



OUTER HOUSE, COURT OF SESSION

[2026] CSOH 62

P17/25

OPINION OF LORD RICHARDSON

In the cause

PHLO TECHNOLOGIES LIMITED

Minuter

against

NADEEM SARWAR

Respondent

Minuter: Dean of Faculty; Roxburgh; Addleshaw Goddard LLP
Respondent Bowen KC; BTO Solicitors LLP

26 June 2026

Introduction and background

[1] This case is one aspect of a broader dispute between the parties. There are currently four other cases ongoing before the Court of Session which principally involve the parties to this case (A294/24; CA109/24; CA119/24; CA134/24).

[2] In summary, the broader dispute concerns the control and leadership of the minuter. The minuter is a company which operates in the online pharmacy sector. The respondent was the founder of the minuter. Prior to 30 August 2024, the respondent was the chief executive of the minuter. The minuter contends that, as at 30 August 2024, the respondent ceased to be a director of the minuter. The respondent disputes this and contends, for

various reasons, that he remains a director. That dispute is the subject of ongoing litigation between the parties (CA119/24).

[3] The more immediate background to the present case concerns proceedings raised by the minuter seeking interdict and interim interdict against the respondent. Those proceedings sought to enforce certain restricted covenants contained in a shareholders' agreement dated 29 March 2024 to which both the minuter and respondent are parties.

[4] The minuter sought these orders as a result of discovering that the respondent had, in November 2024, established a company, Remedi Healthcare Limited ("Remedi"). The respondent was the sole director and controlling mind of Remedi. Remedi had purchased the business and assets of Remedi Solutions Limited out of an administration procedure. The minuter contended that Remedi was a competitor of the minuter.

[5] Having heard the parties on 15 January 2025, I granted the following orders:

"2. *ad interim* interdicts the respondent from carrying on or being concerned, engaged or interested, directly or indirectly, in any capacity whatsoever in any trade or business within the United Kingdom competing with the internet pharmacy business carried on by the petitioner during the period from 30 August 2022 to 30 August 2024 until 28 February 2026;

3. *ad interim* interdicts the respondent from, either on his own behalf or in any other capacity whatsoever, directly or indirectly, having any dealings with any person, firm or company who was a client, customer, supplier, agent or distributor of the petitioner and with whom the respondent had been engaged or involved by virtue of his duties as a director or employee of the petitioner during the period from 30 August 2022 to 30 August 2024, where such dealings are in competition with, or to the detriment of, the petitioner until 28 February 2026;"

[6] The minuter contends that the respondent has acted in breach of that order. As a result, in August 2025, with the consent and concurrence of the Lord Advocate, the minuter lodged a Minute. The respondent answered the Minute. Thereafter, following adjustment, I allowed the parties a proof on the Minute and Answers.

The shareholders' agreement

[7] In terms of the shareholders' agreement, the respondent provided a number of restrictive covenants in favour of the minuter. For present purposes, the material provisions of the shareholders' agreement are as follows:

"[the respondent] undertakes and covenants with the Investors and the Company that ... they shall not:

9.1.1 while they are a Director or Service Provider carry on or be concerned or engaged directly or indirectly (in any capacity whatsoever) in any trade or business competing with the trade or business of the Group Companies as carried on at the time or, in relation to any trade or business of the Group Companies that they have been engaged or involved in, at any time during a period of two years immediately preceding that time; or

9.1.2 during the period of 18 months commencing on the Termination Date:

(a) within the Territory carry on or be concerned, engaged or interested directly or indirectly in any capacity whatsoever in any trade or business competing with the business carried on by the Group Companies in which they shall have been engaged or involved at any time during the Period;

...

(d) either on their own behalf or in any other capacity whatsoever directly or indirectly have any dealings with any person, firm or company who was a client, customer, supplier, agent or distributor of any of the Group Companies during the Period with whom they shall have been engaged or involved by virtue of their duties during the Period in competition with or to the detriment of any if [sic] the Group Companies;"

[8] In terms of clause 1 of the shareholders' agreement:

"Group Companies: means the Company [the minuter] and each and any of the Subsidiaries from time to time and Group Company means any of them."

and

"Period: means the period of two years immediately preceding the Termination Date."

and

“Termination Date: means the date upon which the Founder [the respondent] concerned ceases to be a director or employee of or a consultant to, the Company or a Group Company whichever is the latest.”

and

“Territory: means the United Kingdom and any other territory where the Company carries on its business as at the Termination Date.”

[9] As I have noted above, the parties are in dispute about whether the respondent remains a director of the minuter. However, whether a director or not, there would seem no disagreement that the respondent is subject to the restrictive covenants which, in short, prevent him from being involved with any trade or business “competing with the trade or business” of the minuter. This follows from either clause 9.1.1 or 9.1.2(a) and (d) of the shareholders’ agreement.

The joint minute

[10] At the hearing before me, the parties tendered a joint minute. Within the joint minute, the parties agreed a number of matters concerning the businesses of the minuter and Remedi.

The minuter’s business

[11] The parties agreed that during the material period specified in the order from 30 August 2022 to 30 August 2024, the minuter operated a digital pharmacy business and had three income streams.

[12] The first related to fulfilling prescriptions for NHS customers. The minuter is and was on the distance selling pharmacy list held by the NHS. That listing is subject to the obligations contained in the National Health Service (Pharmaceutical and Local

Pharmaceutical Services) Regulations 2013. The parties were agreed that the process whereby individuals obtained the minuter's services operated as follows: first, individuals could set up an online profile with the minuter providing details of themselves and their general practitioner. Once registered, the individual could use the minuter's secure system to request prescriptions from their GP. The minuter would then liaise with the individual's GP, confirm when the prescription was approved and, thereafter, arrange for the delivery of the prescription to the individual. The minuter was reimbursed for the prescriptions via an invoice finance facility operated by Castlebridge Finance Limited.

