Neutral Citation Number: [2023] EWHC 3139 (Ch)

Case No: BL-2023-MAN-000045

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
IN MANCHESTER
BUSINESS LIST (ChD)

Manchester Civil Justice Centre
1 Bridge Street West
Manchester M60 9DJ

Date: Friday, 15 December 2023

Before :

HIS HONOUR JUDGE HODGE KC
Sitting as a Judge of the High Court

- -

Between :

Complete Care Services (Rossendale) Limited

Claimant

- and -

(1) Ryan John Godwin
(2) Fallon Natalie Ann Godwin
(together trading as 'Home Care Services')

Defendant

- -
- -

Miss Lesley Anderson KC (instructed by **Ridouts Professional Services Limited**, London W1) for the **Claimant**
Mr Richard Chapman KC (instructed by **Woodcocks Haworth & Nuttall**, Bury) for the **Defendants**

Hearing dates: 10 – 12 October 2023
Judgment circulated: 8 December 2023
Judgment handed down remotely: 15 December 2023

- -

Approved Judgment

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

.....

HIS HONOUR JUDGE HODGE KC

Remote hand-down: The court handed down this judgment remotely by circulation to the parties' legal representatives by email, by uploading it to CE-File, and by release to The National Archives. The time and date for hand-down is deemed to be 10:00am on 15 December 2023.

Partnership *– Expulsion of claimant from domiciliary crisis care business – Whether expulsion valid – Whether one of two partners can rely upon existing grounds for expulsion that were unknown at the time of the expulsion notice and only discovered subsequently – Relevance of mutual duties of good faith*

The following cases are referred to in the judgment:

Adaptive Spectrum and Signal Alignment Inc v British Telecommunications plc [2023] EWCA Civ 451

Boston Deep Sea Fishing and Ice Company v Ansell (1889) 39 Ch D 339

Braganza v BP Shipping Ltd [2015] UKSC 17, [2015] 1 WLR 1661

Cavenagh v William Evans Ltd [2012] EWCA Civ 697, [2013] 1 WLR 238

Kelly v Denman (unreported, Rimer J, 15 May 1996)

Leofelis SA v Lonsdale Sports Ltd [2012] EWHC 485 (Ch)

Lomas v JFB Firth Rixson Inc [2012] EWCA Civ 419

Moody v Jones [2021] EWHC 3443 (Ch)

The Trademark Licensing Co Ltd v Leofelis SA [2012] EWCA Civ 985

His Honour Judge Hodge KC:

I: Introduction

1. This is my considered judgment following the attended trial in Manchester, over three days between Tuesday 10 and Thursday 12 October 2023, of a Part 7 claim originally issued in the Rolls Building in London on 6 September 2022. By an Order made at the costs and case management conference on 3 April 2023, Master Clark transferred the claim to the Business and Property Courts in Manchester; and she directed a trial of agreed liability issues. One of the headline issues in this case is whether one of two partners can rely upon existing grounds for expulsion that were unknown at the time of the expulsion notice and only discovered subsequently.

2. At trial, the claimant was represented by Miss Lesley Anderson KC, instructed by Ridouts Professional Services Limited (**Ridouts**), and the defendants by Mr Richard Chapman KC, instructed by Woodcocks Haworth & Nuttall. The principal relief sought by the claimant is a declaration that the defendants have wrongly sought to expel and exclude the claimant from a domiciliary crisis care business that was carried on in partnership between them.

3. For structural reasons only, this judgment is divided into the following parts (although these are not self-contained, and the contents of any one part have informed other parts):

   I: Introduction

   II: Background

   III: The agreements

   IV: Applicable legal principles

   V: The witness evidence

   VI: Submissions

   VII: Analysis and conclusions

II: Background

4. Until it changed to its present name on 5 May 2021, the claimant (**CCS**) was known as Complete Care Services (Preston) Limited. Its sole director and shareholder is (and was) Mr Alastair MacDonald. The defendants, Mr and Mrs Godwin (who are husband and wife), are both partners in Home Care Services (**HCS**), although it is common ground that, through illness, Mrs Godwin was not involved in operational matters and has played no active role in the running of that business.

5. CCS and HCS each carry on business in the provision of domiciliary crisis care, providing personal care and support for patients in their own homes (as an alternative to admission to hospital or residential care) when an acute situation or crisis occurs. This forms part of a highly regulated sector, with statutory oversight being provided by the Care Quality Commission (the **CQC**). Individual providers of domiciliary and

crisis care services may combine to form consortia to deliver services to a local commissioning authority. This will typically involve one member of the relevant consortium (as the main provider) entering into a contract (referred to as a **'framework agreement'**) with the local authority on behalf of the consortium.

6. CCS and HCS entered into a written partnership agreement on 17 January 2020 with a view to delivering crisis care services in North Lancashire under the trading style '**Supporting Together North**'. Shortly thereafter, Lancashire County Council (the **Council**), as the commissioning authority, awarded Supporting Together North a contract (signed by HCS on 19 March 2020) to provide those services with effect from 1 April 2020 (shortly after the start of the first national Covid lockdown), with HCS appointed to act as the lead service provider, and CCS acting as its sub-contractor.

7. CCS's business centre at Preston was the only location that CCS, as distinct from Mr MacDonald personally, had registered with the CQC. Although it was put down as the nominated office on the submission documents for the Supporting Together North tender, and was used to manage the payroll function and provide staff training for that contract, the Preston location was not directly involved in the actual delivery of any domiciliary crisis care under the Supporting Together North contract; this was in fact supplied out of a geographically different location in Lancaster.

8. The Preston location was inspected by the CQC on 3 and 9 December 2020, during the *'tiered'* system of localised Covid restrictions. On 27 January 2021 the CQC published their inspection report. This was during the third national Covid lockdown (from 6 January until 8 March), which was then followed by a phased exit from restrictions (lasting until July 2021). It was a very challenging and difficult time for the whole health and social care sector. This inspection report was highly critical of the personal care provided by CCS. It concluded:

> *The overall rating for this service is '**inadequate**' and the service is therefore in special measures. This means we will keep the service under review and, if we do not propose to cancel the provider's registration, we will re-inspect within 6 months to check for significant improvements.*

The CQC reported that they had found evidence that service users' human rights and dignity had not been upheld; that service users had experienced poor care and inappropriate treatment, and been exposed to the risk of financial abuse; and that systems were either not in place, or were not robust enough, to manage safety effectively, or to promote users' rights.

9. On 16 February 2021, CCS received notice of a proposal by the CQC to cancel its registration as a provider of personal care services at its Preston location. Despite submitting (through its solicitors, Ridouts), on 15 March, detailed representations against this course, on 20 April the CQC communicated its decision to cancel CCS's registration as a provider of personal care services in relation to the Preston location. In the event, this cancellation never took effect because, on 14 May 2021, CCS (through Ridouts) submitted an appeal to the First-Tier Tribunal (the **FTT**), which had the effect of suspending the CQC's decision to cancel CCS's registration until after the disposal (or abandonment) of the appeal.

10. By this time, however, CCS had already ceased to conduct any personal care business from its Preston location. This was because, by letter dated 15 March 2021, the Council had terminated (with effect from 11 April 2021) a separate contract for CCS, in partnership with a company called Homecare (Mellor) Limited (**Mellor**), as lead provider, to provide domiciliary care services in Central Lancashire, known as **Supporting Together Mainframe Central**. The Council asserted that CCS had breached the agreement and shown that it was incapable of remedying its poor performance, asserting as follows:

> *Your breaches of contract and service specification include but are not limited to:*
>
> *i. Failure to consistently provide the required expertise and resources at a leadership and management level to service the framework contract following CQC inspection outcome of inadequate on 28th January 2021.*
>
> *ii. Following the inspection failure to duly address the CQC breaches in a timely manner.*
>
> *iii. Failure to understand the severity of the risk that is paused [sic] to service users by not having a robust Safeguarding policy which sets out clear steps on when an alert is raised and steps management and staff should take.*
>
> *iv. Failure to be open and transparent with lead partner regarding the CQC inspection and the impact of this on the consortium contract.*
>
> *v. Failure to have a comprehensive service user finance policy to set out what is required by staff.*
>
> *vi. Failure to have robust staff policy and procedures in place.*
>
> *vii. Lack of providing suitably trained staff to deliver care services.*
>
> *The Authority is of the view that there are ongoing, significant quality concerns within your organisation, and that you have failed to address the concerns to our satisfaction in a timely manner. You have failed to provide the required level of expertise and leadership to manage and respond to the CQC inspection and Notice of Proposal. You have failed to recognise the significance and the severity of your shortcomings and the impact and risk that has to your service users. You continue to have inadequate staffing policies and procedures and continue to fail to have adequate staff training in place.*

11. Following the termination letter, the Council placed the users of those services with Mellor; and associated staff were transferred over from CCS to Mellor under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (**TUPE**). The small number of privately funded care service users (less than 5% of the total) were also transferred over to Mellor. Since CCS's Preston location was by then no longer trading, on 5 May 2021 CCS changed to its present name, replacing '*(Preston)*' with '*(Rossendale)*'.

12. This left extant, in addition to Supporting Together North, two further agreements between the Council and consortia which included both CCS and HCS: (1) **Supporting Together Mainframe East**: a partnership providing domiciliary care services in East Lancashire between CCS, HCS, Broadfield Home Care, Mellor, Quality Care North West, and Spring Cottages Home Care Limited; and (2) **Supporting Together Crisis East**: a partnership providing crisis care services in East Lancashire between CCS, HCS, Mellor, and Spring Cottages Home Care Limited. The Council did not seek to terminate either of those contracts.

13. For CCS, Miss Anderson emphasises that the CQC enforcement action against CCS was entirely unrelated to Supporting Together North or any business relationship between CCS and HCS. It related only to Supporting Together Mainframe Central, which involved the partnership between CCS and Mellor (which effectively took over from CCS as the relevant service provider). Miss Anderson stresses the importance of distinguishing between the different contracts with the Council, the different partnerships involved in supplying care services, and the different business locations.

14. A remote meeting by Teams took place on the afternoon of 20 April 2021 attended first (at 1.00 pm) by representatives of HCS (Ryan Godwin and Jodie Nolan) and the Council (Tahera Chaudhrey, Andrew Butterworth and Andrew Richards), who were later (at 2.00 pm) joined by representatives of CCS (Alastair MacDonald and Hayley Walton). The Council's agenda and minutes of that meeting are to be found at Chronological Bundle C3, pages 348-353. In summary, the Crisis Care North service was to continue as it was for the time being, with the option to consider a further contract variation, and further due diligence checks being required, and all options to be considered. There was an agreement to a further meeting on 5 May at 1.00 pm to discuss the outcomes of the further due diligence checks and provider-held meetings, when Ms Chaudhrey would also supply feedback on the Council's legal advice.

15. Ms Chaudhrey sent a confirmatory email to Mr Godwin and Mr MacDonald on 23 April at 3.04 pm (at Chronological Bundle C3, page 362) which reads:

> Hi Both
>
> Further to our MS Teams meeting on Tuesday 20th April to discuss the **Improvement plan** for STN Crisis contract, this included the following two options:
>
> Option 1
>
> Home Care Services (HCS) considers dissolving the partnership agreement with Complete Care Services (Preston) (CCS). This would require a contract variation to ensure the current contract reflects any new arrangements.
>
> **Action required**: HCS legal team to draw up a proposed contract variation and to send to myself.
>
> Option 2

> HCS considers a change in CQC office for CCS from Preston to Rossendale. **Action required**: HCS legal team to draw up a proposed contract variation and to send to myself.
>
> It is for HCS and CCS to take its own legal advice and decide how it wishes to proceed on the two options set out above. Having said this, LCC continues to conduct due diligence and should it be minded at any time to make any comments on the two options and/or propose a further option, I will let you know.

16. This provides the background to HCS's letter to CCS, dated 29 April 2021, headed *'Notice of expulsion from the Supporting Together North Partnership'*, and signed by both Mr and Mrs Godwin, by which they purported to exercise their right to expel CCS from the partnership under clause 22.1 of the partnership agreement. It is Mr Godwin's evidence, which I accept, that he discussed the expulsion notice with his wife, and that she agreed to it. The grounds for expulsion were stated to be as follows:

> *4.1 Your registration with the CQC has been cancelled as confirmed in a letter from the CQC to you dated 19 April 2021 (**Cancellation Letter**);*
>
> *4.2 The findings of the CQC detailed in the Cancellation Letter as reasons for the cancellation of your registration constitute conduct which are likely to have a serious adverse effect on the Partnership and/or the Business. In particular, but without limitation, they are circumstances which could reasonably be expected to give rise to the loss of the Partnership's contract with Lancashire County Council;*
>
> *4.3 Various matters detailed by the CQC in the Cancellation Letter as reasons for the cancellation of your registration amount to irremediable breaches of your obligations under the Agreement including, without limitation, your obligation to ensure the Services are provided [in accordance with] with all applicable laws and regulations in force from time to time including the Health and Social Care Act 2008, the Care Quality Commission (Registration) Regulations 2009 and the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014. Paragraph 1 of the section of the Cancellation Letter entitled 'Reasons' confirms that the CQC found extensive failures on your part to comply with the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.*

It is CCS's challenge to this notice of expulsion which forms the subject-matter of this claim.

