

6 key legal considerations for your GP practice



I hope you enjoy reading our publication on the 6 key legal considerations for your GP practice. We've designed this to provide you with practical information to help you navigate the fast pace of change in the delivery of primary care and enable you to make decisions as you plan the future of your practice.

We work with hundreds of GPs and Practice Managers like you to provide legal advice and our goal is to provide a better service to GP practices than they can receive from any other law firm.

Capsticks is the leading healthcare law firm in the country and has specialised in the healthcare sector for more than 30 years. We are a national firm with over 250 solicitors who service our clients from our offices in London, Birmingham, Leeds and Winchester. We have been voted 'Legal Team of the Year' at the General Practice Awards for two years running.

Please feel free to get in touch with me or any of my colleagues who will be happy to assist with your legal queries.



Sam Hopkins
Partner and Head of GP Group
sam.hopkins@capsticks.com
020 8780 4776

Your partnership agreement: Do you have one and is it up to date?



To find out more please contact:

Mike Clifford
Commercial Partner

mike.clifford@capsticks.com
0121 230 1513

As most general practitioners will be acutely aware; the landscape of primary care in England and Wales is changing rapidly. The Five Year Forward View places a strong emphasis on integration between primary care, community services and hospitals, and to achieve this the new models of care envisage GP practices working collectively in federations or with other providers as part of multi-speciality community provider (MCP) models. In order to prepare for working together at scale, GP partnerships should always ensure that they have up to date partnership agreements to ensure a solid foundation.

Why is a partnership agreement important?

A partnership agreement is essential in order to ensure that good governance arrangements exist between partners. This means that the intentions of the parties, their business relationships, liabilities, decision making, exit strategies and more should be agreed on and properly documented. Surprisingly large numbers of GP practices operate without a formal partnership agreement, or one that is up to date. However this doesn't mean there is no agreement at all. In the absence of any written agreement, the partnership will be governed as a "partnership at will" under the Partnership Act 1890, which is an inherently unstable business relationship and is unlikely

to reflect the intended operation of the partnership. For example, a partnership at will can be immediately dissolved on notice or death, and capital and profits are shared equally (regardless of contribution). This, in turn, can have disastrous consequences for the primary care contract that underpins the practice. A partnership agreement should be seen as a "living document". It has to be kept up to date or it will become increasingly out of date and may become void. Again this can have a result that is contrary to the original intentions of the partners, which can lead to costly disputes.

When should you review and update your partnership agreement?

Changes in law

Partnership deeds should be kept up to date with relevant changes in legislation. The NHS has been routinely restructured by government over past decades and it is important that your deed takes the present structure into account.

CQC registration

As the registered provider of regulated activities, all of the partners are jointly liable to comply with CQC requirements and they will also be liable for the relevant actions/inactions of all the other partners. A partnership deed can help balance this risk by assigning "registered manager"

functions to a particular partner or the practice manager and set out their responsibilities.

New partners

Whenever a new partner joins the partnership deed must be revisited. Setting out a probation period and the consequences of completion of that probation are important considerations. There will also be a range of other questions to consider such as whether or not the new partner will buy into the premises/capital. If so, in what proportion and over how long a period? The introduction of a non-clinical partner may require more careful consideration and distinctions may need to be made between clinical and non-clinical partners on issues such as decision-making and certain key partner obligations.

Property changes

It is particularly important to check whether or not your partnership agreement needs updating when any changes to the way in which the surgery premises are held is made. Under certain circumstances it may be necessary to enter into a separate declaration of trust. This sits alongside the partnership deed and sets out each property owning partner's share of the property. It will also deal with key issues such as when and on what terms an outgoing partner should transfer his or her share to the other partners, and how that share should be valued.

Top tips for maximising the value of your premises

With around 55% of GP premises owned by GPs themselves, property remains a key source of potential income for GP practices. In this article, Sam Hopkins, Real Estate Partner and Head of GP Group, outlines his top tips for maximising the value of your premises . . .

If you're a freeholder:

1 ENGAGE A SPECIALIST SURVEYOR TO REVIEW YOUR NOTIONAL RENT

Receiving an optimum valuation for your premises can boost your Notional Rent reimbursement. Consider appointing a specialist surveyor who can help support you through the process.