[13] The second income stream arose from the minuter's independent prescribing system. This has been operated since March 2024. Under the independent system, individuals go directly to the minuter for prescriptions which they order and pay for online.

[14] The third income stream arose from the minuter's business-to-business scheme. In this regard, the parties were agreed that the minuter works with other healthcare partner businesses by providing such technology infrastructure and pharmacy services as the partner may require.

Remedi's business.

[15] As regards Remedi, the parties were agreed that it is also included on the distance selling pharmacy list held by the NHS.

[16] The parties were also agreed that Remedi's website, as at the date of the proof, displayed, among others, pages which contained the following text:

“ABOUT REMEDI HEALTHCARE

SAFE, RELIABLE, AND EFFICIENT HEALTHCARE SERVICE

We understand how challenging it can be to find the time to visit your GP or pharmacy to collect your repeat prescriptions. Juggling work, family commitments, and other responsibilities often leaves little room for such errands.

That's why we're pleased to offer our free NHS prescription delivery service. With this service, you can have your medicines delivered directly to your door, saving your valuable time and effort. You no longer need to worry about fitting pharmacy visits into your busy schedule.

We specialise in serving care homes, and our state-of-the-art automated dispensary ensures a safer and more efficient medication dispensing process."

[17] A further page contains the following:

"CONVENIENT NHS PRESCRIPTION DELIVERY

FREE MEDICINE DIRECT TO YOUR DOOR

...

WELCOME TO REMEDI HEALTHCARE

We understand how challenging it can be to find time to visit your GP or pharmacy for your repeat prescriptions. That's why we offer a free NHS prescription delivery service, bringing your medications straight to your door.

Our delivery service is safe, reliable, and efficient. You can trust us to handle your prescriptions with care, ensuring they arrive on time and in perfect condition. Say goodbye to the hassle of pharmacy visits and hello to the convenience of home delivery with Remedi Healthcare. Visit our [Carehomes](#) page for more information and to see how we can meet your needs."

The statutory framework

[18] As it formed an important part of the background, it is necessary also to set out part of the statutory framework of regulations governing pharmacies which provide services via the internet. In England, this type of pharmacy, also called "distance selling pharmacies", are subject to the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 and, in particular, Part 9 of those regulations.

[19] Of significance in the present case is the requirement, contained in Regulation 64(3)(e)(i) and (ii) that distance selling pharmacies must ensure that their advertising does not suggest either that it only serves some areas of England or that it will only accept prescriptions from certain categories of patients. Distance selling pharmacies are also required to have websites and provision is made requiring public access to a reasonable range of up-to-date materials which promote healthy living (Schedule 4, Part 4, paragraph 28C).

[20] Consistent with this, the Regulations require, in broad terms, that all pharmacists fulfil prescriptions with reasonable promptness (Schedule 4, Part 2, paragraph 5).

The evidence

[21] In light of the joint minute, together with the focussed nature of the dispute between the parties, I heard only brief evidence from four witnesses. In accordance with the practice of the commercial court, the evidence in chief of each of those witnesses took the form of written statements or affidavits which were lodged in advance and then adopted.

[22] In general, I found all the witnesses to be credible and reliable. The minuter sought to challenge the evidence of the respondent on the grounds that it was “combative”. That may be so but given the circumstances in which the respondent found himself together with the nature of the questioning to which he was subjected, I do not consider that he can be criticised to any significant degree for the way he responded.

Alistair Murray

[23] For the minuter, I heard evidence from Alistair Murray. Mr Murray is the minuter’s chief pharmacist. Mr Murray was clear that, in his opinion, Remedi was competing with the

minuter. In particular, he drew attention to Remedi's website (see [16] and [17] above). In his view, the pages of Remedi's website were directed towards individuals. That was not consistent with Remedi's business relating solely or principally to care homes. On the other hand, the website was consistent with Remedi's obligations as a distance selling pharmacy under Regulation 64(3)(e) of the 2013 Regulations to accept for dispensing any valid NHS England prescription presented to them.

[24] In relation to NHS customers, Mr Murray strongly rejected any suggestion that the minuter had, in some way, ceased to dispense prescriptions to NHS patients. However, he did accept that the minuter had taken the commercial decision to concentrate its marketing budget on the non-NHS side of the business.

[25] As regards Remedi's care home business, Mr Murray pointed out that individuals within care homes are still able to order prescriptions themselves directly. His evidence was that the minuter might well have NHS customers who were resident in care homes. However, it was also clear from his evidence that the minuter did not dispense bulk prescriptions to care home operators. His position was that were the minuter to be approached by a care home operator, they would consider whether the proposal "stacked up".

The respondent

[26] The respondent's first witness was the respondent himself. He was clearly of the view that Remedi did not compete with the minuter. Remedi's business model involved supplying bulk prescriptions to the operators of care homes. The minuter had never operated in the care home market. Equally, the fraction of Remedi's customers that were not

care home operators was tiny. The respondent estimated it was as low as 0.0027% of Remedi's business.

[27] As to Remedi's website, the respondent's position was that the content represented the minimum required to comply with Remedi's obligations under the 2013 Regulations. The present Remedi website had been prepared following an inspection by NHS England, conducted following the insolvency of Remedi Solutions, at which time Remedi had been advised that its website might not meet the necessary statutory requirements. So far as the respondent understood, the website had been procured as a template in order to satisfy Remedi's regulatory obligations.