17. In the event, CCS's appeal to the FTT was settled by way of a Consent Order issued by Judge Iman on 2 December 2021. The appeal was allowed with no order as to costs. The Conent Order provides that:

> (1) The notice of decision dated 19 April 2021 to cancel CCS's service provider registration is not to take effect.

(2) CCS is not to deliver the regulated activity of personal care from the Preston location.

(3) Within 28 days CCS is to submit applications to the CQC to add Rossendale and Nelson as specified locations to its registration.

(4) Within 28 days CCS is to submit an application to the CQC to remove Preston from its registration.

(5) Within 28 days Mr McDonald is to submit applications to the CQC to cancel his individual service provider registration for Rossendale, Nelson, and Chorley.

III: The agreements

18. It is necessary to consider the terms of both the written partnership agreement entered into between CCS and HCS on 17 January 2020 for the delivery of crisis care services in North Lancashire, under the trading style '**Supporting Together North**', and also the contract with the Council, signed by HCS as the lead service provider on 19 March 2020, for the provision of those services.

The partnership agreement

19. The parties are CCS and Mr and Mrs Godwin (trading as HCS). Clause 1 contains various definitions. The expression '**Associated Persons**' is defined as meaning, in relation to each partner, any of its directors, partners or managers. It is common ground that Mr MacDonald is an associated person. '**The Business**' is defined as meaning the business of providing domiciliary crisis care to be carried on by the partnership and such other business as the partners may decide to carry on in accordance with clause 16.5 (b). '**Client Body**' is defined as meaning any local authority and other person which commissions the partnership to provide domiciliary crisis care services. Clearly, it included the Council.

20. By clause 2, the partnership was to commence on the date of the agreement and continue on the terms of the agreement until it was terminated in accordance with the terms of clause 16.5 (l) and clause 27 (relating to dissolution). By clause 27.1, no partner is capable of dissolving the partnership unilaterally by means of a notice; and the partnership is not automatically to dissolve on the death or bankruptcy of any partner or on any partner allowing its share to be charged.

21. Clause 12 sets out various duties and powers. By clause 12 (a), each partner is at all times bound to use its best skills and endeavours to promote and carry on the business for the benefit of the partnership, and conduct itself in a proper and responsible manner. By clause 12 (c), each partner is at all times bound to comply with all legislation, regulations, professional standards, and other provisions as may govern the conduct of the business, including the Health and Social Care Act 2008, the Care Quality Commission (Registration) Regulations 2009, and the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014. By clause 12 (d), each partner is at all times bound to show the utmost good faith to the other partners in all transactions relating to the partnership and to give them a true account of, and full information about, all things affecting the partnership.

22. Clause 22 is headed '*Expulsion*'. By clause 22.1, the partners might expel any partner by giving it written notice in accordance with clause 16.5 (i) if (amongst other grounds):

> (c) it commits a material breach of any other term of the agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing by the other partners to do so (**the material breach clause**);
>
> (t) it becomes the subject of '**Special Measures**' (meaning the administrative framework known as special measures adopted by the CQC to manage providers who are failing to comply with their legal requirements and require a higher than usual level of regulatory supervision) (**the special measures clause**);
>
> (w) it is guilty of conduct which, in the reasonable opinion of the partners, is likely to have a serious adverse effect on the partnership or its business or (being a company or a partnership) has any associated person to whom the foregoing applies (**the serious adverse effect clause**); or
>
> (x) it does or omits to do anything the direct or indirect effect of which allows any client body (thereby including the Council) to terminate its contract with the partnership or (being a company or a partnership) has any associated person to whom any of the foregoing apply (**the client body clause**).

By clause 22.2, notice under clause 22.1 is required to be given within two months of the expelling partner becoming aware of the circumstances giving rise to the right to serve such notice. Immediately on service (or deemed service) of that notice in accordance with clause 29 of the agreement, that partner ceases to be a partner; and the date of such service (or deemed service) is its **Leaving Date** (defined as meaning the date on which an outgoing partner ceases, or is deemed to cease, to be a partner under the agreement).

23. By clause 16.5 (i), in the case of a notice given to a partner under clause 22.2 to expel that partner, the requirement for the unanimous approval of all the partners is modified so that the unanimity required is that of all the partners other than the partner whose expulsion is in question.

24. Clause 23 governs payments to outgoings partners. By clause 23.1, an outgoing partner is not entitled to any share or interest in the property of the partnership or net profits and losses after its leaving date. By clause 23.4, following the preparation and approval of the leaving accounts, the continuing partners are to pay to the outgoing partner: (a) the amount of any capital credited to its capital account in the leaving accounts, (b) any undrawn balance of its profit share as at the leaving date credited to its current account in the leaving accounts and (c) any sums due to it in respect of loans and loan interest. By clause 23.2, the leaving accounts are to be prepared on the same basis as the last accounts of the partnership, except that the assets of the partnership (which shall not include goodwill) are to be shown in the balance sheet of the leaving accounts at their market value.

25. Miss Anderson emphasises that the provisions of the partnership agreement for expulsion are highly expropriatory in nature so far as concerns the goodwill of the partnership.

26. Clause 31.1 provides that if any dispute arises out of or in connection with the agreement or the performance, validity or enforceability of it, then the partners are to follow the dispute resolution procedure set out in clause 31. Clause 31.4 provides that no partner may commence any court proceedings in relation to any dispute arising out of the partnership agreement until it has attempted to settle the dispute in accordance with clause 31, and the representatives for each partner have been unable to resolve the dispute within 14 days of it being referred to them, provided that the right to issue proceedings is not prejudiced by a delay. Neither party has suggested that these legal proceedings had been brought in contravention of this dispute resolution procedure.

The contract with the Council

27. The written agreement for the provision of crisis services in North Lancashire was made between the Council and Mr and Mrs Godwin (trading as HCS), as the lead provider for Supporting Together North. It was effective from 1 April 2020. Clause 25 governs consortium arrangements. By clause 25.4, in the event that the services are being delivered under the agreement as part of a consortium, HCS is the nominated lead member with the contractual relationship with the Council; but all members of the consortium, including HCS, have joint and several liability for any failure in delivering the services pursuant to any agreement between the parties. By clause 25.5, in the event that HCS is part of a consortium, the Council reserves the express right to terminate the agreement pursuant to clause 35 and 36 in the event of failure in delivering the services by any member of the consortium. Further, the Council is at liberty to enforce all of its rights pursuant to the agreements between the parties as against HCS in the event of any failure in delivering the services by any member of the consortium.

28. Clause 8 of the agreement deals with service standards. Amongst other provisions, clause 8.5 provides that if at any time during the term of the agreement, the service provider is inspected by the CQC and receives an overall rating by the CQC of '*inadequate*' or '*requires improvement*' or an '*inadequate*' rating against any one of the CQC's five key questions for the office out of which the service provider is operating for the purposes of delivering services under the agreement, the service provider shall inform the Council immediately and, within a timeframe to be stipulated by the Council, shall share an improvement plan with the Council. If the Council is not satisfied with the service provider's response, this shall amount to a material breach, and the Council may suspend the referral of crisis care packages to the service provider, or terminate the agreement pursuant to the provisions of clause 35 thereof.

29. Paragraph 3.2 (a) of Schedule 1 to the agreement with the Council sets out the regulatory and legal service requirements of the crisis care specification. The service provider must be registered to provide personal care with the CQC and maintain registration throughout the duration of the contract. The service provider must comply with all relevant legislation that relates to the operation of their business. Paragraph 5.1 deals with quality standards and assurance. The service provider must ensure that they meet the registration requirements for delivery of the appropriate regulated

activities and must include correct information within their statement of purpose submitted to the CQC. The service provider must at all times achieve and maintain *Good* or *Outstanding* overall ratings from CQC inspections. In the event that the service provider fails to achieve this, the provisions of clause 8 of the contract are to apply.

30. Clause 35 governs termination for breach. By clause 35.1 (a), the Council may terminate the agreement in whole or in part with immediate effect by the service of written notice on the service provider if the service provider is in breach of any material obligation under the agreement, provided that, if the breach is capable of remedy, the Council may only terminate the agreement if the service provider has failed to remedy such breach within thirty (30) calendar days (or such other longer period if stipulated by the Council in writing) of receipt of a remediation notice from the Council requiring it to do so.

31. During the second part of the remote Teams meeting on 20 April 2021, after Mr MacDonald and Mrs Walton had joined the representatives of HCS and of the Council, the minutes record that: *"Tahera clarifies that if a provider is deemed inadequate by CQC then LCC [the Council] can terminate".*

IV: Applicable legal principles

32. Mr Chapman reminds the court of the legal principles governing the interpretation of written contracts generally, as summarised by Birss LJ in *Adaptive Spectrum and Signal Alignment Inc v British Telecommunications plc* [2023] EWCA Civ 451 at [17] to [20]. Mr Chapman acknowledges that contractual provisions which entitle one partner to expel another should be restrictively construed, although he submits that this does not displace the ordinary rules of construction, merely operating as a means of ascertaining the parties' objective intention, and thus the meaning of the relevant provision, where this is uncertain because the wording is unclear. In the present case, I do not consider that there is any uncertainty about the true meaning and effect of any of the relevant contractual provisions.

33. There is no real issue as to the content of the express terms of the partnership agreement, or as to those terms which fall to be implied into that agreement as the usual and normal incidents of a partnership, including those implied under the Partnership Act 1890. There is also no real issue as to the fiduciary nature of the obligations of the partners as such. Miss Anderson submits, without any challenge from Mr Chapman, that these include fiduciary duties on each partner: (1) to act in good faith; (2) not to place oneself in a position where one's own interests, or the interests of others, might conflict with those of one's partners; (3) to act at all times in the best interests of the partnership, and not to prefer the interests of oneself, or any other party, over those of the other partners; and (4) that in the event of any conflict of interest arising between the partners, to inform the other partners and to decline to act further in support of one's own interests, and to the detriment of the other partners. Miss Anderson accepts that all these are mutual obligations.

34. However, Miss Anderson submits that CCS is wrong to contend that the ambit of clauses 12 (a), 12 (c), and 22.1 (w) is not restricted to, but extends beyond, conduct in the course, and services provided for the purposes, of the partnership and its business. She emphasises that the primary obligation in clause 12 (a) is to promote and carry on

the business for the benefit of the partnership; and she submits that the requirement upon each partner to *"conduct itself in a proper and responsible manner"* must be confined and construed by reference to that primary obligation. The construction contended for on behalf of HCS would have it exist as a freestanding primary obligation, which applies whether or not it is the partnership business that is being conducted. On that basis, it would constrain the partners even when they are engaged on non-partnership business, or in the conduct of their personal affairs. A similar analysis is said to apply to clauses 12 (c) and 22.1 (w): there is no justification for reading *"the conduct of the Business"* in the former sub-clause, or *"conduct"* in the latter sub-clause, as meaning anything than the conduct of the partnership business.

35. Mr Chapman submits that the relevant conduct for the purposes of the serious adverse effect clause (22.1 (w)) is not limited to conduct in the course of the partnership's business. He does so for the following reasons:

(1) The sub-clause does not state that the relevant conduct is restricted to conduct in the course of the partnership's business.

(2) The relevant conduct includes that of an '**Associated Person**', which is defined in clause 1.1, in relation to each partner, as *"any of its directors, partners or managers"*. The directors, partners and managers are not parties to the partnership agreement and so this extends more widely than the relevant partner's obligations under the partnership agreement.

(3) It is clear that the purpose of clause 22.1 (w) is to protect the partnership and its business. Conduct extraneous to the business of the partnership can still have an adverse effect upon it, and so is capable of being brought within this sub-clause.

(4) The partners' duties are not restricted to conduct in the course of the partnership or its business. In particular, the duties and obligations at clauses 12 (a), (d), and (f) to (m) could all arise in respect of matters taking place other than in the course of the partnership or its business (even where, as in clause 12(d), the duty relates to *transactions relating to*, and to *things affecting* – as distinct from in the course of – the partnership).

36. I accept Mr Chapman's submissions. During the course of her oral closing, Miss Anderson was driven to accept that something occurring outwith the partnership might have a serious adverse effect on the partnership for the purposes of clause 22.1 (w). Likewise, she indicated that she would struggle to resist my suggestion that the duty imposed upon each partner by clause 12 (a) to conduct itself in a proper and responsible manner should be construed as extending to matters affecting or concerning the partnership or its business.

37. Mr Chapman also raises an issue about the true meaning and effect of the client body clause (22.1 (x)). He submits that, on its proper construction, this clause is engaged where a commissioning authority is entitled to terminate its contract with the partnership, and is not restricted to circumstances where the authority has in fact already terminated that contract. This is for the following reasons:

(1) The client body clause does not state that the contract needs to have been terminated.

(2) The operative word is "*allows"*. This signifies the entitlement, or the right, to terminate, rather the client body acting upon that entitlement or right.

(3) The word *"allows"* is used in the present tense, signifying that the termination need not already have happened.

