Dr Cheema v Dr Jones

Dr Jones, Dr Rasheed, Dr Rawal, Dr Roy v Dr Cheema

Case No: HQ16X03267

High Court of Justice Queen's Bench Division

19 May 2017

[2017] EWHC 1156 (QB)

2017 WL 02774048

Before: David Pittaway QC (Sitting as a Deputy High Court Judge)

Date: 19 May 2017

Hearing dates: 14th – 17th March 2017

Representation

Daniel Tatton-Brown QC (instructed by Hill Dickinson LLP) for the Claimant.
Steven Woolf (instructed by Taylor Wood) for the Defendant.

Approved Judgment

David Pittaway QC:

Introduction

1 This action arises out of a partnership dispute between five general practitioners who are in practice at the Rigg Milner Medical Centre at two premises, in East Tilbury and Corringham, Essex. The action was brought by Dr Cheema against Dr Jones to enforce his rights under a written partnership agreement entered into on 8th April 2016. Dr Jones and three other doctors, Dr Rasheed, Dr Roy and Dr Rawal brought Part 20 proceedings against Dr Cheema for the dissolution of an oral partnership agreement entered into on 1st July 2016, which was the date that the three other doctors began practising at the Rigg Milner Medical Centre. Following an order made by Mrs Justice Whipple on 29th September 2016, varied by agreement in December 2016, all five doctors continue to practice at the two premises, pending the outcome of this trial.

Evidence

2 The background to these actions is an unfortunate dispute between the five general practitioners as to the status of their legal relationship within the practice at Rigg Milner Medical Centre. To a very large extent the basic facts in this case are not in dispute.

3 Dr Jones had been in partnership with Dr Byrne in the practice for some years, when sometime in the early part of 2016 Dr Byrne decided to retire. Dr Cheema had worked for the practice as a salaried doctor since 1st September 2015, and he was invited by Dr Jones to become partner in the practice on Dr Byrne's retirement. He accepted the invitation.

4 Dr Jones instructed solicitors, Blake Morgan, to prepare an agreement, which Dr Cheema signed on 8th April 2016. On 18th April 2016 Dr Jones, Dr Byrne and Dr Cheema gave written notification to NHS England of a variation in the General Medical Services ("GMS") Contract dated 17th September 2012 that, with effect from 1st April 2016, Dr Cheema had joined the partnership. On the same date, they gave further notification that Dr Byrne had retired from the partnership with effect from 8th April 2016.

5 Shortly afterwards Dr Jones discussed with Dr Cheema the prospect of enlarging the partnership and taking on more patients from other practices. Before the end of April 2016 Dr Jones had canvassed

the names of three other general practitioners, Dr Rasheed, Dr Roy and Dr Rawal. Dr Jones had previously worked with Dr Rasheed. Dr Roy was unhappy in her partnership following the death of her father, who had been the senior partner. Dr Rawal had also worked in a neighbouring practice.

6 There would appear to have been only one formal meeting, on 21st April 2016, when discussions took place between the parties as to the proposed agreement, except for Dr Rawal, who did not attend. Dr Cheema expressed doubts at that meeting about whether Dr Rasheed's loyalty would be to the new practice, where she was continuing to work in another practice, however, it appears that he was prepared to go along with the proposal. At or about that stage, he asked Dr Jones that the agreement should contain provision for a probationary period for the three other doctors when they joined the practice. There is an email sent by Mrs Halcox, the Practice Manager, on the 22nd April 2016 to Dr Roy making a formal partnership offer. Dr Jones instructed Blake Morgan to prepare a draft partnership agreement. There is also correspondence between Mrs Halcox and the practice accountants on the structure to be adopted for the new partners' drawings, based upon the number of sessions undertaken. That correspondence was conducted on the basis that there would be new partners joining the practice.

7 The pace of events would appear to have moved swiftly. On 12th May 2016 Dr Rasheed, Dr Roy and Dr Rawal all signed a Declaration of Partnership Form for admission to the National Medical Performers List. The document contains a box requesting in what capacity the three doctors would be engaged, each doctor ticked GP Performer Type 1 (e.g. partner). Each of the five doctors signed, as partners, the Declaration of Banking Details, authorising the NHS and CCG to pay all monies due to the credit of the practice bank account. Dr Rawal's signature on that document is dated 1st June 2016.