[28] The respondent also drew attention to the fact that in providing prescription medicines to care homes, Remedi was using the same business model as another company with which the respondent was involved – Universal Pharmacy Limited. For a number of years prior to his departure, the respondent had acted as a director both of the minuter and Universal. No concerns had been raised about this at the time. That was because, so far as the respondent was concerned, the two companies were not in competition.

[29] The respondent did not accept that there was any overlap between Remedi's business and the minuter's business-to-business income stream (see [14] above). This part of the minuter's business involved the provision of technological infrastructure to other pharmacy businesses. It was not akin to the care home business model operated by Remedi.

[30] Following the grant of the interdict, the respondent had taken advice from Mr Conor Daly. He was a consultant advising pharmacies. That advice was set out in an advice note dated 28 January 2025 which had been produced in these proceedings. Mr Daly's view was that Remedi did not compete with the minuter. On 28 January 2025, the respondent's solicitors had provided a copy of Mr Daly's report to the solicitors acting for the minuter.

The respondent had received no response until the present minute proceedings were raised in July 2025. The respondent was emphatic in his evidence that he had acted in good faith.

Conor Daly

[31] The respondent also led evidence from Mr Daly. He was a qualified pharmacist. He also held a law degree and had completed the bar course to qualify as a barrister (albeit he had never completed a pupillage). He had founded Rushport Advisory LLP in 2011. This was a consultancy which advised those wishing to set up pharmacies. In this context, he had advised both the minuter and Remedi Solutions in their applications to become distance selling pharmacies. Following the grant of the interlocutor on 15 January 2025, Mr Daly had been asked to give his opinion as to whether Remedi operated in competition with the minuter. In giving evidence before me, Mr Daly adopted an affidavit to which his earlier advice note was appended.

[32] The minuter challenged the admissibility of Mr Daly's evidence on two grounds. First, Mr Daly could not be regarded as impartial as he had provided advice to the respondent which was then being relied upon to excuse the respondent's breach (see [30] above). As a result of this reliance, Mr Daly had an interest in the outcome of the proceedings and, therefore, lacked the necessary independence. Secondly, and in any event, Mr Daly's evidence as to what constituted competition for the purposes of the interlocutor dated 15 January 2025 was inadmissible as that was the very issue which the Court had to determine.

[33] The respondent submitted that Mr Daly's evidence was admissible. Properly understood, his evidence was on the nature of the market in which distance selling

pharmacies operated. In light of the minuter's objection, I heard Mr Daly's evidence under reservation of all issues of competency and relevancy.

[34] Mr Daly gave evidence as to the regulation of distance selling pharmacies. In his opinion, although they are both regulated distance selling pharmacies, the minuter and Remedi operated distinct types of business. Remedi was focussed on providing a business-to-business prescription service to care home operators. Whereas the minuter was primarily focussed on signing up individual patients via its website. The minuter's business had started with NHS England patients and then expanded into providing this service privately. On this basis, Mr Daly considered that the business models operated by the minuter and Remedi were fundamentally different and, therefore, in his opinion they were not competing.

[35] In this regard, Mr Daly distinguished between the business models operated by the minuter and Remedi, on the one hand, and the provision by each of them of obligatory prescribing services in order to comply with the 2013 Regulations. In the case of Remedi, Mr Daly did not consider that issuing of prescription items to private individuals, in compliance with the 2013 Regulations, constituted competition with the minuter.

Kenneth Black

[36] The respondent's final witness was Mr Black. He was the general manager of Remedi. Mr Black explained that the business had originally been established in 2020 with the intention of supplying monthly medication to the care home sector across England. He estimated that this sector represented about 7% of the items dispensed in England as a whole.

[37] Mr Black's evidence was that care home residents represented the very great majority of Remedi's business. Expressed in terms of monthly prescriptions, Mr Black estimated that Remedi issued approximately 55,000 prescription items to patients who were resident in the 122 care homes serviced by it. In contrast, Mr Black estimated that Remedi issued only 114 prescription items per month to what he described as "community" patients. Remedi issued prescriptions to 79 such patients – 33 of whom were members of Remedi's own staff and the remainder of whom were members of the public.

[38] As to Remedi's website, Mr Black accepted that the wording it contained was of general application. This was because a distance selling pharmacy, like Remedi, was not allowed to be restrictive. Mr Black described Remedi's website as being "bog standard". He considered that it would have looked foolish had Remedi sought to indicate on its website that it was only interested in attracting business from care home operators.

[39] Mr Black was also asked about the extent to which it was possible for care home residents to obtain and self-administer prescription medication through websites such as that operated by the minuter. Mr Black accepted that this was theoretically possible. However, in his experience of providing dispensing services for more than 500 care homes, he was not aware of it ever actually taking place. In his view, the reason for this was that allowing individual residents to obtain their own prescriptions would cause difficulties for the care home operator as it would make the management of residents' medication significantly more difficult. He thought that this would give rise to difficulties with the operator's own regulator, the Care Quality Commission.

The minuter's submissions

[40] The minuter accepted that it bore the burden of proof and that the relevant standard was proof beyond reasonable doubt.

[41] The minuter contended that the sharp issue was whether the respondent, through his involvement with Remedi, was involved, directly or indirectly, in a business within the United Kingdom which is competing with the internet pharmacy business carried on by the minuter during the period from 30 August 2022 to 30 August 2024. This was the wording of paragraph 2 of the interlocutor which I issued on 15 January 2025 (see [5] above).