38. I accept these submissions. I cannot accept Miss Anderson's submission that the commissioning authority must have actually chosen, or elected, to terminate the contract. The sub-clause does not use the phrase *"which has allowed a Client Body to terminate its contract with the Partnership"*. The language is that of potentiality, rather than actuality. That construction also accords with common sense, enabling the expelling partner potentially to shut the stable door before the horse has actually bolted, by stepping in to expel a defaulting partner before the commissioning authority has actually terminated its contract with the partnership.

39. In my judgement:

(1) The duty imposed on each partner by clause 12 (a) to conduct itself in a proper and responsible manner is to be construed as extending to matters which may affect or concern the partnership or its business, whether or not arising in the conduct of the partnership's affairs or the carrying on of its business.

(2) The duty imposed on each partner by clause 12 (d) to comply with all legislation, regulations, professional standards and other provisions is expressly limited to those which may govern the conduct of the business of providing domiciliary crisis care to be carried on by the partnership (and such other business as the partners may decide to carry on in accordance with clause 16.5 (b)).

(3) Conduct for the purposes of the serious adverse effect clause (22.1 (w)) of the partnership agreement is not limited to conduct in the course of the partnership's business, but may extend to conduct extraneous thereto if, in the reasonable opinion of the expelling partner, it is likely to have a serious adverse effect on the partnership or its business.

(4) The client body clause (22.1 (x)) is engaged where a commissioning authority is entitled to terminate its contract with the partnership, and is not restricted to circumstances where the authority has in fact already terminated that contract.

40. For completeness, I record that Mr Chapman accepts that if (contrary to his foregoing submissions), the proper construction of the serious adverse effect clause were to restrict the relevant conduct to conduct in the course of the partnership business, then there is no room for any inconsistent implied term.

41. One potential point of construction was not raised during the course of submissions and only occurred to me in the course of preparing this judgment. However, it seems to me that the answer is so obvious that it is unnecessary to subject the parties to the delay, and the costs, involved in producing further submission on this issue. This concerns that part of the material breach clause which restricts the giving of notice of expulsion for a remediable breach to the situation where the partner in default fails to remedy that breach within a period of 14 days after being notified in writing by the other partner to do so. What if the relevant breach is clearly incapable of remedy

within that timescale? In my judgement, it is implicit in the material breach clause that notice to remedy is only required if the breach is not only remediable, but also capable of remedy within 14 days. It cannot have been within the reasonable contemplation of the parties that notice to remedy is required where the breach is clearly incapable of remedy within 14 days. In my judgement, the phrase in parenthesis in clause 22.1 (c) is to be read and construed as *'(if such breach is remediable within 14 days)'*.

42. Miss Anderson submits that on the proper construction of clause 22 of the partnership agreement, the partners were given a **power** to expel, and, even if any one or more of the grounds for expulsion were made out, they were not obliged to exercise that power. If they did so, they were exercising a fiduciary power, and were subject to the constraints of good faith. On the evidence, even if (contrary to CCS's primary case), circumstances had arisen which had justified its exercise, the actual exercise of the power of expulsion was flawed, and was made in bad faith.

43. Mr Chapman rejects any suggestion that the duty of good faith between partners has any relevance to HCS's decision to elect to exercise its right of expulsion. He submits that this is beyond the scope of any duty of good faith, and would involve subordinating HCS's own rights to the interests of CCS, especially in circumstances where CCS was itself in breach of its own duty of good faith. The partnership agreement expressly sets out the circumstances in which the right of expulsion applies; and any duty of good faith must be applied in the light of these provisions. Various of the grounds of expulsion require the existence of a state of affairs; and it is difficult to see how any duty of good faith can apply to them. Individual grounds for expulsion may expressly import an element of reasonableness, but there is no over-arching requirement of good faith.

44. Mr Chapman relies upon the following observations of Longmore LJ (speaking for the Court of Appeal) in *Lomas v JFB Firth Rixson Inc* [2012] EWCA Civ 419 at [46] when firmly rejecting the submission that there was any implied term which might require a party to act reasonably when exercising its discretion to bring a contract to an end:

> The administrators did not pursue this third suggested implied term on the appeal. Had they done so, we would have rejected it because it is even more hopeless than the others. The right to terminate is no more an exercise of discretion, which is not to be exercised in an arbitrary or capricious (or perhaps unreasonable) manner, than the right to accept repudiatory conduct as a repudiation of a contract. We have already commented that the specific right to terminate makes theoretical the question whether an Event of Default constitutes a repudiation of the contract which can be accepted by the innocent party as bringing the contract to an end. But no one would suggest that there could be any impediment to accepting repudiatory conduct as a termination of the contract based on the fact that the innocent party can elect between termination and leaving the contract on foot. The same applies to elective termination.

45. However, as Mr Chapman recognises, those observations were made in the very different context of swaps transactions, where no duties of good faith, or other equitable considerations, are engaged. I do not exclude the possible relevance of the

mutual duties of good faith between partners when the court is required to determine the propriety of a decision by one partner to expel another pursuant to a contractual power of expulsion. This is always likely to involve a fact-sensitive decision; and the court must bear in mind that each of the partners is required to show good faith towards the others. I consider, and would hold, that a power to expel a partner must not be exercised with any ulterior motive (financial or otherwise), rather than in the best interests of the partnership as a whole.

46. To illustrate this point, I have already held that the client body clause is engaged where a commissioning authority is entitled to terminate its contract with the partnership. Circumstances might arise where the conduct of one of the partners has given rise to an entitlement on the part of a commissioning authority to terminate the role of the partnership as one of its service providers, but the authority has made it clear that it has no intention of doing so. In those circumstances, considerations of good faith between the partners might well operate to prevent a partner not in default from relying upon the client body clause as a valid ground for expulsion from the partnership.

47. Mr Chapman derives assistance as to the true meaning of the serious adverse effect clause from HHJ Cawson KC's analysis of the broadly similar (though not precisely the same) clause in *Moody v Jones* [2021] EWHC 3443 (Ch) at [220] to [224]. He submits that a partner is *'guilty'* of conduct if they have done something that they ought not to have done in accordance with the terms of the partnership agreement, whether express or implied. The requirement of a *'serious'* breach may be satisfied even though the conduct complained of is not repudiatory in nature, provided it goes to the root of the confidence and good faith which should exist between partners. As Judge Cawson observed (at [222]), *"... one would not ordinarily expect one partner to be able to expel the other unless something had occurred that had fundamentally affected the confidence and good faith that existed between them".* In *Jones v Moody*, Judge Cawson considered that an appropriate consideration was whether, applying an objective standard, the conduct complained of was likely to have a serious adverse effect on the business of the partnership. Mr Chapman points out that the relevant clause in *Moody v Jones* did not include any '*reasonable opinion*' provision; and he therefore submits that clause 22.1 (w) only requires that HCS's opinion that CCS (or Mr MacDonald as an associated person) was guilty of conduct likely to have a serious adverse effect on the partnership or its business should be reasonable. It is the reasonableness of HCS's opinion which falls to be assessed objectively; and it is not for the court to make afresh its own assessment as to the likely serious adverse effect of the conduct of CCS (or Mr MacDonald).

48. Mr Chapman invites the court to note that CCS has not pleaded any implied term as to the manner in which HCS's decision to expel falls to be made, or that it should have been objectively reasonable to expel CCS from the partnership. Mr Chapman submits that this reinforces the position that the focus is upon the objective reasonableness of HCS's opinion rather than concentrating upon the outcome, which runs the risk that the court might substitute its own assessment for that of the primary decision-maker. Applying the analysis of Baroness Hale DPSC in *Braganza v BP Shipping Ltd* [2015] UKSC 17, [2015] 1 WLR 1661 at [17] to [37], he submits that HCS's decision as to whether or not CCS's conduct was likely to have a serious adverse effect upon the

partnership or its business (as distinct from the actual decision to expel) was to be made rationally, in good faith, and consistently with its contractual purpose.

49. I do not understand Miss Anderson to argue against this approach; and I accept Mr Chapman's analysis of the proper approach to the serious adverse effect clause.

50. Another of the legal issues the court has to determine is the extent to which one partner who purports to exercise a power to expel another may seek to rely upon grounds additional to, or differing from, those stated in the relevant expulsion notice. It is well-established, in the case of employment contracts, that an employer can rely upon grounds for dismissal that existed at the time of dismissal but were only discovered subsequently. The question is whether this principle applies in the context of a partnership agreement, as well as in the employment situation. Mr Chapman submits that it does; Miss Anderson contends otherwise.

51. In support of his submission, Mr Chapman referred me to a number of authorities on the after-discovery of prior misconduct, starting with the leading judgment of Cotton LJ in *Boston Deep Sea Fishing and Ice Company v Ansell* (1889) 39 Ch D 339 at 352. As Lloyd LJ explained in *The Trademark Licensing Co Ltd v Leofelis SA* [2012] EWCA Civ 985 at [18]

> … it was and is common ground that an acceptance of a repudiation of a contract, even if expressed to be on a basis which turns out not to have been justified, can be found to be valid and effective if there were at the time facts, even though unknown to the accepter of the alleged repudiation, which would have entitled that party to accept a repudiation. The authority generally quoted for that proposition is *Boston Deep Sea Fishing and Ice Co v Ansell* (1888) 38 [sic] Ch D 339, although the proposition was already settled by then and it was common ground in that case as well. There the company had dismissed Mr Ansell, its managing director, on the grounds of specified alleged acts of misconduct. It brought proceedings against him for damages and he counterclaimed for wrongful dismissal. The company was unable to establish the misconduct on which it had relied in dismissing him, but it was able to prove other misconduct on his part of which it had not been aware when it dismissed him. It was held to be able to rely on that misconduct to justify the dismissal, and thus as a defence to his claim for wrongful dismissal. Kekewich J had held that Mr Ansell had committed some breaches of duty, but that they were not serious enough to justify dismissal. The Court of Appeal disagreed on that point. Cotton LJ said, at page 352:
>
> *"it was not, I think, at all disputed that if there was any circumstance, though unknown to the company at the time when they dismissed Mr Ansell from his position, which would justify them in so acting, it was immaterial whether that was known at the time, and if it was known and established after the time the action was brought, then they could justify the dismissal by proof of that fact."*

Mr Chapman emphasises Cotton LJ's reference to *"any circumstance"*, and not just a new ground.

52. Next I was taken to *Cavenagh v William Evans Ltd* [2012] EWCA Civ 697, [2013] 1 WLR 238. At [5], Mummery LJ said that:

> *Boston Deep Sea Fishing* is a leading authority for some of the basic principles governing dismissal of an employee for gross misconduct: (a) where an employee is guilty of gross misconduct, he may be dismissed summarily, even before the end of a fixed period of employment; (b) dismissal may be justified by reliance on facts not known to the employer at the time of the dismissal, but only discovered subsequently, even after the proceedings began; and (c) the dismissed employee is not entitled to any wages or salary for the broken period of employment immediately preceding his dismissal, because his entitlement had not accrued by then.

Mr Chapman emphasises Mummery LJ's reference to new facts only discovered subsequently, and even after the commencement of legal proceedings.

53. Miss Anderson accepts, as a general proposition in wrongful dismissal claims, derived from the *Boston Deep Sea Fishing* case, that facts which were available to one party as grounds for dismissal, but which were not relied upon at the time, can be relied upon to justify a dismissal However, she submits that that principle cannot apply here. Unlike those cases, the relationship between the parties here was admittedly a fiduciary one; and Mr and Mrs Godwin were obliged to act in good faith. She argues that it is difficult to see how reliance upon a ground, the relevant facts of which were not known to them or appreciated at the time, can be acting in good faith, especially given the seriousness of the consequence for CCS of the decision that was being taken. Nor would it be fair to an expelled partner for the court to allow an expelling partner to rely upon facts, matters, and circumstances that they had only found out about subsequent to the expulsion. To do so, says Miss Anderson, would offend against the need for certainty.

54. In response, Mr Chapman submits that it is difficult to see why the duty of good faith between partners should make any difference. During the subsistence of the employment relationship, an employee owes duties of fidelity towards their employer. Moreover, the duty of good faith between partners is a mutual one. If an expelled partner has hidden any misconduct from the expelling partner, it is difficult to see why, when this is discovered, it should not be capable of being relied upon, either as a new ground, or in support of existing grounds, justifying the expulsion of the defaulting partner. Because of its mutuality, there is no magic in the good faith obligation which should serve to take a partnership outside the application of the principle in the *Boston Deep Sea Fishing* case, which embodies a general principle of the law of contract. It is difficult to see why reliance on new facts should be inconsistent with the expelling party's duty of good faith: if they did not know of them, how can it be a breach of the expelling partner's duty of good faith not to have cited them in the expulsion notice? Mr Chapman accepts that the principle is limited to facts and matters that were in existence at the time of the expulsion notice, albeit they may only have been discovered after legal proceedings have commenced, and does not extend to later developments; although, for the purposes of this case, it is unnecessary for me to arrive at any firm conclusion on this particular point.

