be based on evidence; the evidence must be given at the hearing and so to some extent must antedate the award but normally the interval will be short and of no significance. If in a particular case the tribunal were to think it likely that the values had changed materially since the hearing and before the

> award was promulgated, further evidence could be heard and, if though desirable, arrangements could be made for the award to follow almost immediately after the further hearing.'

75. Although there have been developments in the progress of the pandemic since early October, I was minded to conclude that there had been no material change to the outlook which would impact on the valuation exercise I have to undertake. When I distributed a draft of this Judgment to the parties, I invited them to consider whether they wished to submit that any material change had occurred. Neither wished to do so.

Overall conclusions as to the rival approaches

76. In my view, although a willing buyer would pay careful attention to the Defendant's financial information, he or she would not engage in a purchase of his practice interests for the purpose of necessarily trying to emulate his financial performance. Instead, the willing buyer would examine the Defendant's trading history in order to ascertain what was the likely trading performance they would be able to obtain following their purchase, as a reasonably efficient operator.

77. Despite numerous differences between the two approaches, some of greater significance than others, the two experts did end up concluding, in their second joint statement, that they had arrived at a similar 'base value' for the practice of approximately £300,000. This point of approximate agreement conceals quite significant underlying disagreements as to the appropriate FMOP / ANP and Years Purchase. As I mentioned above, Ms Webber proceeded on the basis of a turnover figure for the sole principal's work of £200,000, to which she added contributions of £4,000 for private income from the associate; £31,000 of NHS income from the associate and £35,000 from the hygienist, making a total turnover of £260,000, and an FMOP of £108,000. Ms Webber applied a figure of 2.75 Years Purchase to yield a base market value of £300,000.

78. For her part, Ms Turner started with a higher turnover figure for the Principal's private income, based on what she considered to be the Defendant's actual private income for the period in question. Ms Turner's figures for the Hygenist, Associate NHS Income and Associate Private income were not that different from those used by Ms Webber (once the point over the GDS contract had been corrected). However, one major difference was that Ms Turner insisted on including approximately £30,000 of NHS income for the Principal, even though the Defendant did not carry out any NHS work. I could not understand why. Overall, Ms Turner ended up with a base value of slightly more than £300,000, from a higher ANP figure of around £176,000 but with a lower Years Purchase figure of 1.8.

79. However, from that 'base value' the two experts diverged markedly. As I have mentioned, Ms Turner made no adjustment at all, whereas Ms Webber made a series of adjustments which grew larger as time and issues over the Defendant's practice grew.

80. Overall, and despite the assistance I gained from some parts of Ms Turner's evidence, in particular the extent to which she was prepared to agree with Ms Webber, I found her position on points where she disagreed with Ms Webber to be either flawed or unreliable. For example:

i) Having inspected the premises and equipment in the Defendant's practice, Ms Webber considered both to be somewhat dated and inconsistent with a purchaser being able to achieve the higher turnover figures which Ms Turner felt able to support. This was a major factor in Ms Webber's doubts over the sustainability of trade. Ms Turner sought to defend the fact that she did not inspect the premises or equipment by claiming that an inspection was '*not integral to the valuation of the goodwill or the profit a business achieves as long as the premises and equipment have been shown to support the income of the business'*, an explanation I found circular but also one which ignored other concerns rightly raised by Ms Webber as to the erratic nature of the Defendant's financial results.

ii) Ms Turner seemed to be untroubled by any factors which affected the sustainability of the high turnover figures she was prepared to accept. In particular, Ms Turner seemed to brush off any problems caused by the Defendant's sudden absence from the practice from 25th April to 8th June 2019, the small patient list which any purchaser would inherit along with the task of rebuilding the practice from the rather erratic recent performance of the Defendant, a task made more difficult and longer due to the effects of the COVID-19 pandemic, and Ms Webber's concerns about the lack of transparency in the information provided.