[42] As a starting point, there was no dispute that the respondent was aware of the terms of the interlocutor dated 15 January 2025. He had been represented at the hearing in question and had been present in court when the order was pronounced. However, following the grant of the order, the respondent had continued with his involvement in Remedi. Furthermore, given the terms of the order, the only point of contention was whether Remedi was competing with the minuter. There was no room for doubt that the respondent's involvement as director of Remedi satisfied the requirement of "being concerned, engaged or interested". There was also no dispute that Remedi was "a trade or business within the United Kingdom".

[43] On the question of competition, it was clear that the minuter was operating an internet pharmacy business. The only issue raised by the respondent in this regard was whether, at present, the minuter was, in fact, dispensing in respect of valid NHS England prescriptions for new customers. Although the minuter did not accept it was not doing so, it submitted that this was irrelevant. Given the time period specified in the order, even if the minuter was no longer dispensing in respect of new NHS England customers, that made no difference.

[44] In this regard, the minuter relied upon a number of English authorities in support of the proposition that, in the context of a restrictive covenant, a prohibition on the competition was not limited to active competition or competition which was solicited (see *Rogers v Drury* (1887) 57 LJ Ch 504; *Allied Dunbar (Frank Weisinger) Ltd v Frank Weisinger* [1988] IRLR 60 at paragraph 26; and *One Step (Support) Ltd v Morris-Garner* [2017] QB 1 at paragraphs 32, and 57 to 64). In particular, the Dean of Faculty relied on a passage from the judgment of Chitty J (as he then was) in *Rogers*:

“The defendant says there has been no competition, because there cannot be competition without solicitation, and he also says that the competition contemplated by the agreement must be active competition. Neither of these propositions can be maintained. It is important to ascertain what was the object of the covenant. Its object was to protect the practice which had been bought and paid for. The agreement contains divers clauses to secure this object, and amongst them is this covenant. I decline to draw a distinction between active and passive competition. The covenant is not to enter into any competition in any way whatever. What I have to do is to give each term in the covenant its full and appropriate meaning, and doing this, and bearing in mind the object of the covenant, I think that it is clearly infringed, for it appears to me that the vendor by coming into the area of the practice is acting most injuriously towards the plaintiff, and to my mind diminishing the plaintiff's fair chance of obtaining that which he has purchased. The defendant has said that the patients would not have called in the plaintiff under any circumstances. To this it can be answered that there might be circumstances under which it would be most important to call in the doctor on the spot—and the skill of the plaintiff is not questioned.” (at 504-505).

[45] The Dean also drew attention to a passage from the judgment of Mr Justice Millet as he then was from *Allied Dunbar* which, in his submission, supported the proposition that a covenant against competition related not only to existing clients:

“the prospect of obtaining new clients from recommendations and referrals was obviously part of the goodwill of the defendant's practice. There could be no certainty that the plaintiffs could secure such clients for themselves but they were entitled to try and to prevent the defendant from denying them the opportunity of succeeding.” (at paragraph 26)

[46] Turning to the facts, it was clear from the 2013 Regulations that Remedi, as a regulated NHS Distance Selling Pharmacy, was legally obliged to accept and fulfil any valid

NHS England prescription for dispensing (see [18] to [20] above). It was also apparent from Mr Black's evidence that Remedi did fulfil prescriptions from the general public (see [37] above). The minuter made this submission both in relation to the so-called "community patients" as well as the care home residents. In respect of the latter, each such patient was an individual who could have placed his or her prescription with the minuter.

[47] In this regard, the minuter submitted that, even if admissible, Mr Daly's evidence did not properly support any alternative conclusion. At its highest, his evidence seemed to be that in order for an undertaking to compete for business, it required to "want" that business. On the basis of *Rogers* this was wrong as a matter of law (see [44] above). Furthermore, his position was wrong on a more practical level – an undertaking which is unintentionally successful in capturing business would still be in competition with other suppliers in the market.

[48] On this basis, Remedi was competing with the minuter in respect of each of the three streams of its business. The services which Remedi was offering to provide were functionally interchangeable with the minuter's three streams. A reasonable market participant or customer would objectively consider Remedi and the minuter to be competing options. In light of the English authorities cited, that was sufficient.

[49] Separately, the minuter argued that Remedi's business with care home operators was in competition with the minuter's third income stream – the business-to-business stream. These care home operators were prospective customers for the minuter.

[50] The minuter submitted that the fact that Remedi was obliged, in terms of the 2013 Regulations, to fulfil all NHS prescriptions was also irrelevant. The respondent had had a choice, following the grant of interdict, as to whether to continue to remain involved in the business and had chosen to do so. That deliberate action was sufficient to provide the

intention necessary for a finding of contempt (see Arlidge, Eady & Smith on Contempt (5th edition) at 16-227 and *Murray v HMA* 2022 JC 181 at paragraph 60). For the same reasons, the minuter also submitted that any reliance by the respondent on the advice of Mr Daly was also irrelevant to the question of whether the respondent was in contempt albeit the minuter recognised that this might be relied upon in mitigation.

[51] The minuter also argued that, for present purposes, there was no room for a *de minimis* argument. The key issue was whether the respondent had deliberately acted in a way which was prohibited by the court order. In this case, that was by being concerned in Remedi which was competing with the minuter. Even if Remedi had not been particularly successful in so competing, the respondent was still in breach of the order.

[52] On a similar basis, the minuter also rejected the argument that it was necessary for there to be actual detriment to the minuter. Such an approach would preclude a party from preventing threatened detriment. In any event, on the basis of the evidence there had been actual detriment because Remedi had actually been competing with the minuter.