55. Mr Chapman submits that this is a short and narrow legal point. In terms of authority, he took me to the section on expulsion procedure at para 10-245 of the 21st edition of *Lindley & Banks on Partnership*. This reads:

> The agreement should provide the manner in which a partner can be expelled. This will usually involve the service of an expulsion notice with the approval of all, or a specified majority, of the other partners. [714] Where the decision is to be taken by a committee of those partners, it is important that they actually take the decision and do not abdicate their responsibility by '*rubber stamping*' a decision that has already been taken. [715] It is prima facie undesirable to provide that the notice will specify the precise matters of complaint which have led to its service, although reference should in practice be made to the relevant ground(s) set out in the agreement. [716] It may, of course, be that the full extent of the expelled partner's misdeeds will only come to light after the expulsion; in such a case, it should be possible for the other partners to place reliance thereon in the event of the expulsion being challenged, [717] although much will depend on the precise terms of the power. [718] Whether reliance can be placed on a ground which the partners have considered and rejected is more doubtful. [719] Provided that all partners have concurred in (or are otherwise bound by) the decision to serve the notice, there is no need for them all to sign it, unless the agreement so requires.

56. Foot-note [717] notes that this principle is clearly established in the case of employees (citing, amongst other authorities, the *Boston Deep Sea Fishing* case and *Cavenagh v William Evans Ltd*); and it points out that it was also applied in the case of a licence agreement (in *Leofelis SA v Lonsdale Sports Ltd* [2012] EWHC 485 (Ch) at [62] per Roth J). The point was said to have been canvassed in the case of a partnership in *Kelly v Denman* (an unreported decision of Rimer J in May 1996) but was not, in the event, ruled upon, because of the way the case had been pleaded. Given the tenor of the judgment, the foot-note suggests that it would appear likely that Rimer J would have allowed reliance on the additional ground had the case been pleaded differently. Foot-note [718] suggests that: *"It might, in any event, be possible to serve a second expulsion notice in such a case."*

57. In principle, I accept Mr Chapman's submissions. For the reasons that he gives, I hold that the principle that was applied in the *Boston Deep Sea Fishing* case is a general principle of the law of contract; and that a partner can rely upon grounds for expulsion that existed at the time of the expulsion notice, but were unknown at that time, and were only discovered subsequently, even if such discovery post-dates the commencement of legal proceedings. It is also open to an expelling partner to rely upon newly discovered evidence in support of an existing ground for expulsion. I see no unfairness, or any lack of certainty, about that.

58. In my judgement, the duty of good faith between partners does not affect the position. That duty is a mutual one. If an expelled partner has not disclosed a potential ground for expulsion to the expelling partner, or any evidence relevant thereto, when this is later discovered, it may be relied upon, either as a new ground, or in support of existing grounds, to justify the expulsion of the defaulting partner. Because of its mutuality, there is no magic about the good faith obligation which serves to take a

partnership outside the application of the principle in the *Boston Deep Sea Fishing* case. I see no need to go through the idle act of serving a further expulsion notice, without prejudice to the validity of the earlier one. Indeed, I note that this partnership agreement does not actually require the expulsion notice to specify the precise grounds of complaint which have led to it being given. However, I would also hold that if an expulsion notice does particularise the grounds for expulsion, then the expelling partner cannot seek to rely upon other potential grounds of which it was aware at the time of the giving of the notice. To do so would, in my judgement, involve a breach of the duty of good faith owed to the expelled partner.

59. In the present case, however, there is a further factor at play. Clause 22.2 of the partnership agreement (already referenced) requires notice of expulsion to be given within two months of the other partner becoming aware of the circumstances giving rise to the right to serve such notice. When I raised this point with Mr Chapman, he submitted that clause 22.2 did not affect the position. This provision precludes reliance upon stale grounds for expulsion; but it says nothing about the ability of the expelling partner to add new grounds of which it was not previously aware once an expulsion notice has already taken effect. There is no requirement that the expelling partner should have become aware of the circumstances giving rise to the right to serve an expulsion notice during the two months prior to its service. Rather, the expelling partner is prevented from relying upon circumstances of which it became aware more than two months earlier. I accept this submission. The sub-clause reinforces my view that the expelling partner cannot seek to rely upon additional grounds for expulsion of which it was aware at the time of the giving of the notice; but in my judgement it has no wider implications.

60. In my judgement, it is important to distinguish between, on the one hand, reliance upon additional grounds for expulsion of which the expelling partner was aware at the time of the giving of the notice, but which it did not mention in the expulsion notice, and, on the other, the application of a different legal characterisation to facts that were relied upon in the expulsion notice, or placing reliance upon such facts as constituting an additional ground for expulsion. In the present case, the notice of expulsion cited the findings of fact detailed in the CQC letter cancelling CCS's registration as conduct likely to have a serious adverse effect on the Supporting Together North partnership and/or its business, on the footing that *"they are circumstances which could reasonably be expected to give rise to the loss of the Partnership's contract with Lancashire County Council"*. An alternative way of characterising such conduct would be in terms of conduct *"the direct or indirect effect of which allows a Client Body* – in this case, the Council – *to terminate its contract with the Partnership"*. I can discern no reason why, on the basis of the facts stated in their expulsion letter, HCS should not be entitled to rely on the client body clause (22.1 (x)) even though this provision was not expressly identified as a ground for expulsion in HCS's expulsion notice dated 29 April 2021.

61. In the present case, I consider that it is entirely open to HCS to rely, in support of its decision to expel CCS, upon the CQC's notice of proposal, and also the full terms of the Council's letter terminating the Mainframe Central contract, even though these were not known to HCS at the time of the expulsion letter. It is also open to HCS to rely upon information acquired after the service of the expulsion notice about the true, and limited, extent of the service improvements that CCS had made prior to the

service of that notice, including the service evaluation and improvement plan which Mr MacDonald commissioned from Delphi Care Solutions to which I shall refer when I come to review Mr MacDonald's witness evidence.

62. It is to that witness evidence that I now turn.

V: The witness evidence

63. Each of the parties called two witnesses. For the claimant, the court heard from Mr Alastair MacDonald, the managing director and sole shareholder of CCS, and from Mrs Hayley Walton, the regional manager of CCS. For the defendant, the court heard from Mr Ryan Godwin, and from Mrs Jodie Nolan, the business continuity and quality manager of HCS. Mr MacDonald gave evidence on the first day of the trial, and the other three witnesses gave evidence on the second day, with Mr Godwin's evidence extending over the luncheon adjournment.

64. The court did not hear from Mrs Godwin, due to her medical condition. Miss Anderson criticises the lack of any witness statement from her explaining what her opinion was and how it was formed, or why it was reasonable. However, Mrs Godwin did sign the expulsion notice, and can therefore be taken to have agreed with its terms. The court did not hear from any witnesses from the CQC, the Council, or any of the other consortia of which CCS and HCS were members. Neither counsel invited the court to draw any adverse inferences against the opposing party from the failure to call such evidence. I do not speculate about the evidence that any such witnesses might have given. However, the omission to call any of these witnesses does mean that I am left with no independent evidence about, for instance, the meeting (in two parts) with representatives of the Council on 20 April 2021, or about the Council's understanding and thinking at that time.

65. I will deal with the witnesses in the order in which they gave their evidence. In reaching my conclusions on the evidence, however, I have had regard to all the evidence in this case, written, oral and documentary.

(a) Mr MacDonald

66. Mr MacDonald gave evidence for about 3 ½ hours on day one of the trial. In his written skeleton argument, Mr Chapman made the valid point that Mr MacDonald's witness statement does not comply with CPR PD 57AC. In particular, it goes to matters which are not relevant to issues of fact which fall to be decided at trial, it seeks to argue CCS's case, and it includes commentary upon documents. However, sensibly Mr Chapman does not seek any sanction pursuant to paragraph 5 of CPR PD 57AC, beyond reserving his position in respect of costs. Instead, he simply invites the court to note that his cross-examination of Mr MacDonald would focus upon relevant matters; but the absence of any challenge to Mr MacDonald upon extraneous issues or commentary should not be taken as any agreement with Mr MacDonald's witness statement in that regard.

67. In cross-examination, Mr MacDonald accepted that (as stated at page 3 of the CCS Inspection Report) the overall rating of '*inadequate*' meant that as of 27 January 2021, CCS was in '*special measures*'. He was ashamed of the inspection report; but, re-iterating the evidence at paragraph 39 of his witness statement, Mr MacDonald had

made the decision not to challenge the findings in the report but to draw a line under it, put matters right, and move on. Although he did not agree with the inspection report, Mr MacDonald said that he had been in no position to dispute its findings because the relevant manager had moved on from the Preston location. Mr MacDonald accepted that there had been a need for improvement, and he had decided that the best course of action would be to put all of CCS's energies into getting the service back to what it had been. The focus of CCS's detailed written response to the issues set out in the notice of decision had been to focus upon the improvements that CCS had already made, and upon what CCS had been doing going forwards. Mr MacDonald accepted that times had been difficult due to the pandemic.

68. Mr MacDonald had commissioned Delphi Care Solutions (**Delphi**) to come in to evaluate the service being provided by CCS from its Preston location and to provide an improvement plan. The resulting written service evaluation and improvement plan are undated but the service evaluation was conducted on the 8 and 9 March 2021; and internal references both to a *'planned date'* of 14 March 2021 for all support workers to have undertaken person-centred care training, and also to interviews for a new registered manager for the Preston office being *'scheduled'* for the week commencing 15 March 2021 indicate that it must have been written between 9 and 14 March 2021. In closing, Miss Anderson said that CCS thought that it had been produced around 12 March 2021, which accords with that time-frame.

69. The cross-examination of Mr MacDonald revealed quite a gulf between his own assessment of the services being provided by CCS at the Preston location and the shortcomings revealed by Delphi's evaluation. Mr MacDonald accepted that Delphi's assessment was that insufficient progress had been achieved in terms of improvements since the CQC had inspected CCS in December 2020; but he was adamant that significant improvements had been made and that CCS was *"on a very good path"*. I am satisfied that Mr MacDonald was in denial of the extent of the continuing shortcomings in CCS's service provision at its Preston location. However, Delphi were reporting on matters as at 9 March 2021. Mr MacDonald's evidence was that significant progress was made during March going into April, that the improvements at the Preston location were well on their way towards completion by the time the CQC had issued its notice of decision on 19 April 2021, and that had the improvement programme been allowed to continue, Mr MacDonald would have been very happy with matters during June 2021. Mr MacDonald refused to acknowledge that the CQC had clearly not accepted that CCS had provided them with sufficient evidence of improvement, and that it was this that had led them to serve the notice of decision to cancel CCS's personal care registration for the Preston location on 19 April 2021.

70. On 12 March 2021, Jodie Nolan had held a telephone conversation with Tahera Chaudhrey, a contracts manager, with the Council which she later followed up with an email sent at 6.04 that afternoon. According to Mrs Nolan's manuscript notes of that conversation, she asked if the Mainframe Central contract was being removed from CCS and if HCS should be doing anything about the Crisis North contract. Ms Chaudhrey's response was that the Council had *"serious concerns being brought through different sections of our Intelligence"*. She said that HCS should do due diligence, and that the Council were doing their own due diligence. A later email confirmed that the Council were carrying out due diligence work regarding the Crisis

North contract; and asked, by Wednesday 17 March, for information about which CQC registered office staff were working from, for confirmation of the name of their employer, and for a copy of the contract for the staff who were delivering the services for Crisis North. When asked about these documents in cross-examination, Mr MacDonald said that it was at about this time that he had thought that the Council's attitude towards CCS had changed from one of *"encouragement"* to *"negative pressure"*. He said that it was a difficult time for resources; and that the Council, which had been working quite closely with the CQC, had obviously had concerns about that.

71. Mr MacDonald did not seek to assert that he had ever provided HCS with copies of the CQC inspection report, the QPIP (Quality Performance, Improvement and Planning Process) documentation, the letter from the Council terminating the Mainframe Central contract, or the CQC's notice of decision cancelling the registration of CCS's Preston office. Mr MacDonald had circulated this latter document to all the other consortia members under cover of an email dated 26 April at 10.23 am, commenting:

> Good morning everyone, please find attached the notice of decision. Although not what we hoped for it shows that it is confined to the one branch. I am obviously deeply saddened and apologise for this unique series of events that led to it.

Mr MacDonald said that it had been a complete oversight not to have included HCS amongst the addressees of this email. He observed that it would have been stupid to have sent the notice of decision to the other consortia members, and not to HCS. He added that it would, in any event, have come to HCS's attention very quickly as, indeed, it did, having been forwarded to Mr MacDonald by Jeanette Taylor (of Mellor) some ten hours later, at 10.32 pm. On this specific point, I accept Mr MacDonald's evidence; and I find that there was no deliberate attempt on his part to keep HCS in the dark about the notice of decision. However, I reject Mr MacDonald's repeated protestations that he had not tried to hide the full extent of the problems affecting CCS's Preston branch from HCS. Despite this, it is clear from one of the WhatsApp messages disclosed by Jodie Nolan, that Mr Godwin had seen the earlier CQC inspection report on the night of 28 January 2021. Although Mr Godwin says that he did not see the Council's letter terminating the Mainframe Central contract until the present dispute came to be litigated, he knew that that contract had been terminated. Paragraph 9.9 of the Defence pleads that HCS did not obtain a copy of the termination letter until March 2022, but that HCS was aware of its effect in terminating the Mainframe Central contract on or about 26 March 2021.