2 RE-MORTGAGE

Lenders often see GP property as a sound investment which can be advantageous to GP Partners through lower interest rates – make the most of that!

3 THIRD PARTY OCCUPIERS

Always insist on a lease where owners and occupiers are not the same people. Having a lease underpins the value in the property, protects both parties and can also avoid potential disputes further down the line.

4 PARTNERSHIP AGREEMENT

Always have an up to date partnership agreement: it's essential in order to ensure that good governance arrangements exist between the partners.

5 GET ADVICE ON TAX

Tax can be a complicated business and we recommend seeking specialist advice to help you navigate SDLT, VAT and capital gains tax as well as recommend options that may be available to you through capital allowances and entrepreneurs' relief.

6 PHARMACY

Pharmacies can provide significant additional rental income in addition to enhancing the capital of your property, but pharmacy providers are usually commercially astute, so make sure you enlist the services of a surveyor experienced in health centre pharmacy lettings.

7 EXPAND OR REDEVELOP

Don't forget that under the Premises Costs Directions a number of the funding options are potentially available to you including improvement grants and relief for SDLT, professional fees, mortgage redemption penalties and lease surrender costs.

8 SALE AND LEASEBACK

Owning property freehold can be a barrier to recruiting new GP partners who may be unwilling to invest their own capital in premises. Some practices take the sale and leaseback route to get around this. It will release capital and can allow you to recruit new partners more easily as they won't need to invest their own capital on joining.

9 INVEST IN SOMETHING BIGGER . . . ?

Practice mergers can represent an opportunity to pool assets, and those mergers that involve premises can generate a real improvement on your bottom line.

If you're a leaseholder:

1 HEADS OF TERMS

It is absolutely essential to get your heads of terms right from the start. These are the key commercial terms of the deal upon which the lease will be based. Take advice from a specialist surveyor and solicitor!

2 GET THE FINANCIAL SUPPORT YOU NEED

Financial support may be available if you're taking a new lease. Check if NHSE or your CCG will provide reimbursement of SDLT, professional fees or lease surrender costs for your old premises.

3 DON'T OVERPAY ON YOUR SERVICE CHARGE

Service charges exist to maintain safe premises with good facilities and should never be a profit making scheme for landlords. Your surveyor and solicitor will look carefully at these to protect your position, but you should see what financial support is available from NHSE/ your CCG at heads of terms stage.

4 OPTION TO PURCHASE

Sometimes commercial landlords will give practices an option to purchase their premises at a later date. If this is of interest, it should be included at heads of terms stage.

5 SUBLETTING OPTIONS

If you have extra space that is not eligible for rent reimbursement, take advice from your solicitor on whether or not you can sublet and advice from your surveyor on who to sublet to.

To find out more please contact:

Sam Hopkins
Partner and Head of GP Group

sam.hopkins@capsticks.com
020 8780 4776



Conclusions

Take specialist advice.

Never commit without CCG / NHSE approval in writing.

Legal documents are there to protect you!

Are you considering merging GP Practices?



To discuss which option may be best for you, please contact

Mike Clifford
Commercial Partner

mike.clifford@capsticks.com
0121 230 1513

Whether you are considering a merger now, or in the future, we have guidance to help you plan and succeed.

Understanding the right steps to take and when to take them is crucial for success.

The early involvement of professionals to guide you through the legal, commercial and regulatory hurdles, allows practices to focus on the key issues in making the merger a success from a relationship perspective.

As we see more and more practices merging and joining forces, merged practices reap the rewards that this brings through economies of scale, sustainability in providing services and access to more expertise and skills. However, practice mergers can also fail or struggle in the early years because the appropriate planning didn't take place and relationships broke down.

Our ten golden rules for a happy merger infographic shares the top 10 steps a practice should take to put you in good stead for a smooth and successful merger.

Ten golden rules for a happy merger



The spectrum of love – alternative options for primary care at scale.

Merging is not your only option of course. Developing primary care at scale may not necessarily lead practices to a decision to formally merge and there are a range of different collaborations which can be considered in finding the right model for you. Our ‘Types of collaborative agreement’ infographic compares four different collaborative relationships, of increasing intimacy, on what we have coined the ‘spectrum of love’!