8 On 3rd June 2016 Dr Jones and Dr Cheema signed a letter to the Primary Care Commissioning Officer at NHS England which stated *"please accept this letter as formal notification that the practice will be appointing three new general partners namely Dr Mita Roy, Dr Reshma Rasheed and Dr Meenakshi Rawal. This will be with effect from 1st July 2016."* On or about 21st June 2016 the five doctors signed a Notice of Variation of the GMS contract with effect from 1st July 2016. Dr Cheema's signature is dated 24th June 2016. The draft agreement, unfortunately, was not finalized before 1st July 2016, which was when the new arrangements were put into place. Although Ms Halcox had said in an email to Blake Morgan that both Dr Jones and Dr Cheema requested a six-month probationary period, which was also referred to in the practice minutes of 13th May 2016, no provision for a probationary period was contained in the draft agreement. Copies of the draft agreement were provided at some stage, certainly to Dr Rasheed, Dr Roy and Dr Rawal. Except for the practice minutes of 27th May 2016 where it is recorded that the new partnership would begin on 1st July 2016, there are only limited references to the proposed partnership in the practice meetings which took place before 1st July 2016.

9 Dr Rasheed, Dr Roy and Dr Rawal all started work at the Rigg Milner Medical Centre with effect from 1st July 2016 and attended weekly practice meetings with Dr Jones and Dr Cheema. For reasons that remain obscure the discussions on the terms of the partnership were successively deferred at the weekly meetings throughout July and early August 2016. There are no minutes of the practice meeting on 9th August 2016 where, apparently, there was a discussion on two options for further expansion (1) to take over the whole of a local practice including patients and staff and (2) the disbanded practice' patients should be dispersed between a number of practices, including Rigg Milner Medical Centre. Dr Cheema's recollection is that the three new doctors favoured the first option (including Dr Roy on the telephone) and Dr Jones and the two practice managers the second option. Dr Cheema recollects that Dr Rasheed said she did not have voting rights as she had not signed the partnership agreement, therefore, it was for Dr Jones and Dr Cheema to decide the appropriate course of action. Dr Rasheed does not accept that Dr Cheema's recollection on that point is accurate.

10 The dispute between Dr Cheema and Dr Jones appears to have to come to a head because of a discussion that he had with Dr Rasheed after the meeting on 9th August 2016, in which Dr Rasheed says that Dr Cheema suggested that Dr Jones should retire. Dr Rasheed reported this conversation

back to Dr Jones, who was on holiday at the time. On 12thAugust 2016 Dr Jones telephoned Dr Cheema mid-morning at the practice, whilst Dr Cheema was seeing a patient. Dr Jones admits that he berated Dr Cheema in unflattering terms. After the telephone call Dr Cheema suffered an anxiety attack and considered that he was unable to go on seeing patients. He told the reception that he was unwell and went home. His schedule, including home visits, had to be rearranged for the day and Dr Rawal was contacted to come in from her leave.

11 Dr Cheema remained off work for one week and produced a medical certificate which stated that he had been suffering from anxiety and stress but was fit to return to work on 22nd August 2016. His grandfather had also been unwell and died at this time. When Dr Cheema attempted to return to work on 22nd August 2016, he found no clinics had been scheduled for him, on the instructions of Dr Jones. On 23rd August 2016, Dr Cheema attended a meeting with Dr Jones and Dr Rasheed at which they questioned his fitness to practise, and queryied the medical certificate that he had produced. Unbeknown to Dr Cheema they had also started a trawl of the medical records of patients who he had seen to see if they could find examples of inadequate clinical competence. Meanwhile on 17th August 2016, Ms Halcox had instructed Blake Morgan, not to carry out any further work on the draft partnership agreement.

