Neutral Citation Number: [2025] EWHC 2180 (Ch)

Appeal Reference: CH-2024-000302

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

CHANCERY APPEALS (ChD)

ON APPEAL FROM AN ORDER OF HER HONOUR JUDGE EVANS-GORDON MADE IN THE CENTRAL LONDON COUNTY COURT ON 21ST OCTOBER 2024

(Case Reference: J10CL531)

Rolls Building
7 Rolls Buildings
Fetter Lane
London, EC4A 1NL

19th August 2025

Before :

MR JUSTICE EDWIN JOHNSON

- -

Between :

(1) Dr VIKRAM BHAT

(2) GEETHA BHAT

Appellants/ Defendants

and

SMRUTI PATEL

Respondent/ Claimant

- -

- -

Jason Coppel KC and Oluwaseyi Ojo (instructed by Taylor Woods Solicitors) for the Appellants

David Warner (instructed by Rainer Hughes) for the Respondent

Hearing date: 25th June 2025

- -

JUDGMENT

Remote hand-down: This judgment was handed down remotely at 11.00am on Tuesday 19th August 2025 by circulation to the parties and their representatives by email and by release to the National Archives.

Mr Justice Edwin Johnson:

Introduction

1. This is an appeal against an order of Her Honour Judge Evans-Gordon, sitting in the County Court at Central London, made on 21st October 2024. By that order (**"the Order"**) the Appellants were ordered to pay the sum of £212,600 to the Respondent, together with interest thereon.

2. The Appellants and the Respondent were formerly partners in a medical practice which provided general medical services, under the name of the Sai Medical Centre. Unfortunately, there was a falling out between the parties, in February 2019, which has generated considerable litigation between or involving the parties. It is common ground that the partnership has now been terminated, at the latest by 18th April 2023, but there has been a dispute between the parties as to whether the termination occurred on an earlier date.

3. In this action, which was commenced by claim form dated 30th August 2022, the Respondent, as Claimant in the action, claimed against the Appellants, the Defendants in the action, arrears of an annual fixed sum which the Respondent said was due to her under the terms of the partnership agreement between the parties. The sum claimed by way of these arrears was £212,260, which was said to have accrued due between (and including) the accounting years ending on 31st March 2019 and 31st March 2023.

4. The action came to trial before Judge Evans-Gordon (**"the Judge"**) over three days commencing on 24th July 2024. The Judge handed down her reserved judgment (**"the Judgment"**) on 21st October 2024. For the reasons set out in the Judgment, the Judge decided that the sum of £212,260 was due to the Respondent from the Appellants, and made the Order consequential upon the Judgment. The Judge dealt with costs and the applications of the Appellants for permission to appeal and a stay of the Order in a separate judgment, which was handed down on 13th December 2024. For the reasons set out in that separate judgment, the Appellants were ordered to pay the Respondent's costs of the action and to make an interim payment on account of those costs in the sum of £60,000. The applications for permission to appeal and for a stay were refused.

5. With the permission of Trower J, granted on 20th February 2025, the Appellants appeal against the Order. For the reasons set out in their grounds of appeal, the Appellants say that the Judge was wrong to award any sum to the Respondent, that the Order should be set aside, and that the costs order made by the Judge should be reversed in favour of the Appellants.

6. This is my reserved judgment on the hearing of the appeal (**"the Appeal"**).

7. On the hearing of the Appeal, the Appellants were represented by Jason Coppel KC, and Oluwaseyi Ojo, solicitor advocate. The Respondent was represented by David Warner, counsel. I am most grateful to all three advocates for their assistance, by their written and oral submissions, in my determination of the Appeal.

The conventions of this judgment

8. I find it easiest to refer to the parties in their original capacities in the action. In the remainder of this judgment I will therefore refer to Mrs Patel, the Respondent in the Appeal, as the Claimant. I will refer to Dr Vikram Bhat and Mrs Geetha Bhat, the Appellants in the Appeal, as the Defendants. I will refer to the trial before the Judge as **"the Trial"**.

9. References to Paragraphs in this judgment are, unless otherwise indicated, references to the paragraphs of the Judgment. Italics have been added to quotations.

The history of the partnership

10. The Judge gave a full account of the history of the partnership which culminated in the dispute between the parties which has, most unfortunately, generated this action and other litigation. The Judge also made very full findings of facts. What follows is only a brief summary of the history of this dispute, sufficient to set the scene for what I have to determine. I am indebted to the Judge for this summary.

11. In 1987 the Claimant's husband, Dr Prashant Patel (**"Dr Patel"**), commenced practice as a GP from the premises known as the Sai Medical Centre, in Tilbury, Essex (**"the Medical Premises"**). At some point thereafter Dr Patel and the Claimant acquired the freehold interest in the Medical Premises. By 17th September 2012, Dr Patel was providing GP services to the NHS. These GP services were thereafter provided pursuant to a General Medical Services contract with the NHS Commissioning Board (**"the GMS Contract"**) dated 17th September 2012.

12. In 2013 the First Defendant and a Dr Jagadish (**"Dr Jagadish"**) began working at the medical centre as locum doctors. On 1st April 2014, the Claimant, the First Defendant and Dr Jagadish executed a written partnership agreement between themselves (**"the 2014 Partnership Agreement"**). The GMS Contract remained with Dr Patel alone.

13. During the period with which the dispute in this case was concerned, the medical practice business which was carried on from the Medical Centre was operated through a partnership structure. I will refer to the partnership structure through which the medical practice was operated, as it existed over the relevant period of time, as **"the Medical Partnership"**. This is a neutral expression, which is intended to encompass the changes, over time, in the identity of the partners who comprised the Medical Partnership. Where it is necessary to be more specific, I will use the expression **"the 2014 Partnership"** to refer specifically to the Medical Partnership, as it existed during the period when the Medical Partnership comprised the Claimant, the First Defendant and Dr Jagadish.

14. Dr Patel retired in September 2014 and the GMS Contract was varied in writing as of 1st September 2014, so that the provider of GP services became the Sai Medical Centre. The Judge found that the reference to the Sai Medical Centre plainly meant the partners from time to time, as the Sai Medical Centre was not a legal entity. The variation of the GMS Contract was signed by the three partners under the 2014 Partnership Agreement in April 2015.

15. In March or April 2016 the Second Defendant was added as a partner to the Medical Partnership. On 24 June 2016, the four partners in the Medical Partnership, that is to say

the Claimant, the Defendants and Dr Jagadish signed a variation of the GMS Contract which showed the addition of the Second Defendant as a partner.

16. A deed was drawn up for the purposes of adding the Second Defendant as a new partner in the Medical Partnership. It appears however that this deed was not executed. The Judge recorded, in Paragraph 18, that it was common ground that what she referred to as *"the draft agreements of 2016 and 2017"* were never formally executed or signed. I take the reference to the draft agreement of 2016 to be a reference to the unexecuted deed drawn up in 2016, in relation to the addition of the Second Defendant to the Medical Partnership.

17. During this period the Claimant and Dr Patel were negotiating with the local authority to buy land adjacent to the Medical Premises, known as 116 Dock Road, Tilbury (**"the Adjoining Land"**), with a view to extending the Medical Premises. The purchase of the Adjoining Land was completed on 8th August 2017. The extension to the Medical Premises was to be funded as to two-thirds by the NHS and one-third by the Medical Partnership. The extension has since been built but, as a result of the dispute between the parties, the Adjoining Land has not been incorporated into the Medical Premises.

18. On 25th November 2016, Dr Jagadish served what the Judge described as a notice of termination of the Medical Partnership from 31st March 2017. What I understand to have occurred is that, pursuant to this notice, Dr Jagadish left the Medical Partnership with effect from 31st March 2017. On 7th February 2017, a further variation of the GMS Contract was signed by the remaining partners, that is to say the Claimant and the Defendants, reflecting the departure of Dr Jagadish from the Medical Partnership.

19. Again, a deed was drawn up for the purposes of the removal of Dr Jagadish as a partner in the Medical Partnership. Again, it appears that this deed was not executed. As I have said, the Judge recorded, in Paragraph 18, that it was common ground that what she referred to as *"the draft agreements of 2016 and 2017"* were never formally executed or signed. I take the reference to the draft agreement of 2017 to be a reference to the unexecuted deed drawn up in 2017, in relation to the retirement of Dr Jagadish.

20. The parties, meaning the Claimant and the Defendants, fell out with each other in February 2019. It is not necessary to go into the unfortunate history of events following this falling out, or to go into the litigation which it generated, which is helpfully summarised by the Judge in Paragraphs 8-11.

<u>The 2014 Partnership Agreement</u>

21. The next step is to set out the key provisions of the 2014 Partnership Agreement, which were engaged by the dispute. Reference to Clauses are, unless otherwise indicated, references to the clauses of the 2014 Partnership Agreement.

22. The 2014 Partnership Agreement was expressed to be made between, and was executed by the First Defendant, Dr Jagadish and the Claimant, who were identified, respectively, as Partner 1, Partner 2 and Partner 3. Clause 1 identified the purpose of the 2014 Partnership Agreement in the following terms:

> *"This Deed is made between the parties set out below and shall start on 1st April 2013 This Deed sets out the arrangements which the parties have agreed shall govern relations between themselves in the conduct of their business together,*

namely the provision of general medical services. This shall include enhanced services. And any other services required."

23. Clause 2.2 confirmed the commencement date of the 2014 Partnership Agreement as 1st April 2014. Clause 5 then dealt with the duration of *"the Partnership"* in the following terms:

> *"The Partnership as governed by this Deed shall begin on the Commencement Date 1st April 2014*
>
> *1. The Parties shall carry on the practice of General Practitioners in Partnership under the Practice Name Sai medical centre from the Premises and shall at all times comply with the provisions of the Business Names Act 1985 and of any regulation, instrument, rule or order made thereunder from time to time.*
>
> *2. Subject to the remainder hereof, the Partnership shall continue during the joint lives of the partners or any two or more of them unless or until any earlier termination is validly given under any agreement or law (including by any NHS Organisation).*
>
> *3. The death, retirement or expulsion of Any partner shall not determine the Partnership as regards the other partners and the partners hereby agree and declare that the Partnership shall not otherwise be dissolved unless and until:*
>
> *a. All of the Parties to this Agreement unanimously agree in writing to the dissolution thereof;*
>
> *OR*
>
> *b. Dissolution shall be imposed by the decision of a competent court or act of Parliament*
>
> *4. Notwithstanding any other provisions of this Agreement, any addendum to this Agreement when agreed between the partners and separately executed, may make any such provision as all the partners agree to be appropriate in the event of a New Partner joining the Partnership."*

24. The expression *"the Partnership"* was defined to mean the partnership created by the 2014 Partnership Agreement. The expression *"the Partners"* was defined to mean *"the parties hereto mentioned at part 1* [the First Defendant, Dr Jagadish and the Claimant] *together with any other person or persons who may from time to time be a member of the Partnership"*. References to *"a Partner"* were defined to mean any of the Partners, as so defined.

25. Clause 40 was headed *"INDEMNITY"*. I do not need to set out Clause 40 in full, but it contained the following obligation of indemnity imposed upon the Defendants, for the benefit of the Claimant:

> *"Each of the Partners shall punctually pay and discharge their present and future separate debts and liabilities including but not limited to their separate tax liabilities and shall at all times indemnify and keep indemnified the other Partners and the Partnership assets against such separate debts and liabilities and all actions, proceedings, costs, claims and demands in respect of such separate debts and liabilities.*
>
> *The Precedent Partner responsible for the submission of the Partnership tax return to the Inland Revenue shall be indemnified by each Partner against inaccuracies,*

errors or mistakes contained in the return caused by another Partner in the practice.
Any Partner or Partners in breach of any clause of this Agreement shall indemnify the other Partners or any one of them against any losses, liabilities, expense, actions, proceedings, costs, claims and demands, whatsoever and howsoever resulting therefrom or in connection therewith.
Partners 1 and 2 give full indemnity to partner 3 from all legal and financial liabilities of the partnership and the practice."

26. Clause 44 was headed *"VARIATION"*, and provided as follows:
"No variation to this Partnership Deed shall be valid and binding on the Partners unless agreed in writing and signed by all the Partners. Any variation should take the form of an addendum to this Agreement."

27. Schedule B to the 2014 Partnership Agreement was headed *"DIVISION OF NET PROFITS"* and provided as follows:
"The Net Profits of the Partnership as shown by the accounts shall be divided between the Partners in the following manner or share:-
Partner 1 Dr Vikram Bhat 50%
Partner 2 Dr Nirupa Jagadish 50%
Partner 3 Mrs Smruti Patel; Fixed amount of £50000 Plus superannuation per annum
In addition Lease to be signed by Dr Vikram Bhat & Dr Nirupa Jagadish and pay the rent of the premises as per the lease agreement.
All partners agreed to Partner 3 to work Part time and is required to work 20 hours and will be indemnified from all liabilities of this agreement. She will be entitled to same amount of holidays & sickness as other partners.
Partner 3 will be the main managing partner."

