

**A GUIDE TO MERGERS AND TAKEOVERS IN GENERAL PRACTICE**

**Introduction**

GP Practices undergo mergers and takeovers for a variety of business reasons.

A “takeover” is the term used when, usually, a larger and more robust practice acquires a smaller practice, thereby taking on the core contract (GMS/PMS) of that smaller practice, allowing the partners of that smaller practice to: (i) form part of the partnership of the larger practice, or, (ii) allowing the partners to resign as partners and leave general practice, or, (iii) allowing the partners to return as salaried GPs or even locums.

A “merger” is the term used when two practices want to create a bigger entity and decide to merge their practices and all partners continue to work as one partnership.

This is a basic guide to assist those GP practices in understanding what is required when merging or taking over another practice, but also to guide those practices who are being “taken over”. There are a variety of steps and legal issues to get to grips with and hopefully by reading this step-by-step guide will dispel some concerns and clarify what it is that GP practices need to be aware of.

**The Law**

GP core contracts are public contracts and, because the value of those contracts exceed the financial threshold of when contracts need to be formally procured by the Commissioners (CCG/NHSE), the contracts cannot be merely “handed over” to another entity. This would not be permitted by the Commissioners as they would need to put the contract out to formal tender. Most mergers and takeovers therefore are designed to avoid this from happening and the process is conducted in a way that ensures it does not breach any of the procurement regulations.

**The Contracts**

GP core contracts are usually GMS contracts or PMS Contracts and, sometimes, APMS Contracts. GMS and PMS Contracts are “valuable” in the sense that they are rarely awarded nowadays and so preserving them is important to maintain general practice. These contracts more or less have indefinite end dates, so carry on unless a termination clause is triggered, which is usually rare. APMS Contracts are time limited. You can hold more than one GMS or PMS Contract (which we refer to as “core contracts”) as a contractor or as a group of partners, which essentially means you can be signatories to both contracts at the same time.

In other words, you may be able to form one partnership which can hold more than one core contract. This is usually referred to as a “soft merger”.

You can merge the same type of core contract together (i.e. GMS and GMS) as one contract with one contract code if you ask consent from the Commissioner, who may require you to submit a business case. Your case will be heard and decided by the Commissioner. It is rare that the Commissioner declines an application as it is easier for them to manage one large contract than 2 or 3 separate contracts, but that will depend on whether they are satisfied that any merger of contracts will not place patients at risk and that it ticks certain criteria that they may wish to see in place.

**Avoiding Procurement and Merging Safely Within the Rules**

Basically, whether you intend a “Merger” or a “Takeover”, the partners from each practice must “merge” and core contracts must be varied to add partners.

**If it’s a merger** of two practices, then, the core contract of each individual practice is **varied** to add the partners from the other practice onto it. All partners then become signatories and contract holders of both contracts and become one partnership – soft merger.

The Partners can then in the future apply to merge both core contracts, if those contracts are the same, so they have one accounting system and one contract code – hard merger.

If contracts are not the same then a hard merger cannot occur unless an application is made by any PMS contract holder to convert to a GMS contract and once done, you can proceed to apply to hard merge.

**If it’s a takeover,** then the partners from the taking over practice are added by way of a variation to the other practices’ core contract. Once this happens, the other partners can resign by giving the appropriate notice to the Commissioner to come off the core contract.

**PROCESS**

**Step One**

Practices need to conduct a due diligence exercise on the practice they are taking over or merging with. This means conducting a thorough investigation of each practice, covering issues such as employees, contracts, liabilities and processes. You should also conduct a financial due diligence so that accountants may exchange pertinent information relating to the business of each practice.

**Note:** Parties exchanging information need to sign non-disclosure agreements before commencing any due diligence.

**Note:** Employee personal information should be given in an anonymised form.

**Note:** Due diligence is a lengthy process and so you should allocate at least 6/8 weeks to complete.

**Note:** The best way to achieve a thorough due diligence is to submit a due diligence questionnaire to each practice. Once a practice comes back with the answers and supporting documents, a report can be drafted which comments on the detail and identifies significant issues.

Due diligence gives each party a chance to assess the other practice and, if there are issues that arise, these can be dealt with or solutions found to resolve before proceeding.

**Step Two**

**Pre- Merger Agreement or Business Transfer Agreement**

One of these agreements will be required as a next step. The latter is used where there is a takeover. This is a lengthy and complex agreement which is protective of both parties and, in the case of a takeover, more protective of the practice who is taking over. It is essential that one of these agreements is signed and executed. It contains a number of clauses that clarifies the obligations of either party and also contains indemnities which are legal clauses protecting a party against liabilities that should belong to the other party. You will need to take legal advice in both drawing up the agreement and to fully understand its operation. Practices may be at risk financially if they do not agree and sign this agreement before proceeding with any merger or takeover.

**Step Three**

**Partnership Agreement**

You may require a new partnership agreement or a significant adaptation of an existing one to cover the merger, especially if you are taking on new partners. This means your existing agreement may no longer be fit for purpose and you will need to negotiate new partnership terms which govern the new partnership. Ensure this is ready to sign on the completion date so ensure that you negotiate terms early.

**Step four**

**Variation of Contracts**

You are now in a position to ask for the contracts to be varied and variation notices to be issued by the Commissioner to take effect on an agreed date, usually called the Completion Date. Once signed, this is where parties are legally bound to the merger or takeover – DO NOT sign the variation notices unless you are completely satisfied that everything that needs to be done before the merger/takeover has been done or if for whatever reason you have doubts. You can always pick another Completion Date and give yourselves more time to sort out any issues.

**NOTES:**

* Don’t forget – you may need to consult staff formally under the Transfer of Undertaking (Protection of Employment) Regulations – known as TUPE, if there is a transfer to a new employer.
* Remember that staff terms and conditions cannot be changed (unless under specific permitted circumstances) or else it may give rise to unfair dismissal claims.
* Think about the issues regarding premises and seek the advice of a property lawyer should you need any transfers of leases, or other advice.
* Don’t forget patient consultations – contact your PPG
* You need to make changes to your Privacy Notice (there should only be one if you have merged)
* NHS staff pensions are attached to contract codes, not to the employer. Beware of staff working across two or more sites – pensions may be apportioned accordingly, unless you hard merge.

**PLEASE TAKE ADVANTAGE OF LMC LAW’S RETAINER WITH THE LMC AND ACCESS LEGAL ADVICE ON MERGERS AND TAKEOVERS ON A MORE BESPOKE BASIS BEFORE YOU PROCEED.**