12 Dr Cheema obtained his own occupational health assessment, which Dr Jones refused to accept, maintaining that Dr Cheema had agreed to be seen by one of three specialists selected by Dr Jones. There is copy of a highly-loaded set of instructions prepared by Dr Jones for one of those specialists in the bundle. Dr Cheema instructed solicitors who wrote to the practice on 31st August 2016, informing them that he would be returning to work on 2nd September 2016. Again, he was prevented from seeing patients and refused access to the computerized medical records. On 7th September 2016 Dr Jones wrote to Dr Hull at NHS England setting out concerns about Dr Cheema's clinical competence, following the trawl through patient records. Dr Hull instructed Dr Murphy to carry out an occupational health assessment on Dr Cheema, which was arranged for 23rd September 2016. In his report, dated 24th September 2016, Dr Murphy considered that Dr Cheema was fit to return to work. On 20th September 2016 Dr Cheema had issued proceedings claiming a mandatory injunction against Dr Jones, to enable him to return to practice. He relied upon the partnership agreement entered into on 8th April 2016. He maintained that no new partnership agreement with Dr Rasheed, Dr Roy and Dr Rawal had been concluded. Whipple J granted the injunction following a contested hearing on 29th September 2016.

13 On 29th September 2016, the other doctors' solicitors, Taylor Wood, wrote to Dr Cheema's solicitors, Hill Dickinson, inviting Dr Cheema to agree to an immediate dissolution of the partnership pursuant to clause 17.6.7 of the partnership agreement entered into by Dr Jones and Dr Cheema on 8th April 2016. On 4th October 2016, Hill Dickinson replied stating that Dr Cheema was not willing to agree to the dissolution of the partnership. On 14th October 2016 Taylor Wood changed their position and served notice dissolving immediately the partnership at will, which they asserted had been formed between all five doctors on 1st July 2016. An application was made by Dr Cheema in December 2016 to vary Whipple J's order in relation to the management of the practice, which was compromised.

14 All five doctors continue to work in the practice across the two premises. Dr Cheema maintains that they can continue to work together and has produced attendance notes of meetings he has held with Dr Jones on 18 January 2017 and Dr Roy on 24th January 2017, which he says support this contention. Dr Jones, Dr Rasheed, Dr Roy and Dr Rawal have all given oral evidence in which they maintain that there has been a breakdown in trust and confidence between Dr Cheema and themselves, brought about by Dr Cheema bringing these proceedings, and by maintaining that Dr Rasheed, Dr Roy and Dr Rawal are not partners in the Rigg Milner Medical Centre. They all assert that they have no desire to continue in practice with Dr Cheema.

Findings of fact

15 I have heard oral evidence from all five doctors but no evidence from the lay staff, particularly the practice manager and her daughter, Mrs Halcox and Ms Halcox, who played an important role in these events. I was generally impressed by Dr Cheema, and accept that, as a young general practitioner, he is motivated by a desire to provide his patients with a good service. Dr Cheema produced supportive written statements from members of lay staff that attest to his qualities as a doctor. I have concluded, however, that after 1st July 2016 and before the dispute arose in August 2016 he treated Dr Rasheed, Dr Roy and Dr Rawal as fellow partners in the practice. I was less impressed by Dr Jones, who although he conceded that he overreacted in August 2016, was in my view, along with Dr Rasheed, the prime mover in a concerted plan to oust Dr Cheema from the practice. I was not impressed by Dr Rasheed and Dr Rawal, whose evidence was highly partisan. In my view, Dr Roy was also party to the events to oust Dr Cheema from the practice.

16 The conclusion that I have reached is that this was enterprise which was ill-starred from the outset. Dr Cheema had entered into a partnership agreement to replace Dr Byrne with effect from 1st April 2016, which was properly concluded. It is difficult for me to follow how within such a brief time the prospect of enlarging the practice came to the fore. There would appear to have been only one formal meeting between the doctors which Dr Cheema attended, but was not attended by Dr Rawal. At that meeting, I am satisfied that Dr Cheema did raise concerns about Dr Rasheed's commitment to the practice because of her involvement in another practice. I am also satisfied that, about this time, Dr Cheema raised the issues of a probationary period for the other doctors, which Dr Jones appears to have initially accepted. The arrangements appear to have been put in place by the practice manager, Mrs Halcox, who also communicated with the solicitors, Blake Morgan.