28. I will refer to the provisions which appear in Schedule B to the 2014 Partnership Agreement by the collective expression **"Schedule B"**. I will refer to the annual payment to which the Claimant was entitled under Schedule B as **"the Annual Payment"**,

<u>The claim made by the Claimant in the action</u>

29. By her Particulars of Claim in the action, the Claimant sought judgment for the sum of £213,452. A very small part of this sum comprised a claim for £852, said to be due to the Claimant by way of salary. The bulk of the sum claimed comprised what were alleged to be arrears of the Annual Payment, in the total sum of £212,600. These arrears were alleged to have accrued due from (and including) the accounting year ending on 31st March 2019 to (and including) the accounting year ending on 31st March 2023. Credit was given, in respect of the 2018/2019 accounting year, for drawings made by the Claimant in the sum of £37,400.

30. The claim for arrears of the Annual Payment was made on the basis that the Claimant's right to the Annual Payment, pursuant to Schedule B, had continued to apply following the Second Defendant joining the Medical Partnership in 2016 and following the departure of Dr Jagadish from the Medical Partnership in 2017. The Claimant's case was that the 2014 Partnership Agreement was varied when the Second Defendant joined the Medical Partnership and amended when Dr Jagadish left the Medical Partnership, but

that in each the case the variation/amendment did not alter or affect her right to the Annual Payment pursuant to the provisions of Schedule B.

31. By their Defence and Counterclaim in the action the Defendants denied the Claimant's entitlement to the Annual Payment. For present purposes it is not necessary to go through the detail of the Defendants' pleaded case in the Defence and Counterclaim. In summary, and so far as relevant to the Appeal, the essential case of the Defendants was as follows:
    (1) On the occasion of the Second Defendant joining the Medical Partnership there was an agreed dissolution of the 2014 Partnership and the creation of a new partnership between the Claimant, the First Defendant, Dr Jagadish and the Second Defendant. The new partnership was a partnership at will, terminable by notice by any partner. As I understand the Defence and Counterclaim, it was accepted that the Claimant's right to the Annual Payment comprised a term of this new partnership.
    (2) There was no amendment of the new partnership in 2017, when Dr Jagadish left the new partnership. Dr Jagadish simply retired from the new partnership, as a partnership at will, by giving notice of her intention to do so.
    (3) The new partnership at will was dissolved or terminated by the Defendants either on 7th August 2019, when the Claimant commenced proceedings seeking possession of the Medical Premises as against the Defendants, or on 5th November 2021, when the Defendants served notice of dissolution of the new partnership on the Claimant. As such, the Claimant's entitlement to the Annual Payment came to an end either on 7th August 2019 or 5th November 2021.
    (4) Beyond this, and whenever the new partnership had come to an end, the Claimant was not entitled to payment of the Annual Payment for two reasons. The first reason was that the Claimant had acted in breach of her obligations to the new partnership and had abandoned the new partnership, with the consequence that she was not entitled to any payment out of the profits of the partnership, The second reason was that if and to the extent that the Claimant was entitled to receive a share of the profits of the new partnership, by way of the Annual Payment, the Claimant was not entitled to be paid until after the determination of the net profits of the partnership and any other money owed by the Claimant to the new partnership. In other words, the Claimant was not entitled to be paid until the taking of the accounts of the new partnership, following its dissolution, which had not occurred and, so far as I am aware, has still not occurred. A particular argument raised by the Defendants in this respect was that there was a potential claim by the NHS in relation to the sums advanced for the construction of the extension to the Medical Premises on the Adjoining Land. It was argued that this potential claim would need to be reflected in the dissolution accounts drawn up for the new partnership.

<u>The Judgment – Paragraphs 1-17</u>

32. In summarising the decisions made by the Judge in the Judgment it is convenient, for reasons which will become apparent, to divide the Judgment into sections. I will deal first with Paragraphs 1-17.

33. At Paragraph 3 the Judge set out the agreed list of issues which fell to be determined at the Trial, in the following terms:

> *"3. The issues, as set out in an agreed list of issues, are as follows:*
>
> *i) On what terms were the parties carrying on in partnership from 1 April 2016 – pursuant to a partnership agreement dated 1 April 2014 made*

between the claimant, the first defendant and Dr Nirupa Jagadish ("Dr Jagadish") as subsequently varied ("the Original Agreement") or as a partnership at will from 1 April 2016, alternatively, from 2017?

ii) Was the partnership dissolved by conduct, being the service of forfeiture proceedings on 7 August 2019 or by service of a notice of dissolution by the defendants on 5 November 2021?

iii) Is the claimant entitled to any payment from the partnership pending the taking of a dissolution account?

iv) Did the claimant abandon the business of the partnership so as to deprive her of an entitlement to a fixed share of the profit or was she excluded from the business by the actions of the defendants?

v) What sum, if any, is due to the claimant?

A further issue as to whether the partnership should be dissolved by order of the court has fallen away in light of the claimant's acceptance that it was dissolved by written agreement on 18 April 2023."

34. At Paragraphs 4-11, the Judge then set out the background to the dispute and some of the principal factual issues between the parties. My own summary of the history of the Medical Partnership is drawn from this section of the Judgment.

35. In Paragraphs 12 and 13 the Judge directed herself as to the law. The Judge identified the applicable legal principles in Paragraph 12, and addressed the burden of proof in Paragraph 13.

36. In Paragraphs 14-16 the Judge reviewed the evidence. The Judge heard evidence at the Trial from the Claimant and the Defendants. The Judge made a careful assessment of the overall credibility of the evidence given by each of these individuals.

37. The Judge's impression of the Claimant was recorded in Paragraph 14 in the following terms:

> *"14. I heard oral evidence only from the parties themselves. The claimant was a straightforward witness whose evidence I found to be honest and reliable. Her evidence was consistent with contemporaneous documentation."*

38. The Judge was more circumspect in her impression of the Defendants. So far as the Second Defendant was concerned, the Judge recorded her impressions in the following terms, in Paragraph 14:

> *"Much emphasis was placed on findings of dishonesty against the defendants in earlier proceedings. However, it seems to me that I should form judgments and make findings on the evidence before me, without reference to the views of other judges in other cases. I start with a clean sheet. Initially, I formed the impression that the second defendant was an open and honest witness. However, as her evidence went on, she became evasive and, in my view, dishonest about the reasons for, and her memory of, various text messages passing between her and the claimant in 2018 and 2019. She portrayed herself as naive and wholly trusting in and reliant on the second defendant, her husband, in relation to the partnership negotiations and documentation. Her husband flatly contradicted this portrayal telling me that while he dealt with the negotiations around her becoming a partner, the second defendant would question him closely. I accept the first defendant's evidence in this respect."*

39. So far as the First Defendant was concerned, the Judge was also circumspect. The Judge recorded her impressions in Paragraph 15, of which I need only quote the first part:

> *"15. The first defendant plainly feels hard done by in the litigation, particularly in relation to the view taken by Recorder Geraint Jones KC of his honesty. However, the first defendant's evidence as to the negotiations and agreements around the second defendant becoming a partner in 2016 is somewhat unreliable, does not reflect the contemporary documentation or the partnership accounts and differs between his oral and written evidence, particularly in relation to the percentage share the second defendant was to have on joining the partnership and from where that share was to come."*

40. In Paragraph 17 the Judge reviewed some of the key provisions of the 2014 Partnership Agreement.

<u>The Judgment – Paragraphs 18-24</u>

41. In this section of the Judgment the Judge addressed herself to the first issue which she had to resolve; namely on what terms were the parties carrying on the Medical Partnership, as from 1st April 2016 when the Second Defendant joined the Medical Partnership.

42. The Judge started by summarising the rival contentions of the parties, in Paragraph 18, in the following terms:

> *"18. The parties' positions on this are starkly opposed save that it is common ground that the draft agreements of 2016 and 2017 were never formally executed or signed. The defendants deny all knowledge of the draft agreements and assert that there was no meeting or discussion of terms of the partnership. The claimant insists that there was a meeting at which the draft agreement was discussed and agreed. She was clear that the defendants had seen the draft agreements and agreed to them. The first defendant accepts that he knew of the terms of the Original Agreement. He also told me that in 2015/2016 he was focussed only on the effort to have the second defendant admitted as a partner and was not concerned about any other terms although he expected them all to continue as under the Original Agreement. He was aware of a draft agreement being prepared. The second defendant states that she had not seen the Original Agreement, although she was aware of its existence, or the 2016 draft agreement. She said that if the first defendant signed up to it, she would go along with him. Ms Bhat told me that she didn't ask about the terms of the partnership agreement but left it all up to the first defendant."*

43. At Paragraph 19 the Judge accepted that there had been a technical dissolution of the 2014 Partnership when the Second Defendant joined the Medical Partnership:

> *"19. I recognise, as I must, that there was a technical dissolution of the original partnership between the claimant, the first defendant and Dr Jagadish when the second defendant joined as a partner. The issue is whether it was a mere technicality with no impact on terms of the agreement between the new partners because by their conduct they expressly or impliedly accepted those terms. Alternatively, is this a case where the original agreement was expressly or impliedly abandoned or where the second defendant was*

unaware of the terms of the original partnership and cannot or should not be held to it so that a partnership at will was established? The answer depends on the evidence, as set out in Cheema v Jones."

44. In Paragraph 20 the Judge set out her findings of fact as to what had been agreed to by the Defendants on the occasion of the Second Defendant joining the Medical Partnership. As these findings are central to the Appeal, I should set out Paragraph 20 in full:

> *"20. In my judgment the evidence shows that, on balance of probabilities, the defendants, at least impliedly and probably expressly, agreed and accepted that the partnership, with the addition of the second defendant, was to continue on the same terms as set out in the Original Agreement. The first defendant, in his oral evidence, told me that was his understanding, as stated above. I am satisfied that the second defendant was also aware that the partnership was to continue on the original terms. She was aware of the existence of the Original Agreement on her own evidence. Also on her own evidence, in May or June 2016 she saw the pages of that agreement that were to be amended on her joinder as a partner although she "may not have read them". Those pages clearly refer to a deed and state that it contains the "arrangements which the parties have agreed shall govern relations between themselves". The second defendant told me that she agreed to those documents being sent to NHS on her behalf. In the circumstances she knew there was a document setting out the terms governing the partnership and agreed to them. Further, as she told me, she agreed to whatever the first defendant agreed to. As the second defendant was aware of the Original Agreement, aware that the only changes were to the identity of the partners and consequent profit share, I infer that she was agreeing to be bound by the terms of the original agreement. If she chose not to read relevant documents or to ask for the full terms to be provided to her, that does not detract from her agreement to be bound."*

45. The Judge then dealt with the question of whether Clause 44 prevented the new partnership from being bound by the terms of the 2014 Partnership Agreement. In Paragraph 21 the Judge concluded that Clause 44 had not had this effect:

> *"21. There is nothing in the Original Agreement that prevented a, technically, new partnership from being bound by its terms. Quite the contrary, clause 5.3 provides expressly that death, retirement or expulsion will not determine the partnership which may only be [wholly] dissolved if all of the parties unanimously agree in writing, or a dissolution is imposed by judgment or statute. To the extent that the addition of the second defendant as a party required writing pursuant to clause 44 of the Original Agreement, I agree with Mr Warner that the document sent to NHS dated 31 May 2016 (although not signed by Dr Jagadish until 6 June 2016) setting out the joinder of the second defendant as a partner and signed by all the then partners, constitutes a written variation for the purposes of clause 44. Mr Ojo, rightly, did not argue otherwise. The provision as to a variation taking the form of an addendum to the original agreement does not appear to be mandatory, as Mr Ojo also, quite properly, accepted."*

46. In Paragraph 22 the Judge made the further finding that there was a meeting at which the draft partnership agreement was discussed:

> *"22. In the light of the above evidence and finding, it really doesn't matter whether there was a meeting at which the draft partnership agreement was discussed. However, for the avoidance of doubt, I am satisfied that there was such a meeting on the strength of the claimant's evidence. Her evidence was more reliable than that of the defendants. In saying this I am treating the first defendant's evidence to the contrary as unreliable. There must have been conversations about the partnership and Ms Bhat's joinder. It seems to me that, as he said in oral evidence, the first defendant was more focussed on getting the second defendant admitted as a partner. He was not interested in anything else and did not turn his mind to it. I regret to say that I simply did not believe the second defendant's evidence in this respect."*

47. The Judge then turned, at Paragraph 23, to the question of what happened when Dr Jagadish retired from the Medical Partnership in 2017. The Judge accepted that this had worked a technical dissolution, but considered that this did not bring about a substantive dissolution of the Medical Partnership:

> *"23. In 2017, when Dr Jagadish retired from the partnership, there was, again, a technical dissolution. However, in my view, in light of clause 5.3 of the Original Agreement, this did not result in a substantive dissolution of the partnership. On 16 February 2017, the claimant sent an email to NHS saying, "Please find attached Contract Variation to come into effect from 2 April 2017, Duly signed by all partners, no changes to partnership, only removal of Dr Jagadish all rest is the same". The defendants were both copied into this email and did not demur. Again, the variation of the GMS Contract signed by all four partners in February 2017 and sent to NHS setting out the departure of Dr Jagadish, constitutes a written variation within the meaning of clause 44 of the Original Agreement."*

48. The Judge concluded, on the first issue, that the parties had agreed to be bound by the terms of the 2014 Partnership Agreement, when the Second Defendant joined the Medical Partnership, and that there had been no departure from these terms in 2017, on the retirement of Dr Jagadish from the Medical Partnership:

The Judgment – Paragraphs 25-37

49. At Paragraphs 25-27 the Judge addressed the question of whether the Medical Partnership had been dissolved either by conduct on 7th August 2019 or by the notice of dissolution on 5th November 2021.