[53] For these reasons, the minuter sought a finding of contempt with matters being continued to address the question of sanction.

The respondent's submissions

[54] The respondent sought dismissal of the minute on the grounds that the minuter had failed to prove that there had been any breach of interdict. In essence, the respondent's position was that the supply of prescriptions by Remedi to 79 community patients did not constitute actual competition on a proper construction of the interlocutor.

[55] As a starting point, senior counsel appearing for the respondent took no issue with the authorities cited by the minuter. However, he submitted that the terms of the

interlocutor fell to be construed strictly (see *Arlidge, Eady & Smith* at 16-228) and in light of the minuter's petition. In that petition, the minuter had sought interim interdict in order to prevent the respondent from breaching the restrictive covenants contained in the shareholders' agreement (statement 1.3). At the hearing on 15 January 2025, those representing the minuter had submitted that those restrictive covenants were for the protection of the investors. Those representing the minuter had sought interim orders on the basis of an averred apprehension that the respondent would seek to cause damage to the minuter's business (statement 7.6). Accordingly, properly construed against this background, the prohibition contained in the interlocutor related to competition which was as a matter of fact to the detriment of the minuter's business. Purely notional or hypothetical competition, which was without detriment to the minuter's legitimate business interests, was not prohibited.

[56] As the minuter had failed to prove any actual detriment to its business through the conduct of the respondent, it had also failed to prove that Remedi was competing with it and, therefore, any breach of interdict. All that the minuter had proved was that Remedi was complying with its statutory obligations under the 2013 Regulations. The respondent's own evidence explained that this regulatory compliance was the reason for the wording of Remedi's website. Further, Mr Murray's evidence did not support the contention that the provision of services to care home operators formed part of the minuter's business. The respondent's position was also supported by Mr Daly's opinion. The respondent submitted that Mr Daly's evidence was, essentially, that Remedi and the minuter operated in different markets.

[57] Finally, on the issue of the minuter's case that individual residents within care homes could use the minuter's websites to order their own prescriptions, the respondent pointed to

the unchallenged evidence of Mr Black that, in his experience, no care home operators allowed residents to self-administer prescription medication because of the difficulties this would cause.

Decision

A preliminary issue – the objection to the evidence of Mr Daly

[58] As a preliminary point, I require to address the objection to the evidence of Mr Daly which was raised by the minuter (see [32] above). As I have noted, as the objection was articulated by the stage of submissions, the minuter challenged this evidence on two separate grounds: first, that Mr Daly could not be regarded as impartial because he had previously given advice to the respondent in relation to the terms of the interlocutor dated 15 January 2025; and, second, and in any event, that Mr Daly's evidence about the meaning of competition sought to usurp the role of the court.

[59] Having considered Mr Daly's evidence in light of the minuter's objections, I am satisfied that it is admissible.

[60] In relation to the first point, I am not satisfied that the minuter has set out any proper basis of challenge to Mr Daly's impartiality. The thrust of the minuter's argument appeared to be that because Mr Daly had initially provided an opinion to the respondent following the grant of the interdict (which was contained in his advice note dated 28 January 2025), Mr Daly could no longer be impartial. As the Dean of Faculty put it, as a result of giving this earlier advice, Mr Daly had "skin in the game".

[61] I do not consider that this challenge is made out. As is apparent both from his initial advice note (at paragraph 24) and his subsequent affidavit (at paragraph 17), Mr Daly was aware that he was setting out his views for the assistance of the court. Further, it is also clear

that Mr Daly's views have not changed since he initially set them out. In these circumstances, I do not consider that the mere fact that Mr Daly was aware that the respondent had relied upon his opinion changed his status from being an independent expert to being, in some way, partial.

[62] In relation to the second ground of challenge, it would seem that the nub of the point being made by the minuter is encapsulated in the judgment of Lord Reed and Lord Hodge in *Kennedy v Cordia (Services) Limited* 2016 SC (UKSC) 59 at paragraph 49:

“[49] In *Davie v Magistrates of Edinburgh* (p 40) the Lord President observed that expert witnesses cannot usurp the functions of the jury or judge sitting as a jury. Recently, in *Pora v R* (para 24), the Judicial Committee of the Privy Council in an appeal from New Zealand, stated:

‘It is the duty of an expert witness to provide material on which a court can form its own conclusions on relevant issues. On occasions that may involve the witness expressing an opinion about whether, for instance, an individual suffered from a particular condition or vulnerability. The expert witness should be careful to recognise, however, the need to avoid supplanting the court's role as the ultimate decision-maker on matters that are central to the outcome of the case.’

Thus, while on occasion in order to avoid elusive language the skilled witness may have to express his or her views in a way that addresses the ultimate issue before the court, expert assistance does not extend to supplanting the court as the decision maker. The fact-finding judge cannot delegate the decision-making role to the expert.”

[63] In the present case, Mr Daly expressed his opinion on the question of whether Remedi and the minuter could be considered to be in competition. He approached this question based upon his knowledge of the market for distance selling pharmacies together with his understanding of the business models adopted by Remedi and the minuter. Although, to adopt the formulation used in *Kennedy*, the way Mr Daly has expressed his views do address the ultimate issue before the court – whether the respondent has acted in breach of the interlocutor dated 15 January 2025 – I do not consider that his evidence can properly be viewed as seeking to usurp the role of the court.

The issue in dispute

[64] The issue before me for determination is whether the respondent's involvement with Remedi is conduct prohibited by paragraph 2 of my interlocutor dated 15 January 2025 (set out above at [5]).