17 Whilst there were no doubt informal discussions that did take place during this period, involving some or all of the doctors, which led to the signed documents set out above being prepared, an unsatisfactory situation developed. All five doctors began work at the Rigg Milner Medical Centre on 1st July 2016 without there being a written agreement in place as to the terms upon which they were participating in the partnership, other than the completion of the necessary formalities required by NHS England. As the minutes of the practice meetings demonstrate, after 1st July 2016, the issue of the partnership agreement was successively postponed, without further discussion.

18 I have concluded that Dr Cheema has placed an incorrect interpretation on Dr Rasheed's comments about voting rights at the practice meeting on 9th August 2016. Whilst I cannot be satisfied as to what was actually said, having heard Dr Rasheed's evidence, I do not believe she was abdicating responsibility to Dr Jones and Dr Cheema for decisions about the future direction of the practice. I am satisfied that Dr Rasheed, Dr Roy and Dr Rawal all considered themselves to be partners in the practice. Dr Cheema's interpretation, in my view, is also inconsistent with him raising concerns about Dr Jones with Dr Rasheed, after the meeting on 9th August 2016. I consider that he would not have done so unless he considered that she was a partner in the practice. Dr Jones now accepts that he overreacted in his telephone call on 12th August 2016 and in his subsequent interactions with Dr Cheema, including excluding him from the practice, which he accepts was unlawful.

19 I have concluded that Dr Jones and Dr Rasheed, with the support of Dr Roy and Dr Rawal, decided to oust Dr Cheema from the practice sometime in mid-August 2016. Their decision to trawl through the medical records of Dr Cheema's patients to find issues of clinical incompetence, which NHS England later concluded were unfounded, was indicative of their thinking. Further the communication from Mrs Halcox to Blake Morgan on 17th August 2016 with the instruction not to do any further work on the draft partnership agreement is further evidence of their intentions.

20 Following the order made by Whipple J the doctors have worked together in an uneasy relationship, pending the outcome of this trial. I have formed the view that the management of the practice has been at an effective standstill since Whipple J's order was made. I am satisfied that notwithstanding Dr Cheema's positive outlook as to the future, the relationship between him and the other doctors, has broken down irretrievably. Having heard the oral evidence from Dr Jones, Dr Rasheed, Dr Roy and Dr Rawal, I am satisfied that none of them wish to continue working with Dr Cheema in the Rigg Milner Medical Centre, at least not in the foreseeable future and probably again at all.

Issues

21 The issues that I am asked to decide are in relation to the status of the existing partnership arrangements between Dr Cheema and Dr Jones, and also the partnership or contractual arrangements with the three other doctors, Dr Rasheed, Dr Rawal and Dr Roy. There was clearly a binding partnership agreement between Dr Cheema and Dr Jones entered into on 8th April 2016. What has happened to that agreement? Is it still in existence? Was it superseded with effect from 1st July 2016 when the three other doctors, Dr Rasheed, Dr Rawal and Dr Roy started working at the Rigg Medical Centre? If so was there a new partnership agreement between all five doctors that began with effect from 1st July 2016? If so what is the status of that agreement? Was it a partnership at will? Was it dissolved by written notice on 14th October 2016? If not what is the contractual relationship between the five doctors? To a very large extent these issues are inter-linked.

Submissions

22 Mr Tatton-Brown QC, on behalf of Dr Cheema, maintains that the agreement made between Dr Jones and Dr Cheema on 8th April 2016 remained in place after 1st July 2016. He relies upon the fact that there was no express agreement which superseded it, either in the form of a new written partnership agreement or an oral agreement as to the terms upon which the five doctors would carry on in partnership with effect from 1st July 2016. He relies upon the absence of discussion between Dr Rasheed, Dr Roy and Dr Rawal and Dr Jones and Dr Cheema after the single meeting on 21st April 2106. He also relies upon the original intention of Dr Jones and Dr Cheema that there should be a probationary period for the other three doctors, which was not carried into effect, as evidence that no agreement had been concluded.