50. So far as the first of these dates was concerned, the Judge found that there had been no dissolution for two reasons. First, and pursuant to the findings made by the Judge in Paragraphs 18-24, the restrictions on termination in Clause 5 had continued to apply after the technical dissolution of the 2014 Partnership in 2016. As such, the Medical Partnership could not have been dissolved by conduct; see Paragraph 25. Second, the Judge did not consider that the commencement by the Claimant of the possession proceedings could constitute conduct capable of bringing the Medical Partnership to an end, even if the restrictions on termination in Clause 5 did not apply; see Paragraph 26.

51. So far as the second of these dates was concerned the Judge concluded in Paragraph 27 that the notice of dissolution had not had effect, by reason of the continuation of the restrictions on termination in Clause 5:

> *"27. In light of my finding that the partners were bound by the terms of the Original Agreement, the notice of dissolution had no effect as it did not comply with the terms for termination of the partnership and was not accepted by the claimant who, at all material times, asserted her status as a partner and her entitlement to payment under the terms of the Original Agreement. There was no act or representation by the claimant that would found an estoppel."*

52. The overall result, on the basis of the Judge's findings, was that the Medical Partnership continued until 18th April 2023; being the date on which the Claimant accepted that the Medical Partnership had been brought to an end by the written agreement of the parties; such written agreement being constituted by the pleaded cases of the parties in their statements of case in the action.

53. The Judge then turned to the question of whether the Claimant was entitled to any Annual Payments in advance of the dissolution accounts of the Medical Partnership being taken. I will need to come back to this part of the Judgment (Paragraphs 28-34) in more detail later in this judgment, when I come to the grounds of appeal. For present purposes the following summary will suffice.

54. The Judge decided that the Claimant's entitlement to be paid the Annual Payment was an entitlement to be paid out of the net distributable profits of the Medical Partnership prior to the division of the balance of the net profits between the other partners; see Paragraph 28. In other words, the Claimant's right to the Annual Payment had priority and had first to be paid out of the net profits of the Medical Partnership, to the extent that there were net profits available for the relevant accounting year to meet the Annual Payment. Assuming that the Medical Partnership realised net profits of at least £50,000 for an accounting year, the Claimant was entitled to be paid the Annual Payment in full for that accounting year, in priority to the rights of the other partners to share in the net profits.

55. The Judge considered the available accounts of the Medical Partnership, and made the following findings, in Paragraphs 31 and 32, in relation to the net profits of the Medical Partnership for the accounting years in respect of which the Claimant had made her claim to arrears of the Annual Payment:
    (1) The Medical Partnership had realised net profits well in excess of £50,000 for each of the relevant accounting years.
    (2) The Defendants had shared those net profits between themselves for the relevant accounting years, without accounting for the Annual Payment. The only exception to this was the accounting year ending on 31st March 2019, in respect of which the Claimant, as she had accepted, fell to be credited with drawings of £37,400.

56. On the authority of *Mukerjee v Sen* [2012] EWCA Civ 1895, the Judge determined that the Claimant was entitled to be paid these arrears of Annual Payment in advance of the dissolution accounts of the Medical Partnership.

57. The Judge was not persuaded by the argument that the dissolution accounts must be prepared first because of the potential claim by the NHS. The Judge set out her findings in this respect in Paragraph 34:

> *"34. I do not accept the argument that dissolution accounts must be prepared first because of a potential claim by NHS in relation the sums advanced by it to construct the additional buildings on the land adjacent to the medical centre. There is very little material before me in relation to this issue. It is not clear how much is at stake or what the parties' liabilities are towards NHS or to each other. This potential liability is not referred to anywhere in the approved or agreed accounts even after letters from Capsticks and NHS in late 2021 or early 2022 suggesting that the NHS grant may be recovered. The defendants have continued to draw profits irrespective of this potential liability. If they may draw and retain profits in these circumstances, then it would be unfair to prevent the claimant from doing so too. That would be treating the partners unequally. Finally, under the terms of the Original Agreement, the claimant is not liable for any of the debts etc of the partnership as between the partners. As between them, she is entitled to the entire £50,000 without deduction. The only issue is that in relation to the extension on the Adjoining Land. I have not been addressed as to whether the indemnity clauses would alleviate the claimant from the consequences of a successful claim by the NHS. Judges in other cases between these parties have suggested the claimant may have some liability. In any event, if the defendants can draw freely on the profits notwithstanding this, then so too, may the claimant – any other outcome would be unfair."*

58. The Judge then turned to the issue of whether the Claimant had abandoned the Medical Partnership in such a way as to lose her entitlement to the Annual Payment. This issue does not appear to have been pursued by the Defendants to the conclusion of the Trial. The Judge explained the position in the following terms, at Paragraph 35:

> *"35. Mr Ojo abandoned any reliance on this point during his closing submissions on the basis that it would have no effect in law on the claimant's entitlement to payment of her share, whatever that share is. In my view, Mr Ojo was correct to concede this issue. In any event, it is clear on the evidence that the defendants' excluded the claimant from the partnership by purporting to terminate her employment, by effectively locking her out of the premises and the computer systems. The police were called twice in relation to her attendance or her agent's attendance at the medical centre. To be fair to Dr Bhat, he accepted in his oral evidence that he acted intemperately in these respects but by the time he realised this, the matter was in the hands of the solicitors."*

59. In terms of the sum due to the Claimant, the Judge concluded, at Paragraph 36, that the Claimant was entitled to judgment for the sum of £212,600, which was the total amount of the Annual Payment due for the relevant accounting years, after giving credit for the drawings of £37,400 for the 2018/2019 accounting year.

<u>The grounds of appeal</u>

60. In the Appeal the Defendants challenge the Judge's decisions (i) that the Medical Partnership came to an end on 18th April 2023, and (ii) that the Claimant was entitled to be paid the arrears of the Annual Payment found by the Judge to be due to the Claimant in advance of dissolution accounts.

61. This challenge is organised into six grounds of appeal, which I will refer to as Ground 1 and so on. The first four Grounds are concerned with the question of when the Medical Partnership came to an end and are as follows.

62. Ground 1 is that the Judge went wrong in Paragraph 19 in ruling that there was a technical dissolution of the 2014 Partnership when the Second Defendant joined the Medical Partnership. The Defendants contend that this was the creation of a new partnership, which was subject to a technical dissolution when Dr Jagadish resigned from the Medical Partnership in 2017.

63. Ground 2 is that the Judge went wrong in finding that the parties were carrying on in partnership from 1st April 2016 pursuant to the 2014 Partnership Agreement. The Judge should have found that the parties were carrying on in partnership from that date pursuant to a partnership at will.

64. Ground 3 is that the Judge erred in Paragraphs 20-21 and 24 in a number of ways, which comprise sub-grounds of Ground 3, which I shall refer to as Ground 3(a) and so on, as follows:
    (1) Ground 3(a) - the Judge failed to give effect to Clause 44, which stipulated that the 2014 Partnership Agreement could only be amended in writing, such writing to be signed by all partners.
    (2) Ground 3(b) - the Judge went wrong in ruling that the parties' written amendments of the GMS Contract, sent to NHS England on 31st May 2016 and 16th February 2017, constituted satisfaction of Clause 44, when they were not written amendments of the 2014 Partnership Agreement.
    (3) Ground 3(c) - the Judge went wrong in ruling that the second sentence of Clause 44, which required that any variation of the 2014 Partnership Agreement should take the form of an addendum to the 2014 Partnership Agreement, was not mandatory.
    (4) Ground 3(d) - the Judge went wrong in directing herself that the Defendants' solicitor advocate at the Trial (Mr Ojo) had accepted and had not argued against the rulings referred to in sub-paragraphs (2) and (3) above, when he had indeed argued against them.
    (5) Ground 3(e) - the Judge went wrong in concluding that the Second Defendant had agreed to be bound by the terms of the 2014 Partnership Agreement when she had not done so, having not ever seen the terms of the 2014 Partnership Agreement, and when the terms of the new partnership did not reflect those of the 2014 Partnership Agreement (but, in particular, made different provision as to profit share between the partners).
    (6) Ground 3(f) - the Judge went wrong in concluding that the partnership was governed by the terms of the 2014 Partnership Agreement, when the terms of the new partnership were different (in particular as to profit share between the partners).

65. Ground 4 is that the Judge erred, in Paragraph 27, in concluding that the Defendants' notice of dissolution dated 5 November 2021 was not effective to determine the partnership between the Defendants and the Claimant.

66. The Defendants do not maintain the argument, in the Appeal, that the Medical Partnership came to an end, by conduct, on 7th August 2019. The Defendants confine

themselves, in this respect, to the argument that their notice of dissolution was effective to terminate the Medical Partnership, as a partnership at will, on 5th November 2021.

67. In theory, and on the Judge's findings, this means that, even on the Defendants' case, the Claimant would be entitled to £141,739 by way of arrears of the Annual Payment up to the alleged dissolution date of 5th November 2021. This analysis disregards however Grounds 5 and 6, which challenge the decision of the Judge that the Claimant was entitled to payment in advance of dissolution accounts.

68. Ground 5 is that the Judge erred in ruling, in Paragraphs 29 and 33, that the Claimant was entitled to claim a remedy from the Defendants in advance of the taking of the dissolution accounts of the partnership. The Judge should have held that the only appropriate remedy to be ordered in favour of the Claimant was that an account should be taken.

69. Ground 6 is that the Judge erred in ruling, in Paragraphs 33-34, that the Claimant was entitled to the Annual Payment from the partnership between herself and the Defendants without taking into account the potential liabilities of that partnership to repay monies to NHS England (or any other liabilities of that partnership). The Judge erred in relying upon accounts which were prepared for the partnership between the Defendants and did not reflect the potential liabilities of the partnership between the Claimant and the Defendants.

70. The grounds of appeal include a seventh ground of appeal, which seeks to challenge the Judge's decision on costs. At the outset of his oral submissions Mr Coppel confirmed that there was no free standing challenge to the costs order made by the Judge, independent of the outcome of the Appeal on Grounds 1-6. Rather, the challenge to the costs order depended upon the outcome of the appeal on Grounds 1-6. This seems to me to be the correct position. I can see no basis for challenging the costs order made by the Judge, if the Judgment stands.

Grounds 1-4 – analysis and determination

71. It seems to me that there is a misconception which lies behind the arguments of the Defendants which are contained within Grounds 1-4.

72. The foundation of the Defendants' arguments in Grounds 1-4 is the proposition that wherever there is a change in the membership of a partnership, this constitutes, as a matter of law, the dissolution of the existing partnership and its replacement by a new partnership.

73. This is plainly correct. The relevant law is explained in Lindley & Banks on Partnership, Twenty-First Edition, at 3-05 to 3-07, where reference is made to the following statement of principle 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."*

74. The legal position is further explained in Lindley, at 24-01 (I have omitted footnotes from the extracts from Lindley quoted in this judgment):

> *"What is meant by the "dissolution" of a partnership is often misunderstood, not only because that word is used in two distinct senses but also because it has a very different meaning when applied to a company or limited liability partnership. In the case of a partnership, it invariably refers to the moment of time when the ongoing nature of the partnership relation terminates, even though the partners may continue to be associated together in a new partnership or merely for the purposes of winding up the old firm's affairs. Indeed, the outward appearance of a partnership immediately prior to and immediately following a dissolution will frequently be unchanged. For a company or LLP, on the other hand, dissolution marks not the commencement of the winding up but its conclusion, i.e. the moment of extinction. It should be noted that dissolution is an absolute concept: there is no such thing as a "partial" dissolution."*

75. The author then goes on to explain the distinction between a technical dissolution and a general dissolution, at 24-03 and 24-04:

> *"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.*
>
> *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."*

76. It will be noted that, although the distinction is drawn between a technical dissolution and a general dissolution, there is still, in either case, a dissolution of the old partnership. In the case of a technical dissolution, caused by the departure of an existing partner or by the arrival of a new partner or by a combination of such circumstances, there is still the dissolution of the old partnership and the creation of a new partnership. This point is brought out in Lindley, at 24-05:

> *"The above distinction between a technical and a general dissolution was accepted without demur in HLB Kidsons v Lloyd's Underwriters,11 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."