According to a recent survey by the Nuffield Trust* 81% of GP practice-based respondents reported that they were part of a formal or informal collaboration in 2017 citing sustainability, increasing access for patients and shifting services into the community as the key drivers.

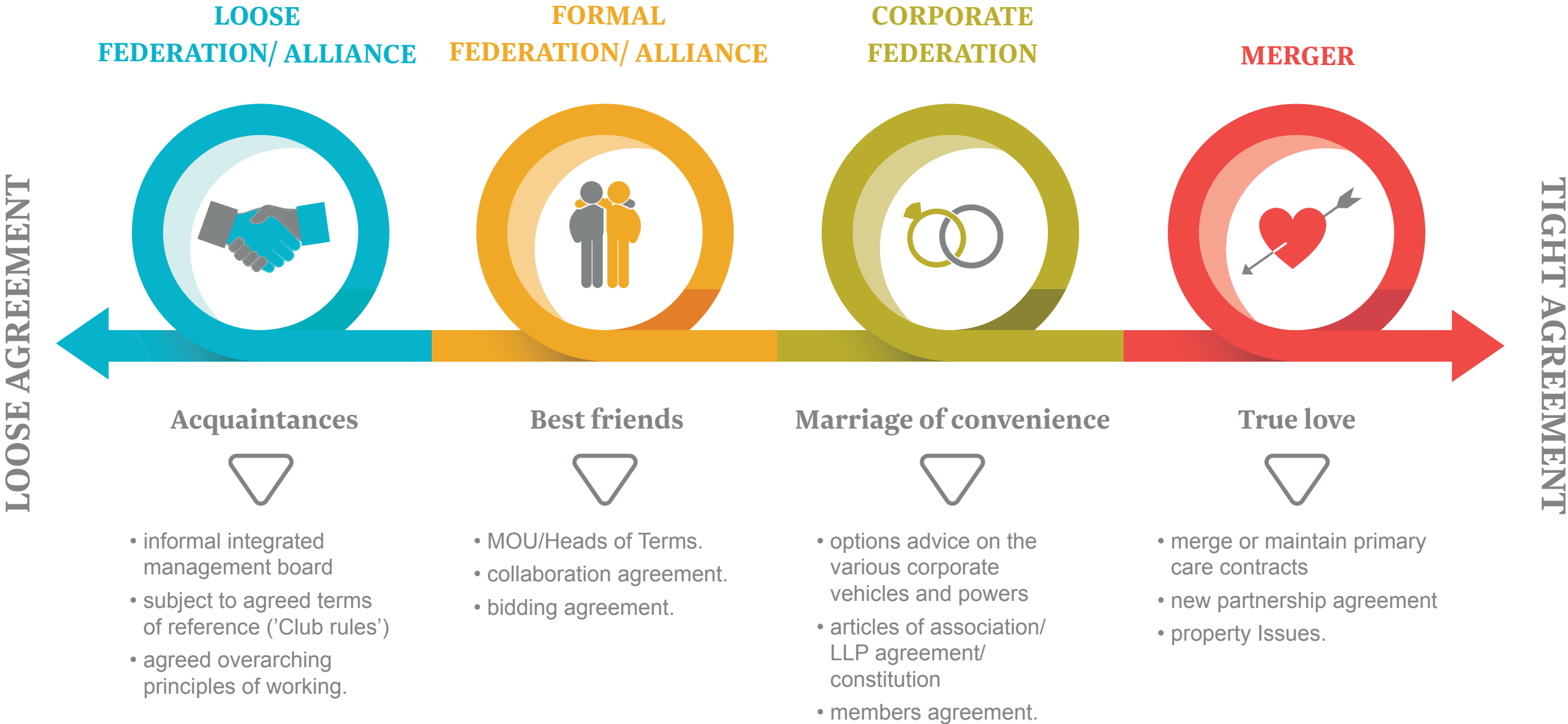
Knowing which option to choose can be daunting and starting such a venture amid existing pressures on time and work can be a huge challenge.



To discuss which option may be best for you, please contact

Mike Clifford
Commercial Partner

mike.clifford@capsticks.com
0121 230 1513



*Source: Nuffield Trust Collaboration in general practice survey

Safe and secure

Associate Daniel Kirk explores the steps practices can take to protect staff and other patients from criminal or “challenging” behaviour.