23 He draws attention to the difficulty Dr Cheema has in establishing an implied agreement in circumstances where there was already an express agreement in existence between Dr Jones and Dr Cheema. He submits that an intention to create legal relations between the five doctors should not be assumed unless it is necessary to give business reality to their transactions, *Tilson v Alstom Transport [2011] IRLR 169* per Elias LJ at paras. 7 and 8.

24 Mr Tatton-Brown also relies upon *McPhail v Bourne [2008] EWHC 1235 (Ch)* where Morgan J said at paragraph 256 that: *"it is a precondition to the existence of a partnership that there is a binding contractual relationship between the parties and the law will then determine whether that contract is a contract of partnership or creates some other relationship"* .

25 Morgan J also referred at para 259 to the judgment of Bingham LJ in *Blackpool and Fylde Aero Club Ltd v Blackpool Borough Council [1990] 1 WLR 1195* at 1202 where he said that *"it was stated that contracts were not to be lightly implied; but a contract could be implied where the court was able to conclude with confidence both that the parties intended to create contractual relations and what the terms of the contract were."*

26 Mr Tatton-Brown relies upon what he describes, as a total absence of communication between Dr Cheema and the other doctors, as indicative that there was no intention to create legal relations and an intention that there should be continued reliance on the partnership agreement entered into by Dr Jones and Dr Cheema on 8th April 2016. Alternatively, he submits that if it is necessary for there to be some form of an implied agreement, then it was that the five doctors would work together providing services under the GMS Contract pending the execution of a partnership deed, whilst Dr Cheema and Dr Jones continued in partnership together. He considers that the fact that, the agreement between the two of them was not terminated in accordance with its terms is a highly relevant factor, particularly in circumstances where the proposed probationary period was not agreed between the parties.

27 Mr Tatton-Brown does not accept that the GMS Contract is evidence that the five doctors entered into a partnership agreement with effect from 1st July 2016. He submits that the GMS Contract is a contract for services with the partnership as from time to time constituted. Although he accepts that

the five doctors were held out to the NHS Commissioning Board as being partners, he submits that did not give rise to a partnership between them unless they had agreed between themselves that a partnership came into being: *Greville v. Venables [2007] EWCA Civ. 878* at [41].

28 Further he submits that the GMS Contract itself does not satisfy the statutory definition of partnership. It provides that in return for the provision of professional services money would be paid to the practice bank account. The signatories to that account were Mrs Halcox, Dr Jones and Dr Cheema. The other alleged partners, not being signatories to the account, had no immediate rights to those monies. He argues that the Partnership Act 1890 draws a distinction between "gross returns" and "profit".Section 2(2) provides that *"The sharing of gross returns does not of itself create a partnership, whether the persons sharing such returns have or have not a joint or common right or interest in any property from which or from the use of which the returns are derived* ." He relies upon the fact that there was no agreement between the parties as to how the profits would be calculated but only an agreement as to drawings. He submits that the GMS Contract is silent as to how those gross returns should be shared amongst the partners, still less how any profit should be shared amongst them.

29 In any event, he submits that the partnership should not be dissolved as a matter of law because the agreement entered into by Dr Jones and Dr Cheema on 8th April 2016 still subsists and that, in any event, I should not exercise my discretion under section 35(f) of the Partnership Act 1890 to dissolve the partnership because it is not just and equitable to do so. He relies upon Dr Cheema's evidence that he wishes to continue working with the other four doctors He relies upon the attendance note prepared by Dr Cheema of the two meetings in January 2016 with Dr Jones and Dr Roy, as reflecting their true intentions.