77. The Judge, quite correctly, accepted that the above legal principle applied when the Second Defendant joined the Medical Partnership. At Paragraph 19 the Judge recognised that the joining of the Second Defendant as a partner in the Medical Partnership effected a technical dissolution of the 2014 Partnership; that is to say the original partnership, established by the 2014 Partnership Agreement between the Claimant, the First Defendant and Dr Jagadish. Although the dissolution which occurred was characterised by the Judge as a technical dissolution this did not alter the fact that, as a matter of law, the effect of the Second Defendant joining the Medical Partnership was (i) the dissolution of the 2014 Partnership, and (ii) its replacement by a new partnership between the Claimant, the First Defendant, Dr Jagadish and the Second Defendant. I will refer to this new partnership as **"the 2016 Partnership"**.

78. The next question which arose, and which the Judge had to answer was what were the terms of the 2016 Partnership. The answer to this question depended upon what, if anything, the parties agreed in this respect, on the occasion of the dissolution of the 2014 Partnership and the creation of the 2016 Partnership.

79. The Judge made very clear findings of fact in this respect. The Judge found, as a fact, that the Defendants both agreed that the 2016 Partnership should continue on the same terms as the 2014 Partnership Agreement; see the Judge's findings in Paragraphs 20, 22 and 24. These findings of fact are unassailable in the Appeal. The Judge saw and heard all the evidence in the case and, in particular, saw and heard the Claimant and the Defendants give their evidence at the Trial. I am in no position to interfere with those findings of fact, even if I could see any grounds to do so, which I cannot.

80. The Defendants have sought to argue, by Ground 3(5), that the Second Defendant could not have agreed to be bound by the terms of the 2014 Partnership Agreement in relation to the 2016 Partnership, on the basis that she did not see the terms of the 2014 Partnership Agreement and on the basis that the terms of the 2014 Partnership Agreement made no provision for the payment to the Second Defendant of a share of the profits of the 2016 Partnership.

81. In my view these points do not undermine the Judge's findings of fact that the Second Defendant agreed to be bound by the terms of the 2014 Partnership Agreement. Nor do I consider that these points properly respect the relevant findings of the Judge, at Paragraph 20, which I repeat for ease of reference:

> *"20. In my judgment the evidence shows that, on balance of probabilities, the defendants, at least impliedly and probably expressly, agreed and accepted that the partnership, with the addition of the second defendant, was to continue on the same terms as set out in the Original Agreement. The first defendant, in his oral evidence, told me that was his understanding, as stated above. I am satisfied that the second defendant was also aware that the partnership was to continue on the original terms. She was aware of the existence of the Original Agreement on her own evidence. Also on her own evidence, in May or June 2016 she saw the pages of that agreement that were to be amended on her joinder as a partner although she "may not have read*

them". Those pages clearly refer to a deed and state that it contains the "arrangements which the parties have agreed shall govern relations between themselves". The second defendant told me that she agreed to those documents being sent to NHS on her behalf. In the circumstances she knew there was a document setting out the terms governing the partnership and agreed to them. Further, as she told me, she agreed to whatever the first defendant agreed to. As the second defendant was aware of the Original Agreement, aware that the only changes were to the identity of the partners and consequent profit share, I infer that she was agreeing to be bound by the terms of the original agreement. If she chose not to read relevant documents or to ask for the full terms to be provided to her, that does not detract from her agreement to be bound."

82. The Judge's finding was that the Second Defendant agreed to be bound by the terms of the 2014 Partnership Agreement, and was *"aware that the only changes were to the identity of the partners and consequent profit share"*. It is therefore no answer to the Judge's finding that the Second Defendant agreed to be bound by the terms of the 2014 Partnership Agreement to say that the Second Defendant's profit share was not agreed. Even if this was correct, it did not alter the fact that the Second Defendant had otherwise agreed to be bound by the terms of the 2014 Partnership Agreement, which included the restrictions on termination in the 2014 Partnership Agreement and the priority right of the Claimant to the Annual Payment out of the profits of the 2016 Partnership.

83. It is however not even correct to say that the parties did not agree what the profit share of the Second Defendant would be. The Judge addressed this question in Paragraph 5, and made the following findings of fact:

"It is somewhat unclear as to what share of the profits the second defendant was to have and from whose share of the profits the payment to her was to come. Either she was to receive 10% of the profits which would come out of the first defendant's share (per the Draft Partnership Deed of April 2026 [2016]*); or she was to receive 5% of the profits reducing each of Dr Jagdish and the first defendant's share (per the 2017 accounts and the latter's evidence). A deed, described as an 'Amendment of partnership agreement Adding of new partner from 1 April 2016' was drawn up adding the second defendant as a partner ("the 2016 variation"). Clause 11 and Schedule B again provided that the claimant would receive a fixed sum of £50,000 plus superannuation per annum, Dr Jagadish would receive 50% of the profits, the first defendant 40% and the second defendant 10%."*

84. The fact that the Judge left this particular finding of fact in alternative terms does not alter the fact that the Judge did find as a fact that there was agreement as to the share of the profits which the Second Defendant would receive out of the 2016 Partnership.

85. So far as the reading of the terms of 2014 Partnership Agreement was concerned, I did not understand the Defendants to argue that the Second Defendant could not have agreed to be bound by the terms of the 2014 Partnership Agreement if she did not read them through. There was no legal requirement, or at least none identified to me, to the effect that the Second Defendant had to have read through the terms of the 2014 Partnership Agreement, either in full or in part, before she could make a legally effective agreement to be bound by those terms in relation to the 2016 Partnership.

86. There was some reference made in this context to the decision of the Court of Appeal in *Cheema v Jones* [2017] EWCA Civ 1706 (2018) 159 BMLR 204. This case was also concerned with a medical partnership. The original partnership had been between the two doctors, Dr Cheema and Dr Jones, pursuant to the terms of a written partnership agreement. Three new doctors then joined the partnership, without signing any formal partnership agreement. The two original partners then fell out and the question which arose was whether the new partnership, created by the arrival of the three new doctors, had continued on the terms of the original written partnership agreement or had taken effect as a partnership at will, which could be terminated on notice given by any of the partners. The point mattered because Dr Jones, one of the two original partners, had given notice to dissolve the new partnership. The validity of the notice was disputed by Dr Cheema. At first instance David Pittaway QC, sitting as a Deputy Judge of the High Court decided that the new partnership had taken effect as a partnership at will, with the consequence that the notice of dissolution was valid and had dissolved the new partnership.

87. Dr Cheema appealed against this decision to the Court of Appeal. The appeal was dismissed. In her judgment, with which Newey and Longmore LJJ agreed, Asplin LJ summarised the position in the following terms, at [23];

> ***"[23]*** *In my judgment, the judge's conclusion reveals no error of law. First, it seems to me that on the basis that all of the discussions from April 2016 onwards were focused on a new partnership agreement to be entered into between all five doctors and that there is no reference to the April Agreement as a fall-back position, it is quite proper to infer that Dr Jones and Dr Cheema intended to abandon the April Agreement and to enter into a new contractual relationship as from 1 July 2016 which would supersede the Old Partnership. The fact that a new agreement was never signed does not undermine that inference."*

88. It seem to me that *Cheema v Jones* has limited relevance in the present case. In *Cheema v Jones*, on very different facts to those found by the Judge in the present case, the judge at first instance found that there had been no agreement for the new partnership to continue on the terms of the original partnership agreement. The Court of Appeal found no error of law in the judge's conclusion. In the present case the Judge made very different findings of fact; namely that the parties, including both Defendants, had agreed to the 2016 Partnership continuing on the terms of the 2014 Partnership Agreement, subject only to the addition of the Second Defendant as a new partner and the revision of the profit shares, which did not include any revision of the Claimant's priority right to the Annual Payment.

89. In summary therefore, it seems to me that Ground 3(5) fails. The Judge was entitled to find as a fact and did find as a fact that the parties agreed to the 2016 Partnership continuing on the terms of the 2014 Partnership Agreement, subject to the addition and revision mentioned in my previous paragraph. I will refer to this agreement, as found by the Judge, as **"the 2016 Agreement"**.

90. This clears the way for consideration of the principal argument in Grounds 1-4, which is that the 2016 Agreement could not have taken effect because it infringed the terms of Clause 44. The argument is that the 2016 Agreement constituted a variation of the 2014 Partnership Agreement within the terms of Clause 44. As such, the 2016 Agreement was neither valid nor binding unless (i) it was agreed in writing, and (ii) was signed by all

Partners (as defined in the 2014 Partnership Agreement), and (iii) was in the form of an addendum to the 2016 Agreement. Given that the 2016 Agreement did not satisfy any of these conditions, it was not valid or binding upon the parties, with the result that the 2016 Agreement, as in *Cheema v Jones*, took effect as a partnership at will, which was capable of being terminated by the Defendants' notice of dissolution of 5th November 2021.

91. It is at this point, as it seems to me, that the misconception lying behind the arguments in support of Grounds 1-4 becomes apparent. The Defendants' argument proceeds on the basis that the 2016 Agreement constituted a variation of the 2014 Partnership Agreement, which was caught by the terms of Clause 44. In my view this analysis is not correct. As the Judge found, and as the Defendants accept, the addition of the Second Defendant to the Medical Partnership brought about a dissolution of the 2014 Partnership and its replacement by a new partnership; namely the 2016 Partnership. It follows that the 2016 Agreement was not, as a matter of law, a variation of the 2014 Partnership Agreement. The 2014 Partnership Agreement governed the 2014 Partnership, and ceased to apply once the 2014 Partnership Agreement was dissolved by the addition of the Second Defendant as a partner in the Medical Partnership. The 2016 Agreement was a new agreement. It had to be because the Second Defendant had not been a partner in the 2014 Partnership and had not been a party to the 2014 Partnership Agreement. What the parties effectively agreed, by the 2016 Agreement, was that they would adopt the terms of the 2014 Partnership Agreement as the terms of the 2016 Partnership, subject to the addition of the Second Defendant as a partner and subject to the revision of the profit share provisions. It is possible to refer to this adoption of the terms of the 2014 Partnership Agreement as a variation of the 2014 Partnership Agreement, but this was not, strictly, what occurred. The 2016 Agreement was a new agreement, not a variation of the 2014 Partnership Agreement.

92. The Judge clearly appreciated this point. As the Judge found in Paragraph 20, the Second Defendant agreed to be bound by terms of the 2014 Partnership Agreement. As the Judge also found, in Paragraph 21, there was nothing in the 2014 Partnership Agreement which *"prevented a, technically, new partnership from being bound by its terms"*.

93. In support of his argument in relation to Clause 44, Mr Coppel relied upon the decision of the Supreme Court in *MWB Business Exchange Centres Ltd v Rock Advertising Ltd* [2018] UKSC 24 [2019] AC 119. In that case the defendant company entered into a written licence agreement with the claimant company which contained, at clause 7.6, a no oral modification clause in similar, but not identical terms to Clause 44. The defendant fell into arrears with the payments due under the licence agreement and was locked out of the premises which were the subject of the licence agreement. The claimant also commenced proceedings for the arrears of the licence payment. The director of the defendant claimed that he had agreed a revised payment schedule with one of the claimant's employees, by way of variation of the licence agreement. At first instance the judge held that the variation of the licence agreement, which would otherwise have been effective, was prevented from taking effect by clause 7.6 of the licence agreement. The Court of Appeal allowed the defendant's appeal against this decision, holding that the parties had been entitled to agree to depart from what had been agreed in clause 7.6, and thereby to agree an effective oral variation of the licence agreement. The Supreme Court (Lord Briggs JSC dissenting) overturned this decision. While it would have been open to the parties to agree to dispense with the restriction on oral variations in clause 7.6, on

the evidence the parties had not done this. They had simply agreed an oral variation of the contract. In those circumstances, the parties were bound by clause 7.6, and the oral variation was of no effect.

94. The distinction between the present case and *MWB* is an obvious one. *MWB* was concerned with the question of whether two parties to an existing contract had agreed an effective variation of that contract. In the present case the question is whether Clause 44 operated to prevent parties, namely the Claimant, the Defendants and Dr Jagadish, who were not identical to the parties to the 2014 Partnership Agreement, from agreeing to adopt the terms of the 2014 Partnership Agreement as the terms of their new partnership (the 2016 Partnership). I cannot see how Clause 44 was capable of operating to prevent this, given that it was confined to variations of the 2014 Partnership Agreement. Indeed, it would be very strange if a provision in an agreement made between the Claimant, the First Defendant and Dr Jagadish, could prevent those parties and the Second Defendant from agreeing to adopt the terms of that agreement as the terms of their new agreement.

