



BULLETIN 9

WHY IT IS STILL IMPORTANT TO HAVE A PARTNERSHIP AGREEMENT

GP partnership agreements have undergone a number of changes in recent years especially since “Super-Partnerships” have come into existence, which essentially means GPs will need super-partnership agreements. The latter should incorporate a number of changes to reflect the complex super-partnership arrangements.

Since both GMS and PMS agreements have also changed over the years and the changes have been incorporated into the respective Regulations 2015, current partnership agreements have also had to be modified to include these changes.

This bulletin will set out 10 important inclusions into current partnership agreements that GP practices should be aware of going forward and current agreements should be updated accordingly to incorporate the principles below, where appropriate. Please note there may be other updates to agreements that are necessary depending on when the agreements were drafted. It is safe to say that agreements drafted before 2015 may need a full update.

Gone are the days where partnership agreements could only be interpreted by lawyers. Agreements should be written in clear and understandable terms and should omit any “legal-lease”.

1. Indemnity

Although Partners are jointly and severally liable to the outside world, there is no reason why individual partners who are in breach of the terms cannot indemnify the other partners who are not. Every agreement should contain indemnity provisions and there are several different types depending on the provisions required.

2. CQC

There should be provisions in the agreement that cater for the responsibilities of the partnership to CQC and, in particular, where one partner has been given the responsibility to ensure compliance.

3. Partnership Meetings

These should cater for what decisions require unanimous voting and what decisions require a majority vote. There should also be some idea of how larger super partnership decisions are to be made when the number of partners is significant.

4. Locum Insurance

GP practices can decide on a number of ways in which absent partner cover is paid for. It is important to decide on the mechanics of: who pays for the locum insurance, who pays when the insurance is invalidated or not in place, how claims for locum cover can be made, and who makes good any shortfall. It is important to get this right at first instance as the majority of issues arise when partners are on long term sick leave and when funding cannot be obtained, or when it is, it is not sufficient.

5. Pensions and 24 hour Retirement

There is a process to 24 hour retirement and, to ensure that both the practice and the partner taking retirement are protected, it is important that the process is clearly set out in the agreement. Retiring partners want to know that their position is protected on return and the practice will want to ensure that returns are clearly set out in terms that are within the law and also to the benefit of the practice.

6. Leave and Absence

This seems to create the most problems in super partnerships (especially when merging practices have different leave conditions, some more favourable than others!). It is important to strike a reasonable balance that does not disrupt the running of the business, but also to ensure that maternity, adoption and long term sick leave is dealt with in a way that ensures that the room for discrimination claims is mitigated.

7. Suspension

Not many practices understand the various options that partners have in terms of suspension payments and how these actually work in practice. There are two different ways to claim suspension payments, one under the Statement of Financial Entitlements (SFE) and the other under a Determination of the Secretary of State. One is potentially more favourable than the other, but you will need to cater for both in the agreement and set out the process by which the practice can properly obtain payments under either to cater for locums. Please note, the SFE payments are made to the practice while the Determination payments are paid to the suspended GP. Whichever route is taken makes a huge difference in deciding the process under which the practice can be funded.

8. Termination or Removal of a Partner

This potentially causes the most stress within GP partnerships. If the termination is amicable obviously there is less of an issue. However, more often than not, removals or terminations are due to an individual partner being on long term sick leave which after a while seriously impacts on the business, or where an individual partner is

consistently disruptive. The best clauses in the world in terms of removal tend to forget an important point, and that is that the partnership operates under a separate set of rules to the core contract. Removal therefore under the partnership terms does not always guarantee a removal from a core contract. Both GMS and PMS require consent from all partners to effect such variation and if the partner who is being removed does not consent, then the matter may remain deadlocked. We have seen an emergence of clauses that cater for this in a variety of ways, some stronger than others. However, each case seems to resolve in different ways and is very dependent on the individuals concerned and the nature of the issue. However, the stronger the clauses in an agreement and the more they are weighted in favour of the practice, the stronger the bargaining position.

9. Last Man Standing

These clauses have emerged in partnership agreements only recently in the light of failing practices and partners putting in resignations as fast as the agreement allows. This usually means one partner who has not been able to resign “quick enough” is the last man standing, and effectively “holding the baby”. Unless the commissioners find a caretaking practice and take the business and all its liabilities away (becoming more and more rare), then the last GP standing potentially would have to bear all wind up costs including redundancies, which could be significant. Whilst other partners have walked away with their full share, the position of the “last man” is financially precarious. A robust clause can mitigate this and help spread the closure costs (if any) more evenly.

10. Data Protection Officer and GDPR

In the light of the new legislation, it is wise for all partnerships to contain some clauses that set out the obligations that partners have in terms of compliance. Whether a partner is a designated Data Protection Officer or not, the terms and processes that partners may be required to adhere to, to protect the practice, should be inserted and made clear.