72. It was suggested to Mr MacDonald that any damage to the reputation of one of CCS's branch offices caused reputational damage to all the other offices because of their association. Mr MacDonald accepted that the offices were associated; but he asserted that the reputational damage in this case was very limited, and had caused no financial damage, because the problems were confined to only one branch office in Preston. Mr MacDonald did not accept that terminating the Supporting Together North partnership had been the only way of protecting the Crisis North contract, pointing out that the other two surviving care contracts with the Council (Mainframe East and Crisis East) had remained in place. Reiterating what he had said at paragraph 77 of his witness statement, Mr MacDonald insisted that other options had remained on the table.

73. I do not find Mr MacDonald to be a satisfactory or a reliable witness. I find that he was in denial about the extent of the problems that the CQC had identified with CCS's Preston branch, and about the extent, and the slow pace, of the necessary improvements. During February, he had clearly been playing the Council off against other members of the various consortia, saying different things to each of them, and over-promising about the extent to which Hayley Walton would be contributing to the Mainframe Central contract and the consortia's other contracts with the Council. I find that Jodie Nolan provided an accurate summary of Mr MacDonald's performance at about this time in an email response that she sent to Mr Godwin at 17.49 on 11 February 2021:

> This is what I mean he has no idea what he's doing. He just blunders through and hopes for the best! What he's said to the council reflects what Hayley told me in a message but like you say it's not what he had just discussed with you guys at a meeting today! Xxx

I am satisfied that I should not accept Mr MacDonald's evidence where this is challenged, save to the extent that it is supported by other reliable evidence.

(b) Mrs Walton

74. Mrs Hayley Walton gave evidence for less than an hour. I find her to be an honest, reliable, and straightforward witness, whose evidence I can safely accept. She is also an extremely capable care manager. In cross-examination Mr MacDonald described Hayley Walton as *"a well-respected operator in the care market"* who provided vital support for Mr MacDonald. Mrs Walton considered herself to be more experienced in the care sector than Mr MacDonald. There was really little, if any, serious challenge to her witness statement, with the exception of paragraph 40; and even there Mr Chapman failed to make any appreciable inroad into Mrs Walton's evidence. This was that she did not see how the difficulties at CCS's Preston location could have caused any reputational damage to other members of the various consortia, including HCS.

75. Mrs Walton described the CQC inspection report as *"damning"*, and thought that it was a fair judgement. She appreciated that to turn the Preston branch around would be a huge job, involving a big cultural change. She said that the CQC inspector had been very difficult to deal with; and she commented that Mr McDonald's relationship had become quite hostile towards him. Mrs Walton considered that by early March 2021, the Preston location had improved massively, although it was still not where it should be. Mrs Walton considered that had the CQC re-inspected then, they would have seen that improvements had been made, and that the branch was coming up to an appropriate standard. In re-examination, Mrs Walton expressed the view that by March, she had thought that the necessary improvements would have been completed satisfactorily by June 2021. Mrs Walton expressed her concern that if she was not around, Mr McDonald would not have been able to cope.

76. Mrs Walton told the court that at the second part of the meeting with HCS and the Council on 20 April, she had not got the impression that anything needed to change. The Council had expressed no view as to its preferred option, but had left that to the parties to decide. The change from Preston to the Rossendale office had seemed to be a valid option for the Council. Mrs Walton had got the impression that the Council

had wanted the parties to sort matters out for themselves first and then the Council would take a view on the outcome. She described the meeting as easy and not stressful. She had felt that the Council would be satisfied if the location for delivering the Crisis North services were to change from Preston to Rossendale. The Council never gave any indication that it would not be happy with that option. I recognise that Mrs Walton was not present during the first part of this meeting, which took place only between representatives of the Council and HCS. Nevertheless, nothing in either the minutes of that part of the meeting, or Ms Chaudhrey's later email of 23 April, would seem to me to cast any doubt upon Mrs Walton's sense of the Council's attitude.

77. In re-examination, Mrs Walton said that she had not been left with any impression that the Council had required HCS to expel CCS from the Supporting Together North partnership. She also explained that the WhatsApp messages that she had exchanged with Jodie Nolan had been personal to them, and had never been intended to enter the public domain. As a result of Mrs Nolan's disclosure of those messages, Mrs Walton's friendship with her had not continued.

(c) Mr Godwin

78. Although Mr MacDonald had been an unsatisfactory witness, Mr Godwin was even more so. He was poorly prepared, with little recollection of his witness statement, requiring a ten-minute break during his cross-examination to re-read it, and often needing to refer to it. Mr Godwin had difficulty in understanding and answering questions that Miss Anderson put to him (although on one occasion this was due to Miss Anderson having confused the Council's letter terminating the Mainframe Central contract with the CQC's decision letter cancelling the registration of CCS's Preston location).

79. Early on in his cross-examination, Mr Godwin revealed that he had made notes of meetings which he had not previously disclosed in the course of this litigation. Mr Godwin then disclosed that he had brought his 2021 diary along to court with him. Miss Anderson submits – and I accept – that the fact that he had done so demonstrates that Mr Godwin had appreciated its potential relevance. The explanation that Mr Godwin gave was that he had been trying to double-check some information in his witness statement. I reject Miss Anderson's invitation to find that Mr Godwin had deliberately suppressed his diary notes because it was he who voluntarily disclosed them to the court; but the fact that he did so for the first time under cross-examination in the witness box reveals, at best, an ill-disciplined approach to this litigation in general, and the preparation of his witness statement in particular. I note that there is no reference to this diary in either of the two lists of documents (RG1 and RG2) to which reference was made when Mr Godwin made his witness statement. These extend to some 11 pages of disclosed documents.

80. Miss Anderson examined the diary entries over the luncheon adjournment; and, when the court resumed, she indicated that she had found 13 relevant entries. She declined to cross-examine upon them, explaining (in her oral closing) that both CCS, and the court, had been denied the opportunity of considering them in their proper context. In light of that, I declined to inspect the diary entries for myself. Mr Chapman did not seek to put the diary in as evidence, understandably so since he had already concluded his cross-examination of CCS's witnesses. I am therefore left without any evidence in

the form of Mr Godwin's contemporaneous diary notes. I do not speculate as to what they might have revealed; but certainly they can provide no support for HCS's case. Even if the diary entries cut both ways, that does not undermine the significance of HCS's underlying failure of disclosure, a failure which is all the more surprising given the plethora of WhatsApp messages passing between Mrs Nolan and Mrs Walton – many of a highly personal nature – that HCS had in fact disclosed, and which were included – in unredacted form – in the hearing bundles..

81. Both Mr Godwin (at paragraphs 52-53) and Jodie Nolan (at paragraph 76 of their respective witness statements) relate a telephone conversation between Mr Godwin and Tahera Chaudhrey (overheard by Jodie) during the course of which Tahera is reported to have said that Mr MacDonald *"was only fit to run a scrap yard or second hand car dealership but a care business requires skills he does not possess"* (Mr Godwin); or "*was not being open and honest with his business partners and would be better suited to a car sales business or something similar as he does not understand care"* (Mrs Nolan). I find it difficult to accept that Ms Chaudhrey should have said words to this effect because: (1) Mr Godwin described Ms Chaudhrey as *"straightforward and professional"*; (2) Mrs Nolan could not put a date on this conversation, and she had made no note of it (unlike the handwritten note she had made of her 12 March 2021 conversation with Ms Chaudhrey; (3) Mrs Nolan accepted that what Ms Chaudhrey is reported to have said was *"surprising"* and *"exceptional"*; and (4) Mrs Nolan accepted that she had not shared the details of this call with Hayley Walton which, in view of the degree of frankness and honesty revealed by their disclosed WhatsApp messages, I find surprising. Had it been strictly necessary for me to make any express finding about this alleged conversation, I would have declined to find that it had been proved on the balance of probabilities; but since this matter does not go to any live issue between the parties, or raise any issue of credibility as between their respective witnesses, I make no express finding about it.

82. Mr Godwin was asked about the reasons why his wife had agreed to join in signing the notice expelling CCS from the Supporting Together North partnership. His response was that he had discussed the information in his witness statement with her, and Mrs Godwin had relied on the information he had been giving her. Mr Godwin said that he had specifically mentioned a lack of trust and confidence in CCS on his part. I note that this is not specifically mentioned in the notice of expulsion. However, it is amply documented in the witness statements of Mr Godwin and Mrs Nolan.

83. Mr Godwin accepted that he had only seen the Delphi service evaluation and improvement plan during the course of disclosure and so HCS had taken no account of this when deciding to expel CCS from Supporting Together North.

84. Mr Godwin was taken to the Council's typed notes of the remote meeting by Teams that had taken place on the afternoon of 20 April, which was first attended (at 1.00 pm) by representatives of HCS and the Council, who were later (at 2.00 pm) joined by representatives of CCS. In particular he was referred to the bullet point minuted during the first part of the meeting that:

> Tahera confirms that section 3.5B in the contract states the contract can be terminated due to CQC failure but will not be enacted. Instead an improvement plan as detailed in contract section 8.5 is requested.

It was put to Mr Godwin that he could not possibly have been in any doubt that the Council's position was that the Crisis North contract was not at risk. He accepted that that was what the note said; but he said that this was subject to the proviso that HCS expelled CCS from Supporting Together North. Miss Anderson suggested that the only people who had been talking up the matter of reputational damage had been Mr Godwin and Mrs Nolan, to which Mr Godwin responded by suggesting that to some extent the minutes did not reflect everything that had been said. The Council's due diligence coincided with HCS's own; and the conclusion was that neither could continue to work with Mr MacDonald.

85. Earlier in his evidence, Mr Godwin had said:

> The whole tenor of the problem was that Mr MacDonald wouldn't agree to anything. He was intractable.

Miss Anderson suggested to Mr Godwin that he had seen the valuable opportunity of expelling CCS from the Supporting Together North partnership. It was all about HCS's *"financial greed"*. Without in any way assenting to this suggestion, Mr Godwin did not really respond to this point. Miss Anderson pointed out that Supporting Together North's profit and loss account for the year ended 29 April 2021 had recorded a net profit of £452,552, divisible as to £226,276 to each of HCS and CCS. Mr Godwin's comment was that there would not have been any surviving contract with the Council if HCS had kept CCS in the partnership. Mr Godwin accepted that he had not considered any other options to expulsion; but he said that that was what had come from the Council.

(d) Mrs Nolan

86. I find Mrs Nolan to be a competent business manager. She gave evidence for about an hour, and much of her evidence was subject to little real challenge.

87. Mrs Nolan explained that as of the end of January 2021, HCS had thought that Mr MacDonald had been going to remedy the failings revealed by the CQC inspection report and pull matters round. At that time, HCS had not believed that the report would have any detrimental effect upon any of the care contracts with the Council. However, Mrs Nolan considered that the Council would not have terminated the Mainframe Central contract if it had been satisfied about the improvements being made by CCS. HCS had not seen the relevant termination letter at the time, but they had known of its effect. Mrs Nolan accepted that she did not know whether the Council had been right or wrong to terminate the Mainframe Central contract.

88. I have no doubt that Mrs Nolan was seeking to do her best to assist the court; but I have already expressed my reservations about her account of Ms Chaudhrey's comments to Mr Godwin concerning Mr MacDonald during the telephone conversation which Mrs Nolan overheard. I have even greater concerns about Mrs Nolan's account of the meeting with representatives of the Council on 20 April 2021, and her understanding of Ms Chaudhrey's subsequent email of 23 April. Mrs Nolan addresses this at paragraphs 111 to 117 of her witness statement, where she refers to indications from the Council that it would not have allowed any change in the nominated office for the Crisis North contract. In cross-examination, Mrs Nolan reiterated, consistently with Mr Godwin's evidence, that the Council's confirmation

that they would not terminate the Crisis North contract was given against the background of an indication from HCS that they were proposing to expel CCS from the partnership, and was only given because of that. I cannot reconcile that account with the recording (in the minutes of the second part of the meeting) that Ms Chaudhrey *"advises that she will liaise with Legal regarding the possibility for a contract variation to change the nominated office from CCS Preston to CCS Limited (Rosendale)"*. Nor is Mrs Nolan's evidence consistent with Ms Chaudhrey's subsequent email, which refers to two options, the second being a change in the CQC office for CCS from Preston to Rossendale. That assumes, as one option going forward, CCS's continuing involvement in the contract. The email also confirms that the Council's due diligence is still continuing. I am satisfied that Mrs Nolan, like Mr Godwin, has put her own preferred gloss upon what was said by the Council, both at the meeting, and in the email. I cannot accept their evidence on this matter.

(e) Findings

89. I find that at the time of the purported expulsion of CCS, the Council was not actively considering terminating the Supporting Together North contract. That is the clear inference both from the minutes of the 20 April meeting (in both its parts), and from Ms Chaudhrey's email of 23 April 2021, which I find should both be taken at face value. I reject Mr Godwin's suggestion that the minutes did not reflect everything that had been said. The Council had every reason to create an accurate record of what had been said at both parts of the meeting. It would have been extremely foolish for the Council to have minuted (as it did) that it would not be terminating the Crisis North contract due to CQC failure, but would be requesting an improvement plan instead, if that was not presently its true intention.