95. In summary, the misconception in the Defendants' arguments in support of Grounds 1-4 seems to me to be that those arguments treat the 2016 Agreement as a variation of the 2014 Partnership Agreement. As a matter of general language it may be convenient to refer to the 2016 Agreement as a variation of the 2014 Partnership Agreement but, as I have explained, this was not what it was. The 2016 Agreement was a new agreement, by which the parties thereto agreed to adopt the provisions of 2014 Partnership Agreement as the provisions governing their new partnership. In common with the Judge, I cannot see how Clause 44 or, for that matter, any other provision in the 2014 Partnership Agreement prevented this adoption from taking effect.

96. In his oral submissions Mr Coppel stressed that both in terms of the statements of case of the parties in the action and in terms of the agreed issues for the Trial, the parties were concerned with the question of whether there had been a variation of the 2014 Partnership Agreement, as from 1st April 2026, or a partnership at will. Given this binary position, so it was submitted, Clause 44 could not be avoided by resort to an argument that the terms of the 2014 Partnership Agreement were agreed as the terms of a new partnership as from 1st April 2016.

97. I do not think that the problem with the Defendants' case, which I have identified above, can be avoided in this way. So far as the statements of case were concerned I note, from examination of the Claimant's Particulars of Claim, that the Claimant pleaded her case on the basis that *"the Original Partnership Agreement"*, which I am referring to as the 2014 Partnership Agreement, was subject to a variation, which the Claimant referred to as *"the 2016 Partnership Agreement"*. The pleaded case was that it was by this 2016 Partnership Agreement that the Second Defendant joined the Medical Partnership. I cannot see how the pleaded case in the Particulars of Claim was inconsistent with the argument, ultimately accepted by the Judge, that the parties to the 2016 Partnership agreed to be bound by the terms of the 2014 Partnership Agreement. Still less, can I see that such an argument was precluded by the pleaded cases of the parties.

98. Ultimately, this part of the Defendants' argument begs the question of what is meant by a variation of the 2014 Partnership Agreement. If the issue in the present case had been whether the Claimant, the First Defendant and Dr Jagadish had agreed a variation of the 2014 Partnership Agreement between themselves, not involving the introduction of a new

partner or the departure of an existing partner, I can see that Clause 44 would, on the authority of *MWB*, have applied to such a variation. As I have explained however, the 2016 Agreement was not, strictly speaking, a variation of the 2014 Partnership, but an agreement by the partners in the new 2016 Partnership to be bound by the terms of the 2014 Partnership Agreement. I cannot see that the Claimant's pleaded case in the action was inconsistent with this analysis let alone, as I have said, that the Claimant was precluded from advancing this case.

99. The same analysis seems to me to apply to the formulation of the first issue which was before the Judge at the Trial. This formulation of the first issue did identify the question as being whether the 2014 Partnership Agreement was subsequently varied, but this again begs the question of what was meant by a variation. Again, I cannot see that this formulation of the issue was inconsistent with or precluded the argument that, on the dissolution of the 2014 Partnership, the parties to the 2016 Partnership Agreement agreed, by the 2016 Agreement, that their new partnership should continue on the same terms as the 2014 Partnership Agreement.

100. Even if I am wrong however, in the analysis set out above, the Judge did conclude that the parties, by the 2016 Agreement, agreed that their new partnership, the 2016 Partnership, should continue on the same terms as the 2014 Partnership, subject to the addition of the Second Defendant as a partner, and the revision of the profit sharing provisions in Schedule B. If in doing so, and contrary to my view, the Judge went beyond the scope of the first issue she was asked to decide, and/or went beyond the scope of the Claimant's pleaded case, it seems to me that a complaint to this effect, now and without more, is effectively water under the bridge.

101. There is another means by which the Judge's conclusion can be tested. In the course of his submissions, I asked Mr Coppel what the terms of the 2016 Partnership were, if the 2016 Agreement was deprived of any effect by Clause 44. Mr Coppel's answer was that the 2016 Partnership took effect as a partnership at will, the remaining terms of which were supplied by the Partnership Act 1890 (**"the Act"**). By way of example, Mr Coppel referred me to Section 24 of the Act. Section 24 of the Act contains a short set of rules relating to the interests and duties of partners *"subject to any agreement express or implied between the partners"*. I was also referred to Section 32, which contains provisions governing the dissolution of a partnership, again *"Subject to any agreement between the partners"*. It struck me as a bizarre result that these provisions in the Act should supply the terms of the 2016 Partnership, in circumstances where the parties to the 2016 Partnership had expressly agreed to provisions which were inconsistent with the terms of both Section 24 and Section 32 of the Act.

102. Mr Coppel also drew my attention to the provisions of Clause 5, which appear to contemplate the continuation of the partnership constituted by the 2014 Partnership Agreement; that is to say what I am referring to as the 2014 Partnership, notwithstanding the departure of an existing partner or the arrival of a new partner; see in particular Clause 5.4, which refers to an addendum to the 2014 Partnership making *"any such provision as all the partners agree to be appropriate in the event of a New Partner joining the Partnership."*. Provisions of this kind do appear to contemplate a change in the identity of the partners in the 2014 Partnership being dealt with by an addendum to the 2014 Partnership Agreement, which in turn might be thought to support the argument that Clause 44 would apply to any such addendum. In my view however, whatever

interpretation one puts on provisions in the 2014 Partnership Agreement such as Clause 5.4, they were not capable of changing the legal effect of a new partner joining the Medical Partnership; namely the dissolution of the 2014 Partnership and its replacement by a new partnership, namely the 2016 Partnership, the terms of which, as a new partnership, the partners in the 2016 Partnership were free to agree between themselves, without being constrained by the terms of Clause 44.

103. My analysis thus far has disregarded the point that the Judge had another ground for concluding that the 2016 Agreement was not invalidated by Clause 44. The Judge also decided that, if the 2016 Agreement was caught by the terms of Clause 44, the terms of Clause 44 were satisfied by the notification given to the NHS on 31st May 2016.

104. The notification in question was given to the NHS by a letter dated 31st May 2016, and sent by email that day. In that letter, which was signed by the Claimant, the First Defendant and Dr Jagadish (although Dr Jagadish's signature is dated 6th June 2016), the partners in the 2014 Partnership advised the NHS that the Second Defendant had joined the Medical Partnership. This letter (**"the First Notice"**) enclosed two pages from the 2014 Partnership Agreement, comprising Clause 1 (which set out the names of the parties to the 2014 Partnership Agreement) and Schedule B, amended to show the Second Defendant as an additional partner (identified as Partner 4), with an entitlement to 10% of the net profits of the 2016 Partnership. The purpose of the First Notice was stated to *"to inform you* [the responsible officer within the NHS] *that Mrs Geetha Bhat has joined us as a non-clinical partner"*. The Judge accepted the argument of Mr Warner, at the Trial, that the First Notice satisfied the requirements of Clause 44, if Clause 44 applied.

105. For ease of reference, I set out Clause 44 again:

> *"No variation to this Partnership Deed shall be valid and binding on the Partners unless agreed in writing and signed by all the Partners. Any variation should take the form of an addendum to this Agreement."*

106. In my view, if Clause 44 did apply to the 2016 Agreement, the First Notice was sufficient to satisfy Clause 44. The first sentence of Clause 44 required a variation to the 2014 Partnership Agreement to be in writing and signed by all the Partners. The First Notice was in writing, and was signed by the parties to the 2014 Partnership Agreement; namely the First Defendant, Dr Jagadish and the Claimant. The First Notice was addressed to the NHS and was clearly drafted for the purposes of informing the NHS, for the purposes of the GMS Contract, that the Second Defendant had joined the Medical Partnership. I cannot see however that the fact that the First Notice does not appear to have been drafted for the purposes of effecting a variation of the 2014 Partnership Agreement prevents the First Notice from comprising the agreement in writing required by Clause 44. The test seems to me to be one of content, not intention. If the First Notice was signed by the partners in the 2014 Partnership, and recorded the agreement of the partners that the Second Defendant should be added to the Medical Partnership, with an amendment to the profit sharing provisions in Schedule B, then it seems to me that this was sufficient to satisfy the requirements of the first sentence of Clause 44.

107. This leaves the second sentence of Clause 44, which stated that any variation should take the form of an addendum to the 2014 Partnership Agreement. Mr Coppel argued that this requirement was compulsory, so that the relevant variation would not take effect if it was not contained in an addendum to the 2014 Partnership Agreement. The First

Notice could not be described as an addendum to the 2014 Partnership Agreement. As such, the First Notice, even if it was capable of satisfying the first sentence of Clause 44, could not satisfy the second sentence of Clause 44. It seems to me however that there is a change of language between the first and second sentences of Clause 44. The first sentence sets out the requirement for signed writing, and sets out the consequences if the relevant variation is not in written form and signed by the partners. By contrast, the second sentence uses the word *"should"* when referring to the addendum. I do not think that *"should"* can be read as *"must"*, particularly in circumstances where the language is different in the first sentence of Clause 44. In my view the second sentence of Clause 44 does no more than what it says; namely that a variation should take the form of an addendum to the 2014 Partnership Agreement. There is no sanction expressed, if this requirement is not complied with. In my view a variation which satisfies the first sentence of Clause is not deprived of its effect if it does not take the form of an addendum to the 2014 Partnership Agreement.

108. The other argument I need to deal with, in the context of the First Notice, is Ground 3(d). The argument in Ground 3(d) is that the Judge went wrong in directing herself that Mr Ojo, as the Defendants' solicitor advocate at the Trial, had accepted and had not argued against the Judge's rulings (i) that the First Notice constituted a written variation of the 2014 Partnership Agreement for the purposes of Clause 44, and (ii) that compliance with the second sentence of Clause 44 was not compulsory.

109. For ease of reference, I set out again Paragraph 21, where the Judge set out her conclusions in relation to Clause 44, and recorded the position of Mr Ojo:

> *"21. There is nothing in the Original Agreement that prevented a, technically, new partnership from being bound by its terms. Quite the contrary, clause 5.3 provides expressly that death, retirement or expulsion will not determine the partnership which may only be [wholly] dissolved if all of the parties unanimously agree in writing, or a dissolution is imposed by judgment or statute. To the extent that the addition of the second defendant as a party required writing pursuant to clause 44 of the Original Agreement, I agree with Mr Warner that the document sent to NHS dated 31 May 2016 (although not signed by Dr Jagadish until 6 June 2016) setting out the joinder of the second defendant as a partner and signed by all the then partners, constitutes a written variation for the purposes of clause 44. Mr Ojo, rightly, did not argue otherwise. The provision as to a variation taking the form of an addendum to the original agreement does not appear to be mandatory, as Mr Ojo also, quite properly, accepted."*

110. The documents before me on the hearing of the Appeal included a transcript of the Trial. Mr Coppel took me to the transcript of the third/final day of the Trial and the closing submissions of Mr Ojo. I was shown an extract from these submissions where Mr Ojo argued that the First Notice constituted only a variation of the GMS Contract, and could not also do duty as a variation of the 2014 Partnership Agreement for the purposes of Clause 44. I was also shown a further extract from these submissions, in Mr Ojo's final reply to Mr Warner's closing submissions, where Mr Ojo, in answer to a question from the Judge, made it clear that it was his submission that a variation of the 2014 Partnership Agreement, in order to be effective, not only had to be in writing and signed by all the Partners (Mr Ojo submitted that this meant executed), but also had to be expressed to be an addendum to the 2014 Partnership Agreement. I was also referred to Mr Ojo's

skeleton argument for the Trial. Mr Ojo did not, as I read the skeleton argument, articulate his position on Clause 44 as clearly in the skeleton argument as he did in the extracts from his closing submissions to which I was referred. I stress that this is not a criticism. In any event, I note that the skeleton argument did take the point that there had been no deed of variation of the 2014 Partnership Agreement, with the consequence that what Mr Ojo referred to as *"the second partnership"* took effect as a partnership at will. There was therefore no concession made in the skeleton argument that there was anything to satisfy Clause 44, in terms of variation of the 2014 Partnership Agreement.

111. On the basis of the relevant extracts from Mr Ojo's skeleton argument for the Trial, and on the basis of extracts from the transcript of Mr Ojo's submissions at the Trial which I was shown by Mr Coppel, it appears that the Judge did misdirect herself. It appears that the Judge was mistaken in recording (i) that Mr Ojo did not argue against the proposition that the First Notice could do duty as a variation of the 2014 Partnership Agreement within the terms of Clause 44 and, (ii) that Mr Ojo accepted that the First Notice did not have to be in the form of an addendum to the 2014 Partnership Agreement. In theory therefore, Ground 3(d) is made out.

112. I do not see however how this assists the Defendants, either in relation to the dispute over the effect of Clause 44 or more generally in relation to the Appeal. I say this for three reasons.