[65] There is much which is not in dispute. There is no question that the respondent's involvement in Remedi – as founder and sole director – constitutes being directly concerned or engaged with that company. It is also clear that Remedi is a business operating in the UK. Accordingly, the issue to be resolved narrows down to the question of whether Remedi is competing with the internet pharmacy business carried out by the minuter during the material period from 30 August 2022 to 30 August 2024.

[66] In this regard, as I have noted above (at [11]), the parties have also agreed that at the material time, the minuter's internet pharmacy business had three main income streams: first, fulfilling prescriptions for NHS customers; second, fulfilling prescriptions which were prescribed directly by the minuter; and third, the minuter's business-to-business scheme whereby it works with other healthcare partner business by providing infrastructure and pharmacy services. I certainly heard no evidence that during the material time the minuter's internet pharmacy business extended beyond these three streams.

[67] Finally, in resolving the issue before me, it is the minuter who bears the onus of proof and that the relevant standard is beyond reasonable doubt.

The proper construction of the interlocutor dated 15 January 2025

[68] The starting point for addressing the question of whether Remedi is competing with the minuter is the wording of paragraph 2 of the interlocutor dated 15 January 2025. It is

well recognised that, especially when one is assessing whether there has been a breach of its terms, the terms of an interlocutor require to be construed strictly (*Arlidge, Eady & Smith* at 16-228).

[69] Approaching the wording on that basis, I note that it is straightforward and unqualified. What is prohibited is engagement with a trade or business which is “competing” with the minuter’s internet pharmacy business at the material time. It is notable that in this respect the wording of paragraph 2 can be contrasted with paragraph 3. Read short, the latter paragraph prohibits the respondent from having dealings with third parties who had dealings with the minuter during the material period where those dealings “are in competition with, or to the detriment of” the minuter” (emphasis added).

[70] For completeness, I also note that the question of competition is to be measured against the internet pharmacy business of the minuter between 30 August 2022 and 30 August 2024. Accordingly, I agree with the minuter’s submission that the issue which, to a limited degree, featured in evidence as to whether the minuter was still, at present, fulfilling NHS prescriptions is entirely irrelevant.

[71] As to the approach to be taken to construction, I agree with the submissions made on behalf of the respondent that restrictive covenants undertaken by the respondent which are contained in the shareholders’ agreement (see [7] and [8] above) form important background to the interlocutor. However, I do not accept that the wording of paragraph 2 falls to be glossed in the way contended for on behalf of the respondent. In particular, I reject the argument that in order for competition to fall within the scope of paragraph 2 it requires to cause damage or detriment to the minuter’s business for two principal reasons.

[72] First, there is no support for this additional qualification in either the wording of paragraph 2 of the interlocutor or the equivalent provision of the shareholders’ agreement

upon which it is based (clause 9.1.1 and clauses 9.1.2(a) and (b)). Furthermore, for what it is worth, it is notable that this omission can be contrasted with paragraph 3 of the interlocutor (and the equivalent provisions of the shareholders' agreement) where there is a reference to "detriment".

[73] Second, in the absence of any textual support for the respondent's gloss, I do not consider that it can be implied as a matter of construction. The respondent's construction would introduce significant uncertainty as it would logically introduce the notion of "non-detrimental" competition which was not prohibited either by paragraph 2 of the interlocutor or the shareholders' agreement. However, the respondent's construction would provide no guidance as to when competition was to be classed as detrimental or otherwise. The introduction of this uncertainty would run contrary to the interests of all parties to the shareholders' agreement by both rendering enforcement more difficult and reducing clarity for the respondent as to the extent of his obligations.

[74] As to the meaning of a trade or business "competing with" the minuter's internet pharmacy business in paragraph 2 of the interlocutor, I consider that this phrase should be given its natural meaning: namely, that two entities are competing with each other for custom when they are both striving to win some part of the same custom. In this regard, I have found the analysis to the question of competition formulated by Lord Justice Christopher Clarke in *One Step*, referred to by the minuter in submissions, to be of assistance. His Lordship broke down the question into two parts: first, are the two putative competitors properly to be regarded as supplying goods and services which are sufficiently comparable to mean they are in competition; and, second, are they operating in the same area. In referring to "area" in the second part of his analysis, I understand his Lordship to be asking whether the two putative competitors are operating in the same market.

[75] I also consider that “competing with” requires to be construed objectively – the subjective intention of the competing party is not relevant. In that regard, I respectfully agree with the refusal of Mr Justice Chitty (as he then was) to distinguish between active and passive competition in *Rogers* (see above at [44]). What might be in the mind of the reluctant competitor does not seem to me to be relevant if the effect of the competitor’s actions is to win business.

Does Remedi compete with the minuter’s internet pharmacy business as carried out during the material period?

[76] It is first necessary to consider the extent of Remedi’s business. I accept Mr Black’s evidence in this regard which was based on a reasonably detailed breakdown of the prescription items dispensed by the company (see above at [37]). Mr Black was not challenged on this and I did not understand it to be in dispute.

[77] On the basis of Mr Black’s evidence, I find that Remedi’s business consists of two parts – one which is very much larger than the other. The first is Remedi’s care home business in terms of which Remedi provides a service to care home operators, dispensing prescription items to the operators for the benefit of the care home residents. Mr Black’s evidence was that Remedi issued 55,000 monthly prescriptions to 122 care homes on this basis. The second, very much smaller, part of Remedi’s business was the issuing of prescriptions to NHS patients – described by Mr Black as “community patients”. This part of Remedi’s business consisted of 114 prescription items per month to 79 patients. These patients appeared to be a mixture of Remedi’s own staff and some members of the general public.