90. Consistently with Mrs Walton's evidence (which I accept), I find that the Council was content to leave it to HCS and CCS to decide how they wished to proceed on the two options of either: (1) dissolving their partnership, with HCS taking over the Crisis North contract, or (2) effecting a change in the CQC registered office for CCS from Preston to Rossendale. In the meantime, the Council had made it clear that it continued to conduct due diligence, and should it be minded at any time to make any comments on the two options or propose a further option, the Council would let both HCS and CCS know. There was agreement to a further meeting in the early afternoon of 5 May 2021.

91. I do not find that the contemporaneous documentary evidence supports HCS's evidence and case that the Council's confirmation that it would not terminate the Crisis North contract was given against the background of any indication from HCS that they were proposing to expel CCS from the partnership, or that it was only given because of that. The closest that the minutes come to supporting that analysis is the recording (towards the end of the first part of the meeting) that: *"Both Tahera and Andy Butterworth indicate if the proposed action to take over the payroll functions from CCS. Then CCS involvement would be nil, and the partnership would be dissolved."* However, in the context of the minutes, and the later email, when taken as a whole, I find this statement to be equivocal; and there is no evidence from the Council to explain what it was intended to convey. The later passages, headed *'Summery'* [sic] and *'Actions'*, relate to the perceptions, views and actions of HCS, rather than the Council. I find that, absent any material change of circumstance (of which there was none), there was no realistic prospect of the Council taking any

action to terminate the Crisis North contract before the meeting that had been agreed on 5 May 2021. Nor is there any evidence that the Council ever threatened to terminate the Crisis North contract unless HCS either dissolved the Supporting Together North contract or expelled CCS from the partnership.

92. I also find that Mr Godwin determined to expel CCS from the Supporting Together North Partnership not because of any perceived reputational damage caused by the CQC's decision to cancel the registration of CCS's Preston location, and their reasons for this, nor because of any perceived imminent threat by the Council to determine the Crisis North contract. As to the former, HCS did not seek to expel CCS from the partnership in response to the original inspection report and the consequent rating of CCS as *'inadequate'*. This was despite a damning online article naming CCS that appeared in the Lancs Live newsletter on 29 January 2021 under the headline: *Preston carers left client in 'soiled' sheets and out others in bed early 'against their wishes'*. As to the latter, I have found that there was no such imminent threat. Rather, I find that Mr Godwin determined to expel CCS from the partnership because: (1) he had lost all trust and confidence in Mr MacDonald and was no longer willing to continue working with him or with CCS, and (2) he could see no continuing role for Mr MacDonald or CCS to perform in delivering any part of the Crisis North contract and, therefore, no reason to continue the existing equal profit-sharing arrangement with CCS. This was not put to Mr Godwin in precisely those terms during cross-examination; but it was clearly comprehended within Miss Anderson's over-arching suggestion, which she did put to him, that this was all about Mr Godwin's *"financial greed"*.

93. I find that the documentation and evidence before the court establishes both that: (1) there were clear failures on the part of CCS to comply with the legislation, regulations, professional standards, and other provisions governing the conduct of CCS's care business from the Preston location such that it deserved a rating of *'inadequate'*, and (2) CCS had not improved sufficiently by the end of April 2021 to satisfy the CQC that it was no longer inadequate. The general tenor and effect of Mr MacDonald's evidence was that there had been a continuing need for improvement; and this was confirmed by what he said and did at the time. However, the best evidence of CCS's systemic failings, and the continuing need for improvement, came from Mrs Walton, whose evidence on this point is summarised at paragraph 75 above. In summary, it was Mrs Walton's assessment (which I accept) that as of March 2021, the necessary improvements were likely to have been completed satisfactorily by June 2021.

VI: Submissions

94. In this case, CCS is the claimant, and it therefore bears the ultimate burden of proving its entitlement to the declaratory and other relief which it seeks. However, since it is HCS who assert that they had valid grounds for expelling CCS from the Supporting Together North Partnership, it makes sense to consider Mr Chapman's submissions in support of HCS's position before turning to Miss Anderson's counter-submissions. That also reflects the order in which the closing submissions were presented.

(a) Mr Chapman for HCS

95. Mr Chapman began his closing submissions by conceding that he no longer relies upon the special measures clause as a valid ground for expulsion. He was right to make this concession for two reasons.

96. First, because of the overall rating of *'inadequate'*, CCS had entered into special measures when the CQC first published their inspection report on 27 January. It is clear from one of the WhatsApp messages exchanged between Mrs Walton and Mrs Nolan on 29 January (at 15.01) that Mr Godwin had seen this report the previous night. Clause 22.2 of the partnership agreement requires notice of expulsion to be given within two months of the expelling partner becoming aware of the circumstances giving rise to the right to serve such notice. Thus, any notice of expulsion founded upon the special measures clause required to be given before 28 January; and the notice served on 29 April 2021 was therefore about one month too late for any reliance to be placed upon the special measures clause.

97. Secondly, the special measures clause was not expressly relied upon as a ground of expulsion in the expulsion notice. I have already held that if an expulsion notice particularises the grounds for expulsion, then the expelling partner cannot seek to rely upon any additional grounds for expulsion of which it was aware at the time of the giving of the notice. Here, HCS knew that CCS was in special measures, but it failed to rely upon this as a ground for expulsion. It is not now open for HCS to seek to do so.

98. All of this is clear from a handwritten note of the solicitors' advice, dated 18 March 2021, that was given to the partners in the various consortia (including Mr Godwin). This reveals that they were made aware of the need to give notice within two months of becoming aware of the relevant circumstances if they wanted to expel CCS. This was said to have occurred on 27 January 2021, when the CQC report became public. The members of the consortia were advised that they would need to move fast, by serving the requisite notice before 27 March 2021. In the event, HCS did not serve its notice of expulsion in relation to the Supporting Together North partnership until 29 April 2021. This was too late; and means that, as Mr Chapman acknowledges, the special measures clause is no longer in play.

99. Mr Chapman began his written submissions with an overview of HCS's position:

(1) It was reasonable for HCS to reach the opinion that CCS was guilty of conduct that was likely to have a serious adverse effect on the Supporting Together North partnership or its business when taking into account (in particular) the CQC report and the risk of the Council terminating the Crisis North contract.

(2) The other grounds are each freestanding reasons for termination, although there is a considerable overlap in respect of the facts relevant to each.

(3) The consent order which compromised CCS's appeal from the CQC's notice of decision without imposing any penalty has no impact upon the validity of the expulsion. In particular, the relevant facts are those as at the date of the expulsion; and, in any event, the notice of decision was not a necessary part of the expulsion. Further, the appeal related only to the notice of decision, and not to the CQC inspection report or the rating of "*inadequate"* or the consequential imposition of special measures.

(4) HCS acted in good faith and in accordance with its contractual entitlements.

100. Mr Chapman submits that the evidence before the court supports the findings in the CQC report:

(1) The best evidence available before the court as to what the CQC found during their inspection of the Preston location is the CQC report itself. This represents the CQC's view, at the time of the report, that CCS's care service was inadequate.

(2) CCS did not challenge the findings in the CQC report (albeit that Mr MacDonald explains that this was because he thought that his time would be better spent in improving care services at the Preston location).

(3) Mr MacDonald impliedly accepts that some of the findings were correct as he states (at paragraph 39 of his witness statement) that he *"… did not agree with all of the CQC's allegations contained in the CQC's draft inspection report of the Preston location in December 2020 …"*.

(4) Mr MacDonald has not set out in his witness statement what he says was wrong with the CQC Report, or why.

(5) CCS's notice of appeal against the notice of decision does not set out any detailed response to the findings in the CQC report (as distinct from the position since that report) other than in very limited respects. Indeed, the tenor of many of the responses to the issues raised in the notice of decision (some of which related to matters which had arisen during the inspection which had led to the CQC report) is that the CQC had failed to re-inspect the Preston location to consider any improvements, or to consider the position at the time of deciding to issue either the notice of proposal or the notice of decision.

101. Mr Chapman also submits that the evidence before the court establishes a failure by CCS to improve sufficiently to satisfy the CQC that it was no longer inadequate:

(1) The notice of proposal establishes that it was the CQC's view on 15 February 2021 that CCS had failed to improve sufficiently.

(2) This was confirmed by the CQC in their notice of decision on 19 April 2021.

(3) The CQC stated as follows in their response to the notice of appeal (at paragraphs 30 to 34):

> 30. The Inspection took place in December 2020, and the Respondent acknowledges the timescales for provision of the Notice of Proposal and Notice of Decision. It is however, refuted that the Respondent relied upon historical evidence, nor failed to take into account contemporary information upon the Location.
>
> 31. The Respondent did consider the position of the service provider by the Appellant at the time both the Notice of Proposal and Notice of Decision was served. A further internal Management Review Meeting took place, to consider whether progress with such enforcement action remained necessary and proportionate. Alongside the position of

> insufficient evidence provided by the Appellant to substantiate progress made in respect of the numerous areas of concerns and multiple Regulation breaches, the Respondent was aware of ongoing concerns by the relevant local authority which were such that resulted in the Appellant's commissioning contract being terminated.
>
> 32. The Appellant was placed in special measures and failed to provide sufficient evidence to substantiate improvements made. Evidence provided by another location, under an entirely separate registration as set out above cannot be accepted as being demonstrative of improvements at another location. No evidence was received by the Respondent in respect of improvements made at the relevant Location, of sufficient quality to substantiate any improvements had been made or could be sustained.
>
> 33. In particular, the concerns of the relevant local authority in relation to the level of service provision by the Appellant was such, that they terminated their agreement with the Appellant on 15 March 2021 and removed service users at the Location. Intelligence received by the Respondent was such which substantiated the concerns identified at the inspection were ongoing and had not been rectified by the Appellant.
>
> 34. Due to the removal of service users, the Appellant's service provision is dormant and had been since 11 April 2021. It was not and continues to remain the position that the Respondent is unable to undertake a re-inspection of a dormant service, where no provision of Regulated Activities is taking place. It would not be possible for the Respondent to correlate any evidence to the actual provision of care.

(4) Mrs Hayley Walton expressed concern in her WhatsApp messages with Mrs Jodie Nolan as to Mr MacDonald's inability to improve.

102. Mr Chapman submits that HCS had a reasonable concern that the partnership was at risk of losing the Crisis North contract if CCS remained as a partner in the Supporting Together North partnership. This is for the following reasons:

(1) The Council terminated CCS's service contract under the Mainframe Central Contract on 15 March 2021, with effect from 11 April 2021. Mr Chapman relies upon the grounds for asserting that CCS had breached the relevant agreement and had shown itself to be incapable of remedying its poor performance, as set out in the termination letter.

(2) The evidence of Mrs Nolan and Mr Godwin is that HCS did not have a copy of the Council's termination letter at the time of the expulsion, but they were aware that such termination had taken place. Although this was a different Council contract, Mr Chapman submits that it was reasonable for HCS to be concerned that CCS's involvement in the Supporting Together North partnership would jeopardise the Crisis North contract.

(3) Mrs Nolan and Mr Godwin were of the view that the Council had not appreciated that the Preston Location was CCS's registered location for the purposes of the Crisis

North contract and that, had they done so, it is likely that that contract would also have been terminated on 15 March 2021.

(4) The Council was conducting due diligence in respect of the Crisis North contract and recommended that HCS should do the same.

(5) The evidence of Mrs Nolan and Mr Godwin is that at the meeting on 20 April 2021, the Council advised them that it could terminate the Crisis North contract, but that given that CCS was to be expelled, the Council would not do so. HCS took this to mean that the Council would have removed that contract from the partnership if HCS did not expel CCS. It is said that the minutes of the first half of the meeting on 20 April 2021 (before CCS joined the meeting) anticipate CCS having no involvement in the future, and the Supporting Together North partnership being dissolved.

(6) The second half of the meeting did not refer to the expulsion of CCS, but nor did it provide CCS (or HCS) with any assurance that the Crisis North contract would continue; indeed, Ms Chaudhrey, on behalf of the Council, clarified *"that if a provider is deemed inadequate by CQC then LCC can terminate"*.

(7) Similarly, Ms Chaudhrey's email to CCS and HCS dated 23 April 2021 set out the two options of dissolution or a change in CCS's office from the Preston location to Rossendale. However, Mr Chapman submits that these were being presented as options for HCS and CCS to consider, rather than suggesting that both were equally satisfactory to the Council. Indeed, Ms Chaudhrey notes in her email that: *"It is for HCS and CCS to take its own legal advice and decide how it wishes to proceed on the two options set out above. Having said this, LCC continues to conduct due diligence and should it be minded at any time to make comments on the two options and/or propose a further option, I will let you know."*

(8) HCS were concerned that CCS had misled the Council (referencing paragraphs 69 and 70 of Mrs Nolan's witness statement).

103. Mr Chapman submits that CCS had failed to provide information, or alternatively provided misleading information, to HCS. This is for the following reasons:

(1) CCS had not provided HCS with the CQC report following an inspection of its Chorley branch published in January 2020.

(2) Mr Godwin was concerned that Mr MacDonald had been telling different things to himself and to the Council about the extent to which Mrs Walton was going to be working upon improvements at the Preston location.

(3) Mr MacDonald refused to share the notice of proposal with HCS.

(4) CCS did not show the Council's termination letter to HCS.