113. First, it is clear that the Judge did not decide the issues arising in relation to the effect of the First Notice on the basis of what she understood (wrongly it appears) not to have been argued by Mr Ojo and/or on the basis of what she understood (wrongly it appears) to have been conceded by Mr Ojo. It is clear from Paragraph 21 that the Judge reached her own conclusions on these issues, on the basis of her acceptance of the submissions of Mr Warner for the Claimant. After reaching those conclusions, the Judge then recorded the position of Mr Ojo. Putting the matter another way, if one notionally deletes the references to the position of Mr Ojo in Paragraph 21, the reasoning and conclusions of the Judge still stand. It is clear that the Judge would have reached the same conclusions as she reached in Paragraph 21, even if she had recorded Mr Ojo as opposing these conclusions.

114. Second and even if one assumes, contrary to my view, that the Judge's reasoning and conclusions in Paragraph 21 cannot stand because they were founded on a misunderstanding of Mr Ojo's submissions, this does not assist the Defendants. For the reasons which I have set out I agree with the Judge's conclusions on the effect of the First Notice, whether or not the Judge's reasoning was undermined by reliance upon a misunderstanding of Mr Ojo's submissions.

115. Third, it is important not to lose sight of the fact that the First Notice constituted an additional ground for the Judge's conclusion that the 2016 Agreement was not invalidated by Clause 44, on the basis that, if the 2016 Agreement was caught by the terms of Clause 44, the terms of Clause 44 were satisfied by the First Notice. This disregards the Judge's principal conclusion, which was that, by the 2016 Agreement, the partners in the 2016 Partnership agreed to be bound by the terms of the 2014 Partnership Agreement. For the reasons which I have explained, and in common with the Judge, I do not consider that Clause 44 was engaged at all, in relation to the 2016 Agreement.

116. I therefore conclude that Ground 3(d), although technically made out, does not assist the Defendants.

117. In summary therefore, the position in relation to the First Notice seems to me to be as follows. If, contrary to my view and contrary to the view of the Judge, Clause 44 applied to the 2016 Agreement, I consider that the Judge was right to conclude that compliance with Clause 44 was achieved by the First Notice and its attachment.

118. I have so far considered Grounds 1-4 by reference to the events in 2016, when the Second Defendant joined the Medical Partnership, and by reference to what I have referred to as the 2016 Agreement and the First Notice. This is not however the limit of the Defendants' arguments in support of Grounds 1-4. Applying my reasoning as set out above, the arrival of the Second Defendant into the Medical Partnership had the effect of the dissolution of the 2014 Partnership, and its replacement by the 2016 Partnership. Dr Jagadish however left the 2016 Partnership with effect from 31st March 2017. Applying the principles set out Lindley, as quoted earlier in this judgment, the departure of Dr Jagadish would have created a technical dissolution of the 2016 Partnership and its replacement by a new partnership between the Claimant and the Defendants, which I will refer to as **"the 2017 Partnership"**. In theory, it is open to the Defendants to argue that the 2017 Partnership took effect as a partnership at will, in the absence of valid variation of the terms of the 2014 Partnership Agreement.

119. The problem with this argument is however obvious. If the Judge was right in her finding that the partners in the 2016 Partnership agreed that the terms of the 2016 Partnership should be those of the 2014 Partnership Agreement, save for the identity of the partners and the profit share arrangements, the question becomes whether the dissolution of the 2016 Partnership and its replacement by the 2017 Partnership effected any change in the terms upon which partners in the 2016 Partnership had agreed. The Judge answered this question in the following terms in Paragraph 23, which I repeat for ease of reference, and in Paragraph 24:

> *"23. In 2017, when Dr Jagadish retired from the partnership, there was, again, a technical dissolution. However, in my view, in light of clause 5.3 of the Original Agreement, this did not result in a substantive dissolution of the partnership. On 16 February 2017, the claimant sent an email to NHS saying, "Please find attached Contract Variation to come into effect from 2 April 2017, Duly signed by all partners, no changes to partnership, only removal of Dr Jagadish all rest is the same". The defendants were both copied into this email and did not demur. Again, the variation of the GMS Contract signed by all four partners in February 2017 and sent to NHS setting out the departure of Dr Jagadish, constitutes a written variation within the meaning of clause 44 of the Original Agreement.*
>
> *24. In the circumstances, I am satisfied that all the parties agreed to be bound by the terms of the Original Agreement when the second defendant was admitted as a partner. There was no departure from those terms in 2017 on Dr Jagadish's retirement from the partnership in light of the above-mentioned email of 16 February 2017. Accordingly, the partnership was at all material times governed by the terms of the Original Agreement and did not become a partnership at will."*

120. The Judge thus found that there was no departure from the terms which the partners in the 2016 Partnership had agreed, when Dr Jagadish retired from the 2016 Partnership. Those terms were the terms of the 2014 Partnership Agreement, save only for the identity of the partners and the profit share. It is not entirely clear to me what finding, if any, the Judge made as to the revised profit share when Dr Jagadish retired, but I do not see that this matters in circumstances where it is clear that, in all other respects save for the identity of the partners, the terms of the 2016 Partnership continued to govern the 2017 Partnership.

121. Given the Judge's findings, and applying my reasoning in relation to the 2016 Agreement and the 2016 Partnership, I cannot see any room for the argument that Clause 44 applied as to prevent the terms of the 2014 Partnership Agreement from taking effect as the terms of the 2017 Partnership. Clause 44 did not apply and did not have this effect. Again, the Defendants' argument proceeds on the misconceived basis that the dissolution of the 2016 Partnership and its replacement by the 2017 Partnership constituted a variation of the 2014 Partnership to which Clause 44 applied.

122. Even if however the above analysis is wrong, the Judge had another ground for concluding that Clause 44 did not prevent the terms of the 2014 Partnership Agreement from applying to the 2017 Partnership. In Paragraph 23 the Judge made reference to the email sent to the NHS by the Claimant on 16th February 2017. Attached to the email was a notice of variation signed by all four partners in the 2016 Partnership (**"the Second Notice"**). The Judge concluded that the Second Notice could be relied upon as a variation of the 2014 Partnership Agreement, for the same reasons as she had relied upon in relation to the First Notice. For the reasons which I have already set out in relation to the First Notice, it seems to me that the Judge was correct in this conclusion if, contrary to my view, Clause 44 was capable of preventing the 2017 Partnership from taking effect as a partnership on the terms of the 2014 Partnership Agreement.

123. In summary, it seems to me that the Judge was correct to conclude that both the 2016 Partnership Agreement and the 2017 Partnership took effect as partnerships on the same terms as the 2014 Partnership Agreement, subject only to the changes in the identity of the partners and the changes in profit shares.

124. Drawing together all of the above analysis, I can summarise my conclusions on Grounds 1-4 in the following terms:
    (1) Ground 1 – this ground is, as I have explained, based on a misconception. The Judge was correct to rule that there was a technical dissolution of the 2014 Partnership when the Second Defendant joined the Medical Partnership. The important point is that there was a dissolution of the 2014 Partnership and its replacement by the 2016 Partnership. The partners in the 2016 Partnership were at liberty to agree that the terms of the 2016 Partnership should be the terms of the 2014 Partnership Agreement. The Judge found as a fact that the partners in the 2016 Partnership did, by the 2016 Agreement, so agree, subject only to the change in the identities of the partners and the changes in profit shares. Clause 44 did not apply to the 2016 Agreement, and was not capable of preventing the 2016 Agreement from having effect. The same analysis applies to the dissolution of the 2016 Partnership and its replacement by the 2017 Partnership.
    (2) Ground 2 - the Judge was not wrong in finding that the parties to the 2016 Partnership carried on in partnership (the 2016 Partnership) as from 1st April 2016

on the terms of the 2014 Partnership Agreement, subject only to the change in the identities of the partners and the change in profit shares. The same analysis applies to the replacement of the 2016 Partnership by the 2017 Partnership.

(3) Ground 3(a) – this ground is also based on a misconception. Clause 44 did not prevent the partners in the 2016 Partnership or in the 2017 Partnership from adopting the terms of the 2014 Partnership Agreement as the terms of their respective partnership agreements.

(4) Ground 3(b) – for the reasons which I have given, I do not think that the Judge went wrong in ruling that the First Notice and the Second Notice each satisfied the requirements of Clause 44 if, contrary to my view, Clause 44 applied to the agreement of the terms of the 2016 Partnership or the 2017 Partnership.

(5) Ground 3(c) – for the reasons which I have given, I do not think that the Judge went wrong in ruling that the second sentence of Clause 44 was not mandatory if, contrary to my view, Clause 44 applied to the agreement of the terms of the 2016 Partnership or the 2017 Partnership.

(6) Ground 3(d) – Ground 3(d) appears to be factually correct, in the sense that the Judge does appear to have misdirected herself as to the position of Mr Ojo, for the Defendants at the Trial, in relation to Clause 44. For the reasons which I have explained, this does not assist the Defendants in the Appeal.

(7) Ground 3(e) – for the reasons which I have explained, the Judge did not go wrong in concluding that the Second Defendant had, by the 2016 Agreement, agreed to be bound by terms of the 2014 Partnership Agreement, subject only to the change in the identity of the partners and change in the profit shares, as the terms of the 2016 Partnership.

(8) Ground 3(f) – for the reasons which I have explained, the Judge did not go wrong in concluding that the 2016 Partnership was governed by the terms of the 2014 Partnership Agreement. The terms of the 2016 Partnership were different only in relation to the identity of the partners and the change in profit shares, but those changes were agreed as part of the 2016 Agreement. The same analysis applies to the 2017 Partnership.

(9) Ground 4 – this ground falls away, by reason of the failure of the previous grounds of appeal. The Defendants' notice of dissolution dated 5th November 2021 could only have been effective if the 2017 Partnership was a partnership at will. The Judge was right to conclude that the 2017 Partnership was not a partnership at will. Its terms, which were those of the 2014 Partnership subject only to the change in the identity of the partners and the change in the profit shares, were not consistent with a partnership at will.

125. Drawing together all of the above analysis, it follows that the Judge was correct to conclude, in Paragraph 27, that the Defendants' notice of dissolution had no effect. It did not comply with the terms for termination to which the 2017 Partnership was subject. As such, the Medical Partnership, strictly the 2017 Partnership, was not terminated by the notice of dissolution on 5th November 2021, but continued until 18th April 2023; being the date at which it was accepted by the Claimant that the Medical Partnership had been brought to an end.

126. I therefore conclude that Grounds 1-4 fail as grounds of appeal.

127. This means that the Claimant's right to the Annual Payment continued until 18th April 2023. Whether the arrears of the Annual Payment which the Judge found to have accrued

are payable depends however upon whether the Judge was correct to conclude that the Claimant was entitled to payment of these arrears in advance of the taking of a dissolution account. This brings me to Grounds 5 and 6.

Grounds 5-6 – analysis and determination

128. Ground 5 is that the Judge went wrong in ruling, in Paragraphs 29 and 33, that the Claimant was entitled to claim a remedy from the Defendants in advance of the taking of the dissolution accounts of the Medical Partnership (strictly the 2017 Partnership). It is contended by the Defendants that the Judge should have held that the only appropriate remedy to be ordered in favour of the Claimant was the taking of an account.

129. In support of this contention the Defendants rely upon the following statement of the law in Lindley, at 23-119:

> *"It is a well recognised rule that, whenever money allegedly belonging or owing to the firm in respect of a partnership transaction is sought to be recovered from a partner, an action for an account is required, unless an account has already been taken between the partners or, exceptionally, taking an account would serve no useful purpose. It should, however, be noted that the Court of Appeal in Mukerjee v Sen held that Lord Millett's statement in Hurst v Bryk, to the effect that a partner does not have an action at law to recover monies due from his fellow partners otherwise than by means of an action for an account, was not part of the ratio of the decision. Be that as it may, the proposition behind that statement remains good law on the authorities. On the other hand, in Barber v Rasco International Ltd the court came up with a more startling formulation: " ... until a court prepares and settles the necessary accounts, its assets cannot be distributed, any assets acquired by the Partnership following the dissolution remain Partnership property and the partnership cannot be wound up." This clearly goes too far: perhaps by the expression "cannot be wound up" the judge meant cannot be finally wound up."*

130. In *Hurst v Bryk* [2002] 1 AC 185 the House of Lords were concerned with the question of whether Mr Hurst, a partner in a partnership between solicitors, was liable for the continuing rent payable on the former partnership premises, in circumstances where the partnership had been dissolved. The judge at first instance found that the partnership had been dissolved by the repudiatory breach of the partnership deed by other partners in the partnership, who did not include Mr Hurst. Mr Hurst argued that his acceptance of the repudiatory breach of his fellow partners had the consequence that he was no longer liable to contribute to the debts of the partnership. The question before the House of Lords was whether Mr Hurst, as the innocent partner, was discharged from all further liability to contribute to the debts and obligations of the partnership, whether accrued at the date of dissolution of the partnership or accruing thereafter.