[78] It follows that I reject the minuter's submission that Remedi's business extended to providing and, thereafter, dispensing independent prescriptions as the minuter does as the second stream of its business, on the basis that there was simply no evidence to support it. The content of Remedi's website, which was a matter of agreement, does not refer to the provision and dispensation of private prescriptions in the way carried out by the minuter. Furthermore, neither Mr Black nor the respondent were challenged on this point.

Remedi's care home business

[79] As a starting point, there would seem no question that, during the material period, the minuter's internet pharmacy business did not include the provision of a service to care home operators as provided by Remedi. I did not understand the minuter to contend otherwise.

[80] Instead, the minuter advanced two alternative arguments in support of its contention that this part of Remedi's business fell within the definition of competition as prohibited by the interdict. First, the minuter argued that each individual resident within the care home fell to be regarded as an individual NHS prescription holder and, therefore, that this part of Remedi's business competed with the minuter's first income stream. Second, the minuter argued that care home operators were prospective clients of the minuter's third income stream – the business-to-business service.

[81] I am not persuaded, to the relevant standard, that Remedi's care home business, considered for present purposes in isolation, can be said to be competing with the minuter's internet pharmacy business during the material time.

[82] In relation to the minuter's first argument, it is true that, theoretically, the NHS prescriptions dispensed by Remedi to care home residents could have been obtained by

those residents individually. However, the minuter's argument misses the point because that is not, in fact, the service which Remedi is offering: Remedi is offering a service to care home operators not to the individual care home residents. In that sense, I do not consider that care home operators would regard the minuter's first stream as being a substitute for the care home service which Remedi is providing. That conclusion is consistent with the unchallenged evidence of Mr Black which was that, in his experience, it was unheard of for a care home operator to allow residents to obtain their own prescriptions.

[83] The minuter's second argument fails because it does not take account of the terms of the interlocutor. The prohibition prevents the respondent from being involved with a business actually competing with the minuter's internet pharmacy business as carried out during the material period. As I have noted above, it is necessary to construe it strictly.

Based on the evidence I have heard, it was clear that the minuter never provided a service to care home operators equivalent to that offered by Remedi. That much was clear from the evidence of Mr Murray (see [25]). In fact, it was not clear to me that the minuter had ever even contemplated providing this type of service. When asked, Mr Murray suggested only he would need to see if such a proposal stacked up. In this regard, I also take account of the respondent's evidence as to the nature of the minuter's third business-to-business stream which suggested that it involved the provision of technological infrastructure rather than the service offered by Remedi.

[84] On this basis, I do not think that care home operators are prospective clients of the minuter in the sense referred to in *Allied Dunbar* (see above at [45]) because they are interested in a specific service which the minuter has never offered. Accordingly, I am not satisfied that the minuter's business-to-business service truly represented a substitute for Remedi's specialist care home service and, therefore, that the two are in competition.

Remedi's community patient business

[85] The starting point for considering this part of Remedi's business is quite different.

[86] As the parties have agreed, Remedi offers on its website to fulfil prescriptions for NHS customers (see [16] and [17]). The wording of the website is clearly aimed at those customers. This appears to be essentially the same service which forms the minuter's first stream of business (see [12]). Furthermore, based on Mr Black's evidence, it is also clear that a small number of customers have taken up the offer made on the website and have obtained their NHS prescriptions from Remedi.

[87] Applying the construction of "competing with" which I have set out above to these facts, it would appear that Remedi's community patient business is competing with the first stream of the minuter's business. The services being offered to NHS customers by both Remedi and the minuter would seem to be highly comparable, if not identical. These services are being offered by both companies to the same market – to all NHS England patients.

[88] As against this, the respondent advances two arguments to justify the conclusion that, despite this evidence, Remedi's community patient business should not be regarded as competing with the minuter.

[89] The respondent's first argument was that "competing with" the minuter's internet pharmacy business ought to be construed as meaning "to the detriment of" the minuter's business. For the reasons I have given above (see [71] to [75]), I do not accept that this is the proper construction of those words. In short, I do not accept that the words of paragraph 2 of the interlocutor fall to be glossed in this way.

[90] Second, the respondent argues that Remedi's community patient business ought, essentially, to be discounted because it arises only as a result of Remedi's obligation as a distance selling pharmacy under the 2013 Regulations. As noted above, in terms of those regulations, Remedi is obliged to ensure that its advertising makes clear that it will accept and fulfil NHS prescriptions from all over England without distinction. Accordingly, so it is argued, the evidence of Remedi's website and the small amount of business generated by that website is not competition because, in some sense, Remedi did not truly want this business but was simply complying with its regulatory obligations. The respondent relies on the evidence of Mr Daly as supportive of its position (see [35]).

[91] Again, for reasons which I have set out above (at [75]) I am not persuaded by this argument. Properly construed, "competing with" must be considered objectively. On this basis, I do not consider that the motivation of those who prepared the content of Remedi's website is relevant to the present question: namely, whether, in fact, the effect of that website was that Remedi offered services to NHS customers in England in competition with the minuter.

[92] In relation to Mr Daly's evidence, I recognise that, as he explained, principally, the business model operated by Remedi is directed towards care home operators rather than community patients. However, I do not accept that, for present purposes, that means one can simply ignore the effect of Remedi's actions, in general and its website, in particular, in the marketplace.

Is the respondent in contempt?

[93] In light of the foregoing, I am satisfied that Remedi's community patient business competes with the minuter's internet pharmacy business at the material time. It follows that

the respondent's continued engagement with Remedi following the grant of the interdict on 15 January 2025 represented a breach of the terms of that order.