(5) Mr MacDonald did not provide HCS with the notice of decision, although Mr Godwin obtained it through one of the other partners in another consortium (Jeanette Taylor of Mellor).

Mr Chapman submits that these breaches were irremediable because the documents had been required at the time.

104. Mr Chapman submits that HCS acted in good faith and in the interests of the Supporting Together North business, and not in some cynical attempt to expropriate the profits of the partnership for itself:

(1) HCS had tried to offer help to CCS.

(2) Mrs Nolan had helped by providing various policies to assist with improvements.

(3) Mrs Nolan sets out HCS's considerations in expelling CCS from the Supporting Together North partnership at paragraphs 100 to 109 of her witness statement. These include CCS's damage to trust and confidence, the risk of termination of the Crisis North contract, joint and several liability for CCS's actions, business continuity plans, reputational damage, and the withholding of the notice of proposal.

(4) It is noteworthy that HCS did not take any steps to expel CCS from the partnership immediately after the CQC published their inspection report and CCS entered into special measures.

105. Mr Chapman submits that HCS were entitled to expel CCS pursuant to the serious adverse effect clause (22.1 (w)) for the following reasons:

(1) The failings leading to the CQC inspection report; the failure to improve; the failure to be open with HCS; and, crucially, the creation and perpetuation of the risk of losing the Crisis North contract.

(2) CCS was responsible for (and so, in the required sense *"guilty of"*) this conduct.

(3) This conduct was not in accordance with the Supporting Together North partnership agreement. In particular, it was not in accordance with clause 12 (a) *("Each Partner shall at all times … (a) use its best skills and endeavours to promote and carry on the Business for the benefit of the Partnership, and conduct itself in a proper and responsible manner"*) or clause 12 (d) *("Each Partner shall at all times … show the utmost good faith to the other Partners in all transactions relating to the Partnership and give them a true account of, and full information about, all things affecting the Partnership"*) of the partnership agreement.

(4) HCS's opinion that CCS's conduct was likely to have a serious adverse effect on the Supporting Together North partnership or its business was a reasonable one. In particular: (a) There was a risk that the Crisis North contract (which was the partnership's sole source of work) would be terminated if HCS did not expel CCS. (b) The CQC were of the view that CCS's services were inadequate, as set out in the CQC inspection report. (c) The CQC were of the view that CCS had failed to improve sufficiently, as set out in the notice of proposal (of which HCS was aware, even though it had not seen its contents), and the notice of decision. (d) HCS had a legitimate concern about the reputational damage to the Supporting Together North partnership and its business. (e) HCS was concerned about the risk of joint and several liability in respect of CCS's conduct as its sub-contractor.

106. Mr Chapman says that it is artificial to separate out the Preston location from the Supporting Together North partnership. First, the Preston location was CCS's only registered location, the other locations being registered to Mr MacDonald personally.

Secondly, the CQC inspection report, and all associated matters, reflect directly on CCS, which in turn reflects directly on the partnership. Indeed, CCS sought to link the various branches (including the partnership) to the Preston location for the purposes of the appeal against the notice of decision. In his oral closing, Mr Chapman reiterated that the Preston office was the sole location registered with the CQC in CCS's own name. What happened at Preston therefore had a clear connection to, and was the concern of, the Supporting Together North partnership, and had a clear impact upon CCS's continuing participation in that partnership.

107. Mr Chapman relies upon the breaches of clauses 12 (a) and (d) of the Supporting Together North partnership agreement as grounds for expulsion under the material breach clause (22.1 (c)). He submits that these were irremediable breaches as they had already taken place by the time of the expulsion. Further, the documents that were not provided had been required before the notice of expulsion was given.

108. Mr Chapman submits that HCS can rely upon the client body clause (22.1 (x)) as a valid ground for expulsion even though it was not referred to expressly in the expulsion notice. He further submits that CCS's conduct as detailed in the CQC inspection report, and its rating of *'inadequate'*, constituted breaches of clause 8.5, and paragraphs 3.2 (a) and 5.1 of Schedule 1, of and to the Council contract which allowed the Council to terminate that contract if it wished to do so (as Ms Chaudhrey is minuted as acknowledging during the second part of the 20 April 2021 Teams meeting). The matters set out in the Council's letter dated 15 March 2021, which terminated the Mainframe Central contract, were equally applicable to the Crisis North contract. Mr Chapman makes it clear that he does not rely upon the cancellation of CCS's registration with the CQC as a valid ground for termination because he recognises that that registration was only suspended by virtue of the appeal.

109. Mr Chapman submits that the consent order has no effect upon the expulsion for the following reasons:

(1) HCS does not rely upon the cancellation of CCS's registration with the CQC as a ground for expulsion.

(2) The Consent Order does not purport to reverse the CQC report or the rating of *'inadequate'*.

(3) CCS agreed to remove the Preston location from its registration. The consent order did not itself provide for the addition of any other locations; instead, it enabled CCS to keep its registration and to apply for the addition of Rossendale and Nelson.

(4) The expulsion must be considered as at the time of the expulsion notice.

110. Mr Chapman notes the suggestion by CCS that HCS should have considered alternatives to expulsion. However, he submits that this provides no proper basis for challenging the expulsion for the following reasons:

(1) CCS has not pleaded the alternative to expulsion which it says should have been considered, or the contractual basis for doing so.

(2) The partnership agreement does not include any requirement to consider alternatives to expulsion.

(3) The requirement of reasonableness in clause 22.1 (w) of the partnership agreement relates to the reasonableness of HCS's opinion as to CCS being guilty of conduct likely to have a serious adverse effect on the partnership or its business, rather than the reasonableness of the outcome or the reasonableness of the decision to expel.

(4) In any event, the other grounds for expulsion do not include any reasonableness requirement at all.

(5) HCS's position is that there was no alternative to expulsion as they were concerned that the Council would terminate the Crisis North contract if CCS remained a partner in the Supporting Together North partnership. So long as HCS remained in partnership with CCS, the risk of the loss of that contract remained.

111. For all these reasons, Mr Chapman submits that CCS has been validly expelled from the Supporting Together North partnership and so is not entitled to the relief it seeks.

(b) Miss Anderson for CCS

112. Miss Anderson submits that the allegations that CCS breached the Supporting Together North partnership agreement all fail at the outset. First, as regards the obligation (in clause 12 (c)) to comply with all legislation, regulations, professional standards, and other provisions governing the conduct of the Crisis North business, Miss Anderson submits that: (1) HCS have adduced no evidence from anyone who is able to speak to the truth or otherwise of the allegations in the CQC inspection report. (2) There have been no prior findings of fact in relation to the allegations in that report, and Mr and Mrs Godwin do not suggest there are any upon which they can rely. (3) Any effect of the CQC decision was suspended until the conclusion of the proceedings in the FTT. (4) The decision of the CQC to cancel the registration of CCS was successfully challenged on appeal to the FTT. (5) There is simply no evidential basis on which HCS can invite the court to find that the allegations in the CQC inspection report are true.

113. Even if CCS never challenged the findings in the inspection report, that makes no difference because their only status was as allegations. The fact that CCS may have chosen (for valid reasons) not to challenge the CQC in relation to the inspection report does not mean that HCS are entitled to rely upon them. HCS were not a party to the procedure which gave rise to the CQC report, and no form of issue estoppel can conceivably arise in their favour against CCS. In any event, it is clear from Mrs Walton's evidence that improvements were already well under way at the Preston location by the date the notice of expulsion was given.

114. Miss Anderson submits that similar reasoning applies to the allegation that CCS was in breach of clause 12 (a) of the partnership agreement because it had failed to conduct itself in a proper and responsible manner.

115. In her oral closing, Miss Anderson emphasises that the material which HCS discovered only after giving the notice of expulsion – the CQC's notice of proposal, the Delphi service evaluation and improvement plan, and the Council's letter

terminating the Mainframe Central contract – only expressed the snapshot opinions of their respective authors at a particular moment in time, and have no real evidential value.

116. As for the alleged breach of the obligation in clause 12 (d) to show the utmost good faith to HCS and to give it a true account of, and full information about, all things affecting the Supporting Together North partnership, Miss Anderson submits that there is no evidence that HCS ever asked for copies of the CQC's notice of proposal, or for the Council's letter terminating the Mainframe Central contract, or for any improvement plan or details of the quality performance improvement and planning process. Nor was there any obligation upon CCS to provide any such documentation or information as an incident of the Supporting Together North partnership when these related not to that partnership but only to CCS's Preston office and the Mainframe Central contract. In her oral closing, Miss Anderson emphasises that each consortium was separate, despite the overlap between the individual members, and that each set of partners owed duties of confidentiality regarding its affairs. She also draws attention to potential data protection issues in disclosing matters pertaining to one consortium to the members of other consortia.

117. Miss Anderson emphasises that the material breach clause (22.1 (c)) requires any breach to be material before it can constitute a valid ground for expulsion. She submits that materiality carries with it a requirement of proportionality, and that not all breaches of the partnership agreement will justify expulsion. HCS have nowhere explained why, or how, the alleged breaches were material for this purpose. The CQC only identified problems with the Preston branch office, and never sought to cancel Mr MacDonald's personal registrations for any of the other CCS offices. These problems were due to an unsatisfactory branch manager who was no longer employed by CCS. The Council only terminated the Mainframe Central contract and not the Mainframe East, Crisis East, or Crisis North contracts.

118. In any event, Miss Anderson submits that all of the alleged breaches were remediable. HCS did not serve any notice requiring them to be remedied under the material breach clause (22.1 (c)) and so it is not open to HCS to rely upon them as a valid ground for expulsion. Further the alleged breaches of the legislation, regulations, professional standards, and other provisions governing the conduct of the Crisis North business were challenged via the appeals process, and that appeal was successful.

119. As regards the serious adverse effect clause (22.1 (w)), Miss Anderson disputes that either CCS or Mr MacDonald were guilty of any conduct which was likely to have a serious adverse effect on the Supporting Together North partnership or its business. Had the Council entertained any real intention of terminating the Crisis North contract because of the involvement of CCS's Preston location, it would have done so at the same time as it terminated the Mainframe Central contract. Had that contract been irremediably tainted by the former involvement of CCS, then the Council would not have transferred the contract over to Mellor, with the staff being transferred over via TUPE. Mrs Walton's evidence was that no-one left the remote meeting on 20 April 2021 expecting the Council either to terminate the Crisis North contract, or to require HCS to expel CCS from the Supporting Together North partnership. Rather, the Council was content for CCS to move the registered office to its Rossendale location.

120. Miss Anderson accepts that each of the two partners in HCS had the necessary authority to serve an expulsion notice on CCS; but clause 22.1 (w) requires both Mr and Mrs Godwin to have formed the reasonable opinion that CCS was guilty of conduct which is likely to have a serious adverse effect on the Supporting Together North partnership. Miss Anderson points out that there is no witness evidence from Mrs Godwin, and that Mr Godwin's witness statement does not address in any detail what he told his wife that led her to join with him in signing the expulsion notice. Miss Anderson submits that HCS have adduced no real evidence to establish what their opinion was in relation to the effect of CCS's conduct on the partnership, or that it was a reasonable opinion. Mr Godwin's evidence was *"all over the place"*, and there is no evidence that Mrs Godwin held any relevant opinion at all, still less that it was reasonable.

121. Miss Anderson points out that the notice of expulsion expressly relies upon the cancellation of CCS's registration with the CQC as a separate ground for expulsion and that (as Mr Chapman acknowledges) this was misconceived. She submits that any decision which placed any reliance upon clause 22.1 (s) (cancellation or suspension of CCS's registration) must be flawed and cannot be said to have been arrived at reasonably. She submits that since the CQC inspection report only contained allegations, and not findings of fact, and, in any event, did not *'bite'* until after the appeal process had been concluded, any reliance upon the CQC report was also unreasonable..

122. Miss Anderson also submits that on the proper construction of clause 22.1 of the Supporting Together North partnership agreement, the partners were only given a power to expel; and that even if one or more of the grounds for expulsion was made out, they were not obliged to exercise that power. If they did so, they were subject to good faith constraints since they were exercising a fiduciary power. On the evidence, even if, contrary to CCS's primary case, circumstances had arisen which justified the exercise of the power to expel, its actual exercise was flawed and in bad faith. There were other options available to HCS. Mr Godwin (and if, in truth, she had any say in it at all, Mrs Godwin) paid undue, and improper, regard to HCS's other businesses, and wholly lost sight of their relationship as a partner with CCS. HCS wrongly placed undue weight on the perceived effect of the CQC report on other consortia, and in doing so HCS acted capriciously and irrationally, and took undue account of the views of the members of other consortia.

123. Miss Anderson submits that the issue of good faith involves an intensely fact sensitive inquiry. She says that HCS acted in bad faith for the following reasons (amongst others):

(1) They misunderstood the regulatory framework, including the effects of the CQC inspection report and of the appeal against the CQC's notice of decision.

(2) They acted secretly and plotted behind the backs of Mr MacDonald and Mrs Walton, setting up a private WhatsApp messaging group with the other consortia members, from which Mr MacDonald was excluded. HCS perversely reached conclusions on factual matters (including Mr MacDonald's honesty and integrity) when there was no valid basis for doing so. Any rational, reasonable or honest person in partnership with CCS would have raised their concerns with Mr MacDonald openly, and in a measured, professional, and calm manner (as by convening a business

meeting to discuss them). This was the proper way to address any concerns about the allocation of Mrs Walton's time between the different consortia and care contracts.