To find out more
please contact:

Daniel Kirk
Associate

0208 780 4747
daniel.kirk@capsticks.com



Recent research published by the BMJ shows a nine per cent increase in recorded crimes on GP premises and health centres. This is against a backdrop of a rise in overall recorded crime of ten per cent and so is not, in itself, a cause for undue alarm. It is, however, a timely reminder to think about what appropriate action should be taken to ensure safe practice premises for staff and patients.

Given the thousands of patients visiting GP premises and health centres every day, the actual numbers of recorded crimes are relatively low. In 2016/17, there were 2,147 incidents, 339 assaults, 55 cases of harassment and 321 public order offences such as threatening behaviour. For the individual victims, of course, the effect may be life-changing. Managing difficult patients can also be challenging for a practice but there are effective ways to help protect staff.

Legal obligations

The obligations on a practice to address such issues will arise from various sources and from its roles as employer, service provider and owner (or tenant) of a premises.

Key relevant legal obligations include:

- Ensuring as far as is reasonably practicable the health and safety of employees, patients and visitors to the premises (Health and Safety at Work etc Act 1974).
- Security arrangements to make sure that people are safe while receiving care (CQC Fundamental Standards Regulation 15).
- Sufficiently trained staff (CQC Regulation 8).

Risk assessment

As with many health and safety obligations, the starting point in addressing required and recommended actions is to conduct an adequate risk assessment. The basic purpose of the risk assessment is to identify hazards, evaluate risks and implement, monitor and review measures to reduce the risks – in this case potential aggressive behaviour to staff and other patients. The Health and Safety Executive (HSE) even has specific guidance on assessing workplace violence in a health and social care setting. The followings areas are likely to be of note in a risk assessment for GP premises:

- The physical environment. Are access ways well-lit and visible? Are there good lines of sight? There is various guidance showing how the impact of colour palette, signage and layout can help reduce and better manage the risk of patient violence. One study reported a 50 per cent reduction in violent incidents in A&E as a result of design and signage changes.
- Do you have lone workers or those conducting visits? What reasonably practicable measures can be put in place to address additional risks?
- Do staff receive appropriate training, such as basic techniques in managing challenging behaviour or de-escalation, with greater training for those in higher risk situations?
- Are there appropriate policies and procedures in place for handling incidents, emergencies and particular high-risk patients, and dealing with threatening patients, such as warning letters and acceptable behaviour agreements?
- Is appropriate equipment available, such as panic buttons or alarms?

Serious consequences

Failure to have adequate systems in place can have serious consequences. For example, a staff member injured by a patient could bring a claim for financial compensation for harm. The employer could also face a health and safety prosecution.

Although a criminal prosecution normally follows an incident in which someone is harmed, an employer or service provider can be charged for simply creating a risk of harm. Following a change in sentencing guidelines, fines for health and safety breaches are now based on an organisation's turnover and can, in certain circumstances, run into hundreds of thousands of pounds. There have been a number of prosecutions, for example, of NHS employers failing to take adequate steps to protect staff who have then been the victim of serious, or even fatal, injuries from patients.

Commonly, issues arise from the systems around assessment or treatment of mental health patients. Whilst the risks may be less prevalent in general practice, isolated violence and sustained aggressive behaviour do occur.

Dealing with serious threats

Cases of stalking of a GP by a patient are thankfully rare but not unknown. In recent years a male patient was imprisoned for a campaign of harassment against a female GP which led to serious mental health consequences.

A common sense approach to dealing with violent incidents includes contacting the police as a first port of call. It is also important to keep a log of events in case the acts become repeated by a particular individual and evidence is needed to pursue formal action, or patterns emerge which can be assessed to help reduce risk.

The Criminal Justice and Immigration Act 2008 created an offence and power to remove those creating a nuisance from certain NHS premises. The legislation does not cover GP premises but rather hospital and other facilities operated by NHS Trusts. Options that GPs do have include removing an individual from the practice list if certain criteria are met. There is a careful process to follow but violent or threatening behaviour can be grounds to justify removal of a patient from the list.

Practices should have a policy on dealing with difficult behaviour, such as escalating

correspondence and setting out how decisions will be taken, including clinical input. These steps often act as a pre-cursor to removing a patient