iii) There were several instances where Ms Turner seemed intent on achieving the highest valuation she could of the Defendant's practice, as follows.

iv) One of these instances was not entirely her fault, because Ms Turner was <u>instructed</u> by the Defendant's solicitors to assume that the Defendant was entitled to a 1/3 share of the entire NHS contract and this resulted in her taking a considerably higher turnover figure for her valuation to 24 October 2018 than the Defendant's own accounts revealed. In my view, a properly objective and independent expert would have, at the very least, questioned that instruction and would have given careful consideration to adopting the actual turnover figure revealed in the Defendant's accounts.

v) Ms Turner's reaction to the Defendant's 43 day absence from the practice was to extrapolate his income for the 181 days in the relevant period when he was at the practice and increase it proportionately up to a 224 day figure as if he had actually worked those additional 43 days, an approach which I find remarkable. This resulted in her overall turnover figure to 7th November 2019 of £347,404.

vi) Again, although this was not entirely Ms Turner's fault, it was revealed during the trial that she had been provided with some financial information by either the Defendant or his solicitors which was not provided to Ms Webber. The source and reliability of this information was not clear, but Ms Turner accepted it and chose to disregard some of the additional financial information served pursuant to the Order of Master Kaye exhibited to Ms Webber's January 2020 report. As Ms Webber observed in the second Joint Statement, Ms Turner's approach appeared 'selective'. I found this incident disturbing, in that I remain unable to comprehend how the Defendant's side was able to justify to themselves the provision of purported financial information to their expert but not to Ms Webber, although ultimately this incident does not impact on my valuation.

81. Overall, I formed the view that Ms Webber's approach is more realistic than Ms Turner's.

<u>My Findings</u>

82. In the light of the discussion above I can state my findings succinctly. I remind myself of my task: to value the Defendant's practice assets in accordance the the Schedule to the CSA, as modified by agreement.

83. My starting point is to take a turnover figure for the sole principal of £220,000, slightly below the mid-point of Ms Webber's range for a reasonable efficient operator operating in the Premises. To that I add the largely agreed figures of £4,000 of Associate Private Income, £31,000 of Associate NHS Income and £25,000 of Hygenist Income, giving a Total Income or FMT of £280,000.

84. Noting the large measure of agreement as to operating expenses, I take the FMOP as approximately 43% of FMT yielding an FMOP figure of £120,000.

85. In terms of the appropriate Years Purchase, I note in particular Ms Turner's standard figure of 1.8 and her reduced figure of 1.2, albeit she was applying her Years Purchase figures to higher ANP figures than Ms Webber's FMOP figures.

86. Ms Webber's standard Years Purchase figure was 2.75, but effectively reduced by the unusual factors she took into account to initially 1.35, then 0.5 and ultimately 0.25. I share Ms Webber's concerns as to the sustainability of trade, the rather dated appearance of the premises and equipment, her perception that any buyer would need to rebuild the practice (both as a result of the Defendant's conduct and the effect of the pandemic) the lack of initial income (again due to the effects of the pandemic) to support the purchase and the aura of conflict at the practice. However, I am inclined to discount some of the more internal aspects of that conflict (including the GDC conditions under which the Defendant was operating). In addition, I consider Ms Turner had a point that as soon as the valuation is determined, at least some of the conflict will dissipate.

87. I have thought long and hard about the appropriate YP figure to adopt, precisely because it must be the result of my evaluation of many factors but also because this is not by any means an exact science. Having reviewed again all the various factors discussed above, I find that the appropriate YP or multiplier is 0.8 with no further goodwill adjustment. Accordingly, I find that the valuation of the Defendant's practice assets is £96,000.

88. I will make an Order declaring (i) that the appropriate date for the valuation of the Defendant's practice assets under the CSA is the date of my Judgment, 21st December 2020 and (ii) that the valuation of the Defendant's practice assets is £96,000. All other consequential issues arising are adjourned to a hearing to be fixed as early as possible in January 2021.