

Is your partnership agreement fit for purpose?

Have you got a partnership agreement? Is it up to date?

One of the most common causes of difficulty and dispute in GP practices is either the absence of a partnership agreement or having a partnership agreement which is inadequate or out of date. Disputes over partnership terms can be time-consuming, costly, exhausting and, in the worst case scenario, can mark the end of a practice.

Understandably, GPs are reluctant to spend time and money overhauling their partnership agreements when everything appears to be ticking over nicely, and when there are so many other demands on their time and budget. But time and time again we see practices torn apart by disagreements that would either never have arisen or which would have been easily resolved if there was a well-drafted partnership agreement in place.

Why does it matter?

If you do not have a partnership agreement, or if your existing agreement does not include all the relevant provisions, the default provisions of the Partnership Act 1890 will apply.

Some of the key problems which may arise if there are not relevant express provisions between the partners are:

- Any partner can dissolve the partnership on notice: an acrimonious dissolution will almost certainly result in termination of the practice's contract with the PCT;
- The partnership cannot expel a partner, no matter how poor his performance or conduct. This can severely compromise a practice's ability to function effectively. Crucially, in the absence of express provisions, a partner cannot be expelled even if he no longer satisfies the conditions for holding an NHS primary care contract (e.g. if he is erased from the medical register), putting the practice's contract with the PCT at risk of termination;
- Profit shares will be equal even if partners work different numbers of sessions;
- A partner who is absent for prolonged periods will be entitled to his full profit share indefinitely;
- There will be a lack of clarity about the host of terms applying as between the partners, such as entitlement to leave in different circumstances and the terms applying during such leave, decision making provisions and provisions relating to expenses; and
- There may be disagreements about how to deal with partnership property when a partner retires.

The checklist overleaf is designed to help you assess whether you need to update your partnership agreement.

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Have you got a partnership agreement?	If not, you really must get one prepared as soon as possible for the reasons set out above.
Was your partnership agreement prepared before 2004?	If your partnership agreement pre-dates the 2004 contract, it is unlikely to be fit for purpose.
Have any partners joined since the partnership agreement was last updated?	If so, they need to formally sign up to the partnership agreement otherwise the provisions of the agreement are no longer effective. It is always advisable to seek legal advice when a partner joins.
Are any partners coming up to retirement?	Your agreement should include provisions relating to retirement, including provisions which make it clear how property will be dealt with (including valuation provisions) and that allow for the practice contract to continue with the remaining partners.
Have there been material changes in the practice since the agreement was made, e.g. changing from PMS to GMS, acquiring new premises, joining a GP "federation" or taking on new contracts for services?	If so, you should review your agreement to ensure that it deals adequately with these new circumstances.
Do you have provisions to enable you to deal with a partner who is not performing adequately, whose conduct is poor or who no longer satisfies the conditions for holding an NHS contract?	You should have provisions which enable you to performance manage partners and, if necessary, expel them without putting your practice contract at risk. It is far easier to negotiate and agree these provisions before problems arise.
Does your agreement include a retirement age for partners?	It is legitimate to include a retirement age but the partners must have considered and documented an "objectively justifiable" reason for it, such as a wish to provide partnership opportunities to salaried doctors. If you do not have a retirement age, a partner can continue in the partnership indefinitely.
Do you have detailed provisions regarding holiday, sickness, parental and compassionate leave, including the terms applying during such leave (such as who pays for a locum and whether the partner is entitled to profits)?	If not, you should negotiate the terms now in order to avoid disagreements in the future.
Does your agreement allow for profit shares to be adjusted in accordance with workload?	If not, you should include provisions to allow for such adjustments. Otherwise a part-time partner may be able to demand the same profit share as a full-time partner.
Does your agreement include provisions relating to representation of the practice on commissioning groups?	If not, you should consider including these provisions. Even though GP-led consortia will not have a statutory basis until April 2013, you need to ensure that your participation in informal groups in the transitional period is accommodated in your partnership agreement.