(3) Having decided to expel CCS, HCS discussed that with third parties (including Ms Chaudhrey and members of other consortia) before even discussing the basis of their concerns with CCS.

(4) HCS failed to give any, or any proper, consideration to alternative measures.

(5) HCS failed to give any, or any proper, consideration to the proportionality of the decision to expel as a response to the facts as they believed them to be.

(6) HCS have continued to fail to act in good faith by refusing to provide CCS with information to which it is entitled to have access about the partnership and its business and affairs.

(7) HCS were motivated by a wish to eliminate CCS's share in the profits of the Crisis North contract and expropriate them to itself.

124. Miss Anderson submits that on no proper, or rational, analysis of the evidence could any acts or omissions on the part of CCS render expulsion from the partnership an appropriate or proportionate response on the part of HCS.

125. For these reasons, Miss Anderson submits that the Supporting Together North partnership still subsists and that CCS has not been validly expelled from that partnership.

126. In arriving at my conclusions, I have borne the submissions of both parties firmly in mind, even if I have not expressly addressed all of them in detail. To keep this judgment within reasonable bounds, I shall also seek to avoid any unnecessary repetition.

VII: Analysis and conclusions

127. In my judgement, the starting-point must be to look at the grounds that HCS gave for expelling CCS from the Supporting Together North partnership in the notice of expulsion signed by Mr and Mrs Godwin on 29 April 2021. Since she signed that notice, Mrs Godwin clearly subscribed to those reasons. The court must first consider their validity. The court must then proceed to look at the other grounds now invoked by Mr Chapman, considering both: (1) the extent to which it is now permissible for HCS to place reliance upon them, and (2) whether they have been made out, and constitute, valid grounds for expulsion.

128. Paragraph 3 of the expulsion notice references three grounds for expulsion: (1) the material breach clause (22.1 (c)); (2) clause 22.1 (s), relating to the cancellation or suspension of CCS's registration with the CQC; and (3) the serious adverse effect clause (22.1 (w)). It is common ground that HCS's purported reliance upon clause 22.1 (s) was fatally flawed because the effect of CCS's appeal to the FTT was that CCS's registration with the CQC remained in effect pending the disposal or abandonment of that appeal.

129. The expulsion notice expressly relies upon the findings of the CQC as detailed in their notice of decision cancelling CCS's registration at the Preston location in support of both the irremediable breach and the serious adverse effect grounds for expulsion. I have already stated my relevant findings at paragraph 93 above. I reject Miss Anderson's submissions that the matters stated in the CQC's notice of decision (and earlier inspection report) were merely allegations, with no proper evidential foundation or effect. I prefer the rival submissions of Mr Chapman, which I have reproduced at paragraphs 100 and 101 above. I find that CCS was in clear breach of clause 12 (c) of the partnership agreement because it was in continuing breach of the obligation at all times to comply with the statutory and regulatory standards governing the business of Supporting Together North. Given the degree, and the duration, of such non-compliance, I also find that such breach was a material breach for the purposes of clause 22.1 (c). Since, on the evidence, sufficient improvement was incapable of being achieved within 14 days, I find that the breach was irremediable. Because of the two months' time bar imposed by clause 22.2, HCS were unable to rely upon the original inspection report, and the consequent rating of CCS as inadequate, as justifying its expulsion of CCS from the partnership under clause 22.1 (c). In my judgment, however, subject to any considerations of good faith (to which I shall return), I hold that HCS are entitled to rely upon the fact that CCS had not improved sufficiently by the end of April 2021 to satisfy the CQC that it was no longer inadequate as justifying its expulsion on the material breach ground. Since I find that there was a clear breach of clause 12 (c) of the partnership agreement, it is unnecessary to consider whether this also constituted a breach of clause 12 (a).

130. I find that HCS are not entitled to rely upon the serious adverse effect clause to justify expelling CCS from the partnership. I have already set out my reasons for finding that there was no imminent threat by the Council to terminate the Crisis North contract at paragraphs 89 to 91 above. I accept that the termination of the Crisis North contract would have had a *'serious adverse effect'* upon the Supporting Together North partnership and its business. That is because it was that partnership's only contract, and its termination would have resulted in the destruction of its only existing business. However, for the reason I have already set out, I am satisfied that it was unreasonable for Mr Godwin (and, through him, his wife) to entertain the opinion that there was any real or appreciable risk that the Council would terminate the Crisis North contract at the time HCS served their notice of expulsion. It was therefore unreasonable for them to entertain the opinion that CCS was guilty of conduct which was likely to have a serious adverse effect on the partnership or its business.

131. In the present case, the notice of expulsion referred to the findings of fact detailed in the CQC letter cancelling CCS's registration as conduct likely to have a serious adverse effect on the Supporting Together North partnership and/or its business expressly on the footing that *"they are circumstances which could reasonably be expected to give rise to the loss of the Partnership's contract with Lancashire County Council"*. In my judgement, an alternative way of characterising such circumstances would be in terms of conduct *"the direct or indirect effect of which allows a Client* Body – in this case, the Council – *to terminate its contract with the Partnership"* within clause 22.1 (x). For the reasons I have set out at paragraph 60 above, I can see no reason why, on the basis of the facts stated in their expulsion letter, HCS should not be entitled to rely upon the client body clause (22.1 (x)) as a ground for expulsion,

even though that provision was not expressly identified as such in HCS's notice of expulsion dated 29 April 2021.

132. The client body clause differs from the serious adverse effect clause in that it does not depend upon the reasonableness of the expelling partner's opinion, nor does it refer to the *'likelihood'* of a serious adverse effect. Instead, it refers to conduct which merely *'allows'* a commissioning authority to terminate its contract with the partnership. That imposes a much lower threshold test. Clearly, CCS's conduct *'allowed'* the Council to terminate the Crisis North contract. Whether or not it chose, or might choose, to do so is another matter. In principle, therefore, I hold that it is open to HCS to rely upon the client body clause as a ground of expulsion. However, this is subject to considerations of good faith.

133. I have already referred (at paragraph 103 above) to Mr Chapman's submission that CCS failed to provide information, or alternatively provided misleading information, to HCS. Mr Chapman relies upon these acts or omissions as constituting a breach of clause 12 (d) of the partnership agreement, thereby giving rise to a further ground of expulsion under the material breach clause. There are a number of answers to this submission. HCS never asked CCS for certain of these documents. Insofar as HCS rely upon a duty resting upon CCS to provide them without being asked, to HCS's knowledge CCS received the inspection report and notice of proposal more than two months before the service of the expulsion notice, so reliance upon the failure to provide them is time-barred under clause 22.2. The omission to supply these documents was clearly remediable, even if they may have been required in order to draft an expulsion notice, so the failure to serve any written notice requiring remedy of the breach within 14 days is fatal to reliance upon the provisions of clause 22.1 (c). But the over-arching answer to reliance upon these matters is that they were clearly known to HCS at the time of the expulsion notice, yet they were not relied upon in that notice. I have already held (at the end of paragraph 58 above) that if an expulsion notice particularises the grounds for expulsion, then the expelling partner cannot seek to rely upon other potential grounds of which it was aware at the time of the giving of the expulsion notice because to do so would involve a breach of the duty of good faith owed to the expelled partner.

134. I am therefore left with the material breach clause, and the client body clause, as extant grounds for expulsion: see paragraphs 129 and 131 above. Both, however, are subject to the potential application of principles of good faith. I have already held (at paragraph 45 above) that a power to expel a partner must not be exercised with any ulterior motive (financial or otherwise) but in the best interests of the partnership as a whole. I provided an illustration of this in paragraph 46 above. There I postulated circumstances in which the conduct of one of the partners has given rise to an entitlement on the part of a commissioning authority to terminate the role of the partnership as one of its service providers, but the authority has made it clear that it has no intention of doing so. In those circumstances, I recognised that considerations of good faith between partners might well operate to prevent the partner not in default from relying upon the client body clause as a valid ground for expelling the other partner. In my judgement, that is precisely the position in the present case. To permit HCS to rely upon the client body clause as a ground for expulsion in the present case would, in my judgement, be to sanction its use for a purpose for which it was never intended. It would permit HCS to expel CCS from the partnership at a time when

there was no real risk of the Council putting an end to its contract with the partnership. That would not be a proper exercise of the power of expulsion, consistent with its purpose. I therefore hold that HCS cannot properly rely upon the client body clause as a valid ground for expulsion. That is not because HCS did not rely upon it in the expulsion notice. Rather, it is because reliance upon it, in the circumstances of the present case, would be outwith the true rationale and purpose of the expulsion clause.

135. That leaves the material breach clause. I have already set out my findings on HCS's motivation in serving the expulsion notice at paragraph 92 of this judgment. I have found that Mr Godwin (and through him, his wife) determined to expel CCS from the partnership because: (1) he had lost all trust and confidence in Mr MacDonald, and was no longer willing to continue working with him or with CCS; and (2) he could see no continuing role for Mr MacDonald or CCS to perform in delivering any part of the Crisis North contract and, therefore, no reason to continue the existing equal profit-sharing arrangement with CCS. Did that constitute a breach of the duty of good faith owed between partners? In my judgment, it did not. The witness and contemporaneous documentary evidence demonstrates the complete breakdown in trust and confidence which had resulted from the serious regulatory failures at CCS's Preston location. CCS had failed to improve sufficiently by the end of April 2021 to satisfy the CQC that it was no longer *'inadequate'*. The Council had terminated the Mainframe Central contract, resulting in the effective closure of CCS's Preston location, and the transfer of its supply of care workers to Mellor through TUPE. I agree with Mr Chapman's submission that, as CCS's only registered location, events at Preston had a clear connection to, and were properly the concern of, the Supporting Together North partnership; and that they had a clear impact upon CCS's continuing participation in that partnership.

136. Further, the evidence of Mr Godwin and, more particularly, of Mrs Nolan (at paragraphs 99, 114 and 117 of her witness statement) was that the results of HCS's due diligence had led them to the view that the other CCS branch offices were in as much of a mess, and were just as bad, as Preston, contrary to Mr MacDonald's recorded assertion (during the second part of the joint meeting between representatives of HCS, CCS and the Council on 20 April 2021) that *"all other branches of CCS remain unaffected"*. Indeed, on 9 April 2021 the CQC had published a report on CCS's Chorley location (based on an inspection visit on 8 December 2020) with an overall rating of *"requires improvement"*. I emphasise that I refer to these matters not as grounds of expulsion, but because they are relevant to considerations of good faith.

137. In these circumstances, I do not consider that considerations of good faith between partners prevented HCS from exercising its valid power of expulsion in reliance upon the material breach clause (22.1 (c)). As Miss Anderson submits, the issue of good faith involves an intensely fact sensitive inquiry.

138. I agree with Mr Chapman's submissions (at paragraphs 109 above) that the consent order that compromised the appeal to the FTT has no effect upon the expulsion. I also agree with Mr Chapman that HCS were under no requirement to consider any alternative to expulsion; and, in any event, there was no such realistic alternative.

139. For all these reasons, I hold that CCS has been validly expelled from the Supporting Together North partnership and so is not entitled to the relief it seeks. I therefore dismiss CCS's claim to any declaratory relief.

140. I propose to hand this judgment down at a remote hearing without the need for any attendance by the parties (or their legal representatives). I would invite the parties to seek to agree a substantive order to give effect to this judgment. If the parties cannot agree on the form of the substantive, or any consequential, orders, they should inform the court by email by 12 noon on the working day before this judgment is due to be handed down, indicating whether they would wish such matters to be determined by way of written submissions or at a hearing, and if at a hearing, whether on hand down or at a later date. A draft order to be made on handing down the judgment should be provided. If any application for permission to appeal is to be made otherwise than at hand down, the draft order should extend the time for appealing until 21 days after the determination of that application, either on written submissions or at the consequentials hearing.

141. The parties are reminded that if consequential matters, including any application for permission to appeal, cannot be agreed, they may be suitable for determination on paper. If this is the case, the parties should provide, within seven days after formal hand down, a draft composite order, concise grounds of appeal (where relevant), and brief written submissions, which should be no longer than necessary and, in any event, no longer than 15 pages. Unless I direct otherwise, I will proceed to determine the outstanding matters on paper. If any of the parties certifies, or I direct, that a hearing is needed to dispose of any consequential matters (including permission to appeal), these will be determined at a short oral hearing, usually of no more than one hour, which will be listed to take place remotely. This hearing must take place no later than 28 days after the judgment has been handed down, regardless of availability, unless the court orders otherwise. Although the court will seek to take the parties' availability into account, their unavailability will not justify any lengthy delay in listing the consequentials hearing. Any request for any longer, or any later, hearing must be made in writing, with reasons. Any skeleton argument or note for the consequentials hearing should be no longer than necessary, and certainly no more than 15 pages (unless the court orders otherwise); and should be filed by 12 noon on the working day before the consequentials hearing.

142. I conclude by expressing my thanks to both counsel for their considerable assistance in this case.

143. That concludes this reserved judgment.