131. In his speech, with which the other members of the House of Lords agreed, Lord Millett answered this question in the negative. Lord Millett stated his conclusion in the following terms, at 200D-E:

> *"My Lords, Mr Hurst has been wronged and is entitled to damages if he can show that the dissolution of the firm has occasioned him loss which he would not otherwise have sustained. But he can neither avoid his joint liability to creditors of the firm arising from past transactions entered into while he was a partner nor, without rescinding the contract of partnership ab initio, throw his proportionate share of that liability onto his partners."*

132. Earlier in his speech, where Lord Millett was considering whether the contractual doctrine of accepted repudiation applied in the law of partnership, Lord Millett described the right of one partner to recover money due to them from their other partners in the following terms, at 194C-E (underlining added):

> *"It is impossible to say whether the modern contractual doctrine of accepted repudiation might have infiltrated the law of partnership if partnership had been treated as merely a particular species of contract enforceable in the common law courts. Disputes between partners and the dissolution and winding up of partnerships, however, have always fallen within the jurisdiction of the Court of Chancery. This is because, while partnership is a consensual arrangement based on agreement, it is more than a simple contract (to use the expression of Dixon J in McDonald v Dennys Lascelles Ltd 48 CLR 457, 476); it is a continuing personal as well as commercial relationship. Neither during the continuance of the relationship nor after its determination has any partner any cause of action at law to recover moneys due to him from his fellow partners. The amount owing to a partner by his fellow partners is recoverable only by the taking of an account in equity after the partnership has been dissolved: see Richardson v Bank of England (1838) 4 My & Cr 165; Green v Hertzog [1954] 1 WLR 1309. Only the Court of Chancery was equipped with the machinery necessary to enable such an account to be taken, and the basis upon which the account was taken reflected equitable principles. These could be modified by agreement, but they did not find their source in contract."*

133. The reference in Lindley to this part of Lord Millett's speech is a reference to the underlined section of the above extract. I have included the entire paragraph in order to put Lord Millett's statement into its context.

134. It is however clear that what is described as a well-recognised rule in Lindley is subject to exceptions, which were affirmed in the decision of the Court of Appeal in *Mukerjee v Sen* [2012] EWCA Civ 1895. This case was concerned with two portfolios of properties which were owned beneficially by the claimants and the first and third defendants, all of whom were siblings. The essential allegation made by the claimants was that the first defendant should have distributed, but had failed to distribute the profits received from the portfolios. Their case was that the first defendant had diverted all the profits to himself. The claimants sought an account of the profits made over the years, and payment of their share of the profits. The first defendant's case was that the properties were held by partnerships and that, for various reasons, there were no profits to account for, once the account had been taken. The claimants sought an interim payment from the first defendant in respect of what they claimed would be due to them on the taking of the account.

135. The application for an interim payment was resisted on the ground, amongst other grounds, that the court had no jurisdiction to order an interim payment because the claimants were claiming for dissolution of a partnership or partnerships and the taking of dissolution accounts. As such, so it was argued, the claim was a claim for what was due after the sale of the partnership property and the taking of dissolution accounts, which did not fall within the terms of CPR 25.1(k) and 25.7(1)(c). The judge at first instance rejected this argument and other arguments of the first defendant, and awarded an interim

payment in the sum of £132,000, which the judge decided was the minimum figure which the claimants would succeed in recovering from the first defendant at trial.

136. The first defendant's appeal to the Court of Appeal against the award of the interim payment was dismissed. In the Court of Appeal the argument of the first defendant was concentrated on the jurisdictional challenge. Leading counsel for the first defendant submitted that the case was on all fours with a decision of Mann J in *Hathurani v Jassat* [2010] EWHC 2077 (Ch). In his judgment in the Court of Appeal, with which Maurice Kay LJ and Baron J agreed, Etherton LJ (as he then was) recorded the submission in the following terms, at [19]-[22]:

> *"19. Mr McDonnell submits that Mann J was there following a well-established line of authority and that, subject to certain specific well-established exceptions, one partner is not accountable to another partner save only on the dissolution of the partnership and the taking of dissolution accounts in accordance with section 44 of the Partnership Act of 1890. In support of that proposition, he relied upon a number of authorities and Lindley & Banks on Partnership (19th ed.). He first referred to the following statement of Lord Millett in Hurst v Bryk [2002] 1 AC 185 at 194C to E:*
>
> > *"It is impossible to say whether the modern contractual doctrine of accepted repudiation might have infiltrated the law of partnership if partnership had been treated as merely a particular species of contract enforcement in the common law courts. Disputes between partners, and the dissolution and winding up of partnerships, however, have always fallen within the jurisdiction of the Court of Chancery. This is because, while partnership is a consensual arrangement based on agreement, it is more than a simple contract, to use the expression of Dixon J in McDonald v Dennys Lascalles Limited, 48 CLR 457 at 476); it is a continuing personal as well as commercial relationship. Neither during the continuance of the relationship nor after its determination has any partner any cause of action at law to recover moneys due to him from his fellow partners. The amount owing to a partner by his fellow partners is recoverable only by the taking of an account in equity after the partnership has been dissolved; (see Richardson v Bank of England (1838) 4 My & CR 165; Green v Hestzog [1954] 1 WLR 1309). Only the Court of Chancery is equipped with the machinery necessary to enable such an account to be taken, and the basis upon which the account was taken reflected equitable principles. These could be modified by agreement, but they did not find their source in contract."*
>
> *20. Mr McDonnell described that statement as part of the ratio of the decision in that case, and emphasised that the other members of the appellate committee of the House of Lords agreed with Lord Millett.*
>
> *21. Mr McDonnell referred to the following statements in Lindley as setting out the orthodox and correct position at paragraphs 23-82 and 23-83 as follows:*
>
> > *"23-82 Although it was formerly considered that an account could only be taken between partners with a view to a dissolution, it has long been recognised that a strict application of this rule would lead to injustice. Lord Lindley observed:*
> >
> > *'The old rule ... that a decree for an account between partners will not be made save with a view to the final dissolution of all questions and*

cross-claims between them, and to a dissolution of the partnership, must be regarded as considerably relaxed, although it is still applicable where there is no sufficient reason for departing from it ...' ...

23-83 Lord Lindley then went on to summarise the three classes of case in which an action for an account without a dissolution is most commonly encountered, although these should, in the current editor's view, more properly be divided into four classes, viz:

1. *Where one partner seeks to withhold some private profits in which his co-partners are interested.*
2. *Where the partnership is for a fixed term and one partner has sought to exclude or expel his co-partner or otherwise to drive him into a dissolution.*
3. *Where the existence of the partnership is denied.*
4. *Where, exceptionally, the partnership venture has failed and the partners are too numerous to be made parties to the action, but a limited account will do justice between them."*

22. *Mr McDonnell submitted that the present case did not fall within any of those exceptions. In particular, he said that, on the first defendant's pleaded case, this is not an instance of secret profit, let alone dishonest appropriation of partnership assets. The first defendant's case, he emphasised, was that, for reasons which it is not material to set out here, the first defendant was positively directed by his siblings not to provide them with accounting information and they were all perfectly well aware that the partnership properties were income producing and that he was not paying out the profit to them and that the tax treatment of their share of the profit was being dealt with by him in the way he did."*

137. Etherton LJ was not persuaded by these submissions. He did not accept that Lord Millett's statement in *Hurst v Bryk* formed part of the ratio of that case. As he explained, at [28]-[30]:

"28. I do not accept that Lord Millett's statement in Hurst v Bryk forms part of the ratio of that case. Lord Millett formulated the essential question for the decision of the appellate committee at page 189F as follows:

"The question in this appeal is whether the innocent partner or partners are thereby discharged from all further liability to contribute to the debts and obligations of the partnership, whether accrued at the date of dissolution or accruing thereafter."

29. *That was a case where there had been a dissolution and the issue was whether the plaintiff could rely upon that dissolution as releasing him from his partnership liabilities on the ground that the dissolution brought about by his other partners was a repudiation of the partnership agreement. Lord Millett's statement at page 194C to E was merely an illustration of his historical analysis as to why ordinary common law rules as to the consequences of accepted repudiation of contract did not and do not apply to partnerships.*

30. *Furthermore, it is perfectly clear that Lord Millett was there making a broad statement, which is more expansive than the cases support. Those cases show that there are well-established exceptions to the general rule. The editors of Lindley observe at paragraph 23-82 that Lord Millett "perhaps overstated*

the position". I have already referred to the well-established exceptions based on existing case law."

138. Etherton LJ went on, at [31], to reject the submission that the case was on all fours with *Hathurani*.

> *"31. I do not accept Mr McDonnell's submission that, with regard to the application of the principles about interim payment and disputes between parties, this case is indistinguishable from Hathurani. In that case the essential question was whether money received by the defendant from the claimant had been received by him on trust or as partnership property by way of loan. It was agreed that, if such money (and the assets currently represented by it) was partnership property, the partnership should be dissolved. There was a claim for equitable compensation but it was not quantified. As Mann J said of that head of claim at paragraph [16]:*
>
> > *"If the trust argument succeeds the Defendant will be declared to hold property on trust, but will not be required or will not necessarily be required, to pay money to the Claimant. The order for equitable compensation or damages is obviously potentially a claim within the rules. However, it is not apparent on the pleaded case or on the evidential case that there is such a valuable claim. There might be a claim for damages or compensation, but it is not pleaded or evidenced in monetary terms, and indeed the express pleading in the Particulars of Claim is that it cannot be quantified. It is possible that there will not be any damages claim at all if the position is that Mr Jassat applied the money properly to buy assets and all the assets are still there and there has been no misappropriation of monies. So the order for damages or equitable compensation is a qualifying claim that could give rise to a relevant judgment for the purposes of CPR 25.1 and CPR 25.7, but there is no attempt to quantify it at a minimum of £7.2m or any other sum."*
>
> *There was nothing equivalent to the claim in the present case for the diversion of profit to the exclusive benefit of the managing partner prior to dissolution."*

139. Etherton LJ considered that the claim in *Mukerjee* fell within the first category of exceptions identified in Lindley. As he explained, at [32] (underlining added]:

> *"32. I can see no logical, practical or sound jurisprudential reason why the present claim in respect of misappropriated profits should not fall within, or be applied by way of analogy with, the first category of exceptions from the general rule in paragraphs 22-83 and 22-84 in Lindley. Whether or not there was dishonesty on the part of the first defendant, and whether or not the first defendant's siblings asked him not to provide them with accounting information, this is a case in which one of the partners, the managing partner, in effect paid to himself and retained for his own benefit partnership profit in excess of his one-quarter entitlement. <u>Unlike Hathurani where, if the assets were held as partnership assets, they would be held for both parties and should be accounted for to the partnership as a whole, the present case is one where the claimants claim that one of the partners has been overpaid. I can see no reason why, where the overpaid partner does not wish to repay to the partnership all the profit received by him but wishes to retain for his own</u>*

benefit that part to which he is entitled, he should not pay to the other partners their due share now rather than making them wait until dissolution to the partnership. The argument to the contrary seems to me against both good sense and fairness."

140. At [33] Etherton LJ went on to make the point that the exceptions to the general rule mentioned in Lindley did not *"mark the limits of what is permissible by way of exception."*.

141. Etherton LJ concluded his reasoning in the following terms, at [34]-[35] in his judgment:
    "34. Nor do I agree with Mr McDonnell that at the trial the judge will be precluded, as a matter of law, from directing separate accounts in respect of the claim for diverted profits, on the one hand, and dissolution, on the other. This follows from my earlier analysis. I certainly agree that it would be unusual since the account in respect of profits would normally be part of the dissolution accounts in accordance with section 44 of the Partnership Act. On the other hand, if the claimants have a good and undeniable claim which can be quantified in respect of diverted profits, for the reasons which I have given I do not see why they should be precluded from receiving their due share of those now rather than waiting until the partnership properties have been sold and the dissolution accounts are finally concluded.
    35. In those circumstances, no question arises on the issue of quantification. The Judge was right to say that issues of capital contribution and withdrawal are properly the subject of the dissolution accounts and are not appropriate to be included in the accounting and quantification of the profits received by the first defendant."

142. Returning to the Judgment in the present case the Judge made the following findings, in Paragraphs 28, 31 and 32:
    (1) The Claimant was entitled to receive the Annual Payment, being the sum of £50,000, out of the net profits of the 2017 Partnership, in priority to the rights of the Defendants to share in the net profits. Provided therefore that there were net profits of £50,000 for any relevant accounting year, the Claimant was entitled to the Annual Payment, thereby putting the Claimant into a position akin to a salaried partner.
    (2) Upon the approval and signing of the partnership accounts for any particular accounting year, the accounts were binding on all the partners, whereupon current account balances could be distributed according to the rights of the partners, with the Claimant's right to the Annual Payment having priority.
    (3) The accounts of the 2017 Partnership had been approved for all of the accounting years in respect of which the arrears of the Annual Payment were claimed.
    (4) The accounts for the relevant years showed figures for net profit sufficient to fund the Annual Payment.
    (5) With the exception of the Claimant's drawings in the sum of £37,400, in the 2018/2019 accounting year, the Claimant had received no payment in respect of the relevant accounting years. Instead, the Defendants had divided the net profits between themselves, without reference to the Claimant's right to the Annual Payment.

