



# GP practices, legitimate expectations and goodwill

Guy Adams, Barrister

St. John's Chambers

Date 26 November 2020



- Statutory bar on the sale of goodwill
- Section 259, National Health Service Act 2006
- Detailed provisions in Schedule 1 and Primary Medical Services (Prohibition on the Sale of Goodwill) Regulations 2019
- Any person proposing to be a party to a transaction which he or she considers might amount to a sale of goodwill of a medical practice may ask the Secretary of State for a certificate, which, if all material circumstances are disclosed and not misrepresented, will be a defence to criminal proceedings



- *NHS Commissioning Board v Sivolosky* [2015] EWHC 3141 (Comm), [2017] EWCA Civ 1389 – no restitution of overpaid sums contracted for under PMS contract
- National Health Service (General Medical Services - Premises Costs) Directions 2013
- *Deacon v Yaseen* [2020] EWHC 465 (Ch) - income properly paid in respect of premises costs under directions could not by definition be regarded as generating goodwill



- A1P1 - Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
- *R (Malik) v Waltham Forest NHS Primary Care Trust* [2007] 1 WLR 2092



- *R v Leicester City Council ex p Powergen* [1999] 4 PLR 91 - principles of legitimate expectation are closely analogous to private law estoppel
- *R v North East Devon Health Authority, Ex p Coughlan* [2001] QB 213 - a legitimate expectation can be substantive, as well as procedural
- an abuse of power or "an affront to the public conscience" – per Lord Steyn in *Anufrijeva and another v Southwark LBC* [2004] 1 AC 604
- *R v IRC ex p Unilever plc* [1996] STC 681 - the categories of abuse of power are not closed
- *Nadarajah v. S of S for the Home Dept* [2005] All ER (D) 283 (Nov) - where the public interest has to be balanced against a private interest then, if the public interest is to be preferred it must be a proportionate response
- *Pine Valley Developments Ltd v. Ireland* (1991) 14 EHRR 319 and *Stretch v United Kingdom* (2003) 38 EHRR 196 – approach is similar under ECHR jurisprudence



- *Van Marle v Netherlands* (Application no. 8543/79; 8674/79; 8675/79; 8685/79) – accountant's personal practice
- *R (Countryside Alliance) v Attorney General* [2006] EWCA Civ 817; [2007] QB 305 per Lord Bingham at para 21
- "In *R (Malik) v Waltham Forest NHS Primary Care Trust* [2007] 1 WLR 2092, the Court of Appeal held that the inclusion of Dr Malik's name on a list of those qualified to work locally for the NHS was in effect a licence to render services to the public and, being non-transferable and non-marketable, not a possession for purposes of article 1."



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