30 Mr Woolf, on behalf of Dr Jones, Dr Rasheed, Dr Roy and Dr Rawal, submits that the question of whether the parties are in partnership is answered by examining the facts and the actual relationship of the parties. He relies upon section 1 of the Partnership Act 1890 ("the Act") which provides that: *"Partnership is the relation which subsists between persons carrying on a business in common with a view of profit* ". He submits that there is no other business being carried on other than the business of the provision of medical services pursuant to the GMS Contract. The GMS Contract states: *"The Contractor is a partnership under the name of Dr S R Jones and Partners carrying on business at the Rigg Milner Medical Centre" and "The names of the partners at the effective date of signature of this contract are Dr S R Jones, Dr S Cheema, Dr M Roy, Dr R Rasheed, Dr M Rawal."*

31 He relies on *Khan v Miah [2000] 1 WLR 2123* where Lord Millett said, 2128 D-E: *"The question in the present case is not whether the parties "had so far advanced towards the establishment of a restaurant as properly to be described as having entered upon the trade of running a restaurant" for it does not matter how the enterprise should be properly described. The question is whether they had actually embarked upon the venture on which they had agreed. The mutual rights and obligations of the parties do not depend on whether their relationship broke up the day before or after they actually transacted any business of the joint venture. The question is not whether the restaurant had commenced trading, but whether the parties had done enough to have commenced the joint enterprise in which they had agreed to engage. Once the judge found that the assets had been acquired, the liabilities incurred and the expenditure laid out in the course of the joint venture and with the authority of all the parties, the conclusion inevitably followed."*

32 Mr Woolf submits that once one partnership ends, another begins, there cannot be two partnership running in tandem. He submits that any finding that the partnership entered into by Dr Jones and Dr Cheema in 8th April 2016 subsists is wrong both as a matter of fact but also of law because for there to be a partnership there must be a business. There was no business that Dr Jones and Dr Cheema operated alone after 1st July 2016. By virtue of the variation of the GMS Contract the provision of the medical services was being provided by all five doctors. He relies upon all five doctors conducting themselves individually, and as a group, as partners. He relies upon their attendance at and voting on issues at practice meetings, their receipt of drawings, their anticipated sharing in profits, their involvement in decision making, and their conducting Dr Cheema's 'Return to Work' Meeting.

33 Further, Mr Woolf submits that there was no agreement by Dr Rasheed, Rawal and Roy to be bound by the partnership agreement made between Dr Jones and Dr Cheema on 8th April 2016. He relies upon passages in ***Lindley on Partnership*** at para 9-13 and in ***Blackett Ord and Haren on Partnership*** [5th Ed.] at para 7.24 . The latter text states: " *But if he is unaware of the old agreement or indicates (for instance by negotiating for new terms) that he does not consider himself bound by it, then he is not bound, and his arrival creates a new partnership between all the partners which supersedes that of the old agreement* ". The authority cited in both texts is Firth v Amslake (1965) 108 SJ 198 ; a case involving general practitioners with some similarities to the present dispute. Therefore, he submits the passage is authority for the proposition that for a new partner to be bound by the terms of an existing partnership agreement he must (a) have knowledge of the old agreement and (b) consider himself bound by it.

34 He maintains that the partnership at will was dissolved pursuant to section 26 of the Partnership Act 1890 , which states: *"where no fixed term has been agreed upon for the duration of the partnership, any partner may determine the partnership at any time on giving notice of his intention so to do to all the other partners".* In any event, he submits that it would be just and equitable to dissolve the partnership because of the complete breakdown in the relationship between the Dr Cheema and the other doctors.

Conclusions

35 From the evidence that I have heard it is clear to me that all five doctors, Dr Jones, Dr Cheema, Dr Rasheed, Dr Roy and Dr Rawal, agreed, certainly by sometime in May 2016, that they would all enter into a new partnership agreement, which would come into effect on 1st July 2016, when Dr Rasheed, Dr Roy and Dr Rawal would join the practice. I accept that the three doctors considered that they were joining the practice as partners, a view which was shared by Dr Jones and, also largely accepted in cross-examination by Dr Cheema, and also in his first witness statement. The documentation prepared for NHS England was signed by all five doctors as partners in the new practice. The monthly practice meetings that took place after Dr Rasheed, Dr Roy and Dr Rawal, joined the practice were held on the basis that they were partners. The drawings were agreed by reference to the number of sessions worked, pro rata by the five doctors, albeit it emerged in Dr Roy's evidence it was later agreed that there was to be some adjustment for seniority payments when the accounts were prepared. The agreement between Dr Jones and Dr Cheema had provided for a share of the profits based on the number of sessions worked. I am satisfied that, in the absence of agreement on other specific terms, issues would have been decided on a majority vote, pending the five doctors entering into a written agreement.