[94] The final issue which I require to resolve, at this stage, is whether the respondent's breach amounts to a contempt of court.

[95] On the face of it, that question would seem capable of short answer. As the Inner House recognised in *Gribben v Gribben* 1976 SLT 266 at 269: "A complaint of breach of interdict is a complaint of disobedience of a competent order of the court. Such disobedience constitutes contempt of court." The necessary ingredients for a finding of contempt in a situation in which there has been conduct contrary to the terms of a court order was also dealt with in the Full Bench decision of *Murray v HMA* 2022 JC 181:

"[60] Contempt of court is

'constituted by conduct that denotes wilful defiance of, or disrespect towards, the court or that wilfully challenges or affronts the authority of the court or the supremacy of the law itself' (*Robertson and Gough v HM Advocate*, Lord Justice Clerk (Gill), para 29).

There is no strict liability. Where there is a court order, which prohibits a particular action, and a person deliberately does something which breaches that order, that is sufficient to prove the crime, including any mental element. The deliberate conduct constitutes the wilful defiance of the court. It is not a defence to say that, albeit that his actions did deliberately breach the order, a person nonetheless thought that he was acting in such a way as to avoid a finding of contempt. It will not do to say that deliberate acts, which are in breach of a court order, were not intended to constitute criminal conduct when, as a matter of fact, they did by contravening that order. In that sense, although it might have been better phrased, the court of first instance was correct to say that an intention to breach the order was 'beside the point'.

[61] The mental element relates to the deliberate nature of the publication, not to whether the publisher, in his inmost thoughts, meant to breach the order. ..."

[96] In the present case, it is clear that the respondent's continued involvement with Remedi after the interlocutor dated 15 January 2025 was "deliberate" in the sense that it was not unintentional or accidental (see *Beggs v Scottish Ministers* 2005 1 SC 342 at paragraph 30).

On this basis, just as in *Murray*, I do not consider that the fact that the respondent had taken advice from Mr Daly and thought he was not acting in breach of the order gives him a defence to a finding of contempt. I have found that, as a matter of fact and contrary to Mr Daly's advice, Remedi was competing with the minuter's internet pharmacy business at the material time. Accordingly, the respondent's continued engagement with Remedi after the granting of the order was a breach of that order and was in contempt of court.

[97] Equally, I also recognise that both the fact that the respondent acted on the basis of advice and the limited extent of the competition between Remedi and the minuter's internet pharmacy business at the material time may well be matters which will be relevant to issues of mitigation.

[98] Finally, I also recognise that as the rationale for the court's jurisdiction in contempt is to uphold the rule of law by enforcing the authority of the court, it is for the court to determine the circumstances in which that jurisdiction is invoked. That decision will turn on whether it is in the public interest to do so (*Sovereign Dimensional Survey v Cooper* 2009 SC 382 at paragraph 31). In the present case, I am satisfied that it is in the public interest for a finding of contempt to be made. On the basis of the evidence I have heard, it is apparent that the respondent has acted in breach of the court's order for a significant period of time. The situation in the present case is very different from the limited and remedied breach which was under consideration in *Sovereign Dimensional*.

Post proof events

[99] While the case was at avizandum, the respondent enrolled a motion seeking to recall Alastair Murray to the witness box. The reason given for this motion was that in his witness statement, Mr Murray had given evidence about premises which the minuter operated from

in Birmingham and, in particular, the minuter's decision to cease to operate from those premises. The respondent had subsequently uncovered further evidence about the minuter's departure from the premises which he asserted contradicted Mr Murray's evidence and sought to recall Mr Murray to ask him about this.

[100] The motion was opposed by the minuter.

[101] Having heard counsel, I refused the motion for two reasons. First, as will be apparent from a reading of the above opinion, the minuter's premises in Birmingham did not feature at all in the course of either party's submissions to me following the proof. At the time of the motion, it did not seem to me to have any bearing at all on the issues which I required to determine. Having now had the opportunity of completing my opinion, I remain of this view.

[102] Secondly, and relatedly, it was far from clear to me what the alleged import was said to be of the new evidence being presented by the respondent. Mr Murray had given evidence in his supplementary witness statement about the minuter's decision to cease operating from its premises in Birmingham. Those premises had been sublet from another company owned and controlled by the respondent. According to Mr Murray, this decision had been taken following the service by the respondent of a notice in October 2024 requiring the minuter to cease operating from those premises. That did not appear to be disputed by the respondent. Mr Murray was asked briefly about this in cross and confirmed his position.

[103] Against this background, the supposedly new evidence was a letter dated 6 February 2026 from the minuter's agents to Birmingham City Council, advising that the minuter intended to vacate the property on 23 June 2026. The respondent was copied into the letter. The solicitor advocate appearing for the respondent at the motion hearing was unable to explain to me what the contradiction between Mr Murray's evidence and the letter dated

6 February 2026 was supposed to be given the obvious difference between operating from premises and occupying them.

[104] Having refused the motion on these two bases, I did not consider it necessary to address the competency of the respondent's motion or whether the respondent had satisfied the test of exceptional circumstances amounting to *res noviter veniens ad notitiam* (see *Rankin v Jack* 2010 SC 642). In relation to the latter, given that the Birmingham premises were sublet by the minuter from a company owned and controlled by the respondent, it seems to me very unlikely that this test would have been met.

Disposal

[105] The parties were agreed that, in the event that I made a finding of contempt, as I have done, a further hearing should be fixed in order that I could be addressed on sanction. Accordingly, I will put the case out by order so that such a hearing can be fixed.