143. On the basis of these findings, the Judge reached the following conclusion, at Paragraph 33, in reliance upon Mukerjee:

> *"33. It does not seem to me that the principle in Mukerjee was limited to payment out to the innocent partners of only the excess sums paid to the overpaid partner. The words used were "… where the overpaid partner does not wish to repay to the partnership all the profit received by him but wishes to retain that part to which he is entitled, he must pay to the other parties their due share now, rather than making them wait until dissolution…"[my emphasis]. The net profits were sufficient to pay the claimant her full £50,000 in each relevant year. In my view, the fact that the defendants did not always draw their full share is irrelevant. They wish to retain their drawings therefore the claimant is entitled to her due share too. Applying that principle, the defendants must pay to the claimant the full £50,000 due to her every year save for 2019 when the sum owing is £12,600, taking into account the claimant's own drawings in that year. I can do no better than echo the words of Etherton LJ and say, "The argument to the contrary seems to me against both good sense and fairness."*

144. Given the Judge's findings, I have difficulty in seeing how the facts of the present case did not come within the first category of exceptions from the general rule stated in Lindley. I repeat what Etherton LJ said in his judgment, in the second part of [32]:

> *"Unlike Hathurani where, if the assets were held as partnership assets, they would be held for both parties and should be accounted for to the partnership as a whole, the present case is one where the claimants claim that one of the partners has been overpaid. I can see no reason why, where the overpaid partner does not wish to repay to the partnership all the profit received by him but wishes to retain for his own benefit that part to which he is entitled, he should not pay to the other partners their due share now rather than making them wait until dissolution to the partnership. The argument to the contrary seems to me against both good sense and fairness."*

145. In the present case, and on the Judge's findings, the Defendants were overpaid. They appropriated to themselves the net profits of the 2017 Partnership, without regard to the right of the Claimant, in priority to the Defendants, to the Annual Payment. The Defendants have retained those net profits for themselves. In these circumstances, and applying the reasoning of Etherton LJ, the Defendants should be required to pay to the Claimant her due share, namely the arrears of the Annual Payment, now rather than making her wait until dissolution accounts have been taken.

146. Mr Coppel contended that the present case was different, because *Mukerjee* was concerned with a different issue. The argument was developed by Mr Coppel in his oral submissions, but it is helpfully summarised in paragraph 28 of the skeleton argument, prepared for the Appeal by Mr Coppel and Mr Ojo, in the following terms:

> *"28. It should be immediately apparent that Mukerjee v Sen was not concerned with the issue which arose in the present case. In that case, the principle and exceptions from the principle were concerned with the circumstances in which an account of profits could be ordered separately from dissolution of the partnership and the dissolution accounts which would be prepared at that stage. In the present case, the partnership had been dissolved and the question for the Judge was whether to order a payment to be made to the Respondent in the absence of dissolution accounts for the Patel-Bhat-Bhat*

partnership having been prepared. Mukerjee v Sen was not authority for the proposition that the Court may order payments to be made from one partner to another partner or former partner without any account being taken at all (or any application having been made for an interim payment in anticipation of the final accounts). It appears that the Judge wrongly regarded the judgment of Etherton LJ in Mukerjee v Sen as giving her general authority to order payment to the Respondent if that seemed to her to be fair and just (§33)."

147. In his oral submissions Mr Coppel submitted that the Judge had failed to identify the critical distinction between the present case and *Mukerjee*. He pointed out that there has been a dissolution in the present case, but that the Claimant had not sought dissolution accounts. What the Claimant should have done, he submitted, was to claim dissolution accounts and payment of what was found to be due to her on the taking of those dissolution accounts. In the meantime, the Claimant had no right to make a claim to payment of the arrears of Annual Payment, as a debt.

148. I do not accept these submissions. It is correct that in the present case there has been a dissolution. It is also correct that the Claimant has not claimed for a dissolution account in her Particulars of Claim, although I note that the Defendants did counterclaim for a dissolution account. It seems to me however that the reasoning of Etherton LJ in *Mukerjee* is equally capable of applying in the present case, notwithstanding that there has been a dissolution in the present case and notwithstanding that the Claimant did not herself claim a dissolution account.

149. This seems to me to emerge clearly from the reasoning of Etherton LJ in his judgment in *Mukerjee*, at [32]. The essential point made by Etherton LJ was that if the overpaid partner did not wish to repay to the partnership all the profit received by him, but wished to retain for his own benefit that part to which he was entitled, then he should pay to the other partners their due share then, rather than waiting until dissolution of the partnership. It is true that Etherton LJ referred to waiting for the dissolution of the partnership, but this simply reflected the fact that, in *Mukerjee*, dissolution had not taken place. The principle to which Etherton LJ made reference was based on the essential unfairness of one partner retaining their own share of partnership profit, while refusing to pay other partners their due shares until the taking of dissolution accounts. The present case replicates that situation, and raises precisely the same principle of unfairness upon which Etherton LJ relied. In the present case, as in *Mukerjee*, it seems to me that the situation falls into the same first category of exceptions to the general rule stated in Lindley. I cannot see that it is material in the present case that the dissolution has taken place.

150. It seems to me that this point is reinforced by a consideration of the reasoning of Etherton LJ in his judgment at [34]. As Etherton LJ pointed out, if the claimants in that case had a good and undeniable claim which could be quantified in respect of diverted profits, they should not be precluded from receiving their due share of the profits *"now rather than waiting until the partnership properties have been sold and the dissolution accounts are finally concluded."*. As Etherton LJ made clear the unfairness which justified the exception from the rule stated in Lindley resulted from the innocent party, with *"a good and undeniable claim which can be quantified in respect of diverted profits"*, being required to wait, not until the dissolution, but until the final conclusion of dissolution accounts. The position in the present case is the same. On the Judge's findings the

Claimant had a good and undeniable claim which could be quantified in respect of the net profits of the 2017 Partnership which the Defendants had diverted to themselves. It follows that the reasoning of Etherton LJ in his judgment in *Mukerjee* clearly applies in the present case.

151. I cannot see how this analysis is affected by the fact that the Claimant did not herself make a claim for a dissolution account in this action. As it happens, the Defendants did make that claim, but in any event, I cannot see that the absence of claim for a dissolution account made by the Claimant provides any ground for saying that the reasoning of Etherton LJ in *Mukerjee* should not apply.

152. The Defendants' counsel submit, in their Appeal skeleton argument, that the Judge wrongly regarded the judgment of Etherton LJ as giving her general authority to order payment to the Claimant if that seemed to her to be fair and just. It seems to me that this misrepresents the reasoning of the Judge. It is clear, from the Judge's reasoning in Paragraphs 28-33, that the Judge based her conclusion that the Claimant was entitled to claim the arrears of Annual Payment, without waiting for dissolution accounts, on the reasoning of Etherton LJ in *Mukerjee*, and by analogy with the exception to the general rule relied upon by Etherton LJ in *Mukerjee*. As Etherton LJ commented in his judgment, at [32], the argument to the contrary to his reasoning *"seems to me against good sense and fairness"*. All that the Judge was doing, at the end of Paragraph 33 where she cited this part of [32], was noting that the Defendants' argument, in common with the argument of the first defendant in *Mukerjee*, was against both good sense and fairness. It is quite clear that the Judge was not making a general appeal to a principle of good sense and fairness. The Judge was applying the reasoning in *Mukerjee*.

153. Returning specifically to Ground 5, and drawing together the analysis set out above, I cannot see that the Judge went wrong in concluding that the Claimant was entitled to claim the arrears of the Annual Payment from the Defendants, in advance of the taking of dissolution accounts. In my view the Judge was correct to follow the reasoning of Etherton LJ in *Mukerjee*, and correct to conclude, at least in theory, that the Claimant was entitled to claim the arrears of the Annual Payment in advance of dissolution accounts.

154. I say *"in theory"* because the position might, it seems to me, have been different in the present case if there had been evidence to undermine the Claimant's claim to the arrears of the Annual Payment. If there had been grounds for thinking that, upon the taking of the dissolution accounts, it might turn out that the Claimant was not entitled to the arrears of the Annual Payment, because there turned out to be no net profits, the position might have been different. On that hypothesis, the Claimant's claim would not have been a clear and undeniable claim which could be quantified in respect of the profits diverted by the Defendants.

155. This brings me to Ground 6, which is that the Judge failed to take into account the potential liabilities of the 2017 Partnership to NHS England. I also note that there is an additional reference, in this Ground, to *"any other liabilities"* of the 2017 Partnership. It is contended that the accounts for the relevant years, which it is said had been prepared as accounts of the partnership between the Defendants, did not reflect the potential liabilities of the 2017 Partnership.

156. It seems to me that there are at least two substantial problems with the argument in support of Ground 6.

157. First, the argument proceeds on the footing that the accounts for the relevant years were prepared by the Defendants as the accounts of a partnership between the Defendants. My attention was not drawn to any finding of fact in the Judgment to this effect. If however it is assumed that the Defendants did prepare the relevant accounts in the belief that they were accounts of a partnership between the Defendants alone, this was a mistake on the part of the Defendants. The 2017 Partnership was not dissolved until 18th April 2023, with the consequence that the accounts were, in fact, the accounts of the 2017 Partnership.

158. I can see the argument, at least in theory, that if the Defendants were preparing accounts which they believed to be the accounts of a partnership comprising only themselves, they might have left out of account liabilities or potential liabilities which would have been taken into account if the Defendants had understood that they were preparing accounts which were in fact the accounts of the 2017 Partnership. There are however no findings of fact in the Judgment to support an argument of this kind. Nor is there anything in the Judgment to support the argument that the potential liability to the NHS, or for that matter any other potential liability was a liability which the Defendants had no reason to take into account if they were preparing accounts which they believed to relate to a partnership only between the two of them, but which would have been taken into account if the relevant accounts had been prepared as accounts of the 2017 Partnership.

159. In summary, if the Defendants did believe that they were preparing accounts for the relevant years which related only to a partnership between themselves, there is nothing in the Judgment to support the argument that the potential liability to the NHS or any other potential liability did not have to be taken into account on that basis, but would have had to be taken into account if the Defendants had understood that they were preparing accounts for the 2017 Partnership.

160. Second, Ground 6 proceeds on the footing that the potential liability to the NHS and other unspecified liabilities of the 2017 Partnership would have to be taken into account in any dissolution accounts of the 2017 Partnership. Whether this was right, and whether there was a risk of the accounts for the relevant years being re-opened, were questions of fact for the Judge to decide, on the evidence at the Trial. The Judge found, on the evidence, that these matters were not established; see Paragraph 34. The Judge was clearly unimpressed by the evidence, such as it was, in this respect. The Judge also noted, in this context, the very obvious and telling points (i) that the Defendants had prepared the relevant accounts without reference to any such potential liability, and (ii) that the Defendants had continued to draw profits irrespective of any such potential liability.

161. The Judge's found, in Paragraph 34, that the potential liability to the NHS did not mean that dissolution accounts had to be prepared before any payment could be made to the Claimant. This is not a finding which it is open to me to interfere with. This was a finding on the evidence at the Trial. Ground 6 comes nowhere near alleging any error on the part of the Judge, in her treatment of the evidence, which would justify my interfering with her findings in Paragraph 34. I say this independent of the point that I can see no reason for questioning the Judge's findings in Paragraph 34 in any event. Ultimately, one comes back to the same point, which is that the Defendants were happy to share what were the profits of the 2017 Partnership between themselves for the relevant years,

apparently untroubled by any potential liability to the NHS or by any other unspecified potential liability. In these circumstances, it would be perverse if the Claimant was not entitled to her priority share of the profits for the relevant years.

162. In summary, and drawing together all of the above analysis, it seems to me that both Ground 5 and Ground 6 fail. I conclude that the Judge was correct in her decision that the Claimant was entitled to claim the arrears of the Annual Payment in advance of the preparation of dissolution accounts, and without regard to the alleged potential liability of the 2017 Partnership to the NHS or other unspecified potential liabilities.

The seventh ground of appeal

163. As I have explained, the seventh ground of appeal does not arise for decision, because it relates to costs and is not pursued as an independent ground of appeal. The costs of the Appeal, and any change sought to the costs order made by the Judge will fall to be determined by reference to the outcome of the Appeal.

The outcome of the Appeal

164. For the reasons which I have set out in this judgment the Appeal fails, and falls to be dismissed.

165. I will hear the parties further, as necessary, on any matters arising consequential upon the dismissal of the Appeal. In the usual way the parties are encouraged to agree as much as they can, subject to my approval, in relation to consequential matters.