36 It seems clear to me that the discussions after 1st July 2016 as to how best to expand the practice were conducted on the basis that the five doctors were in partnership together. I have already said that it was Dr Cheema who contacted Dr Rasheed with the suggestion that Dr Jones should retire that precipitated this dispute. If he had not considered Dr Rasheed to be a partner it would not have been necessary for him to raise the matter with her.

37 The dispute that has arisen is as a result of the failure of the parties to enter into a written partnership agreement on or before 1st July 2016, or to reach final agreement on all the terms, particularly the issue of a probationary period, initially requested by Dr Jones and Dr Cheema. I do not consider that that failure negates what in fact happened on 1st July 2016 which was that the five doctors entered into an oral partnership agreement with the future intention of entering into a written partnership agreement. I have heard that a probationary period would have been unacceptable to the three new doctors, and I suspect the issue dropped away. I consider there is clear evidence that as from 1st July 2016 they acted as and treated each other as partners, and intended to create a contractual relationship between themselves, including Dr Cheema until this dispute arose.

38 In my view the existence of a partnership agreement was necessary to give business reality to the doctors' provision of medical services under the GMS Contract, *Tilson v Alstom Transport* applied,

a case which I consider is entirely consistent with the passage in Lord Millet's speech in *Khan v Miah* set out above. I do not accept the significance Mr Tatton- Brown attaches to the distribution of the profits. It seems to me that the parties had agreed on their respective drawings, based upon the number of sessions that each doctor performed. The final distribution of profits would then take place once the accounts had been prepared.

39 In the absence of a written partnership agreement, I consider that the five doctors became partners at will, which, in my view, superseded the agreement entered into by Dr Jones and Dr Cheema on 8th April 2106. I accept Mr Woolf's submission that there cannot have been two partnerships running in tandem to provide medical services under the GMS contract. It follows that I do not accept Mr Tatton-Brown's submission that Dr Rasheed, Dr Roy and Dr Rawal joined Dr Jones and Dr Cheema as partners under the agreement they had entered into on 8th April 2016, or, indeed, that there was some form of collateral agreement, falling short of the existence of a partnership that came into being on 1st July 2016, pending a formal partnership agreement. In my view, it does not conform to the reality of the situation that arose when Dr Rasheed, Dr Roy and Dr Rawal joined the practice on 1st July 2016. Although they were provided with a draft agreement, they were not provided with a copy of the agreement between Dr Jones and Dr Cheema and nor did they consider themselves bound by it.

40 Although it is unfortunate that on 29th September 2016 Taylor Wood sought to dissolve the partnership between Dr Jones and Dr Cheema entered into on 8th April 2016, once they had corrected their analysis, their letter dated 14th October 2016 was capable of, and did, dissolve the partnership at will between the five doctors. In those circumstances Dr Cheema's application for a permanent injunction fails, and I make no order and dismiss the claim. As to the other parties, the Part 20 proceedings succeed and I invite the parties to consider what directions I should give in that claim.

41 If it had been necessary for me to decide whether it was just and equitable under section 35(f) of the Partnership Act 1890 to dissolve the partnership, I would have done so. I cannot see that it is practical for these five doctors to continue working together in circumstances where their mutual relationship of trust and confidence has broken down. Dr Cheema's desire to continue in practice with the other doctors on a long-term basis is, in my view, unrealistic and not in the interests of any of the doctors, or indeed, the staff or patients. I have heard evidence that the operation of the practice has been at an effective standstill over the past few months. Notwithstanding Dr Cheema's meetings with Dr Jones and Dr Roy, the oral evidence from Dr Jones, Dr Rasheed, Dr Roy and Dr Rawal is clear that they do not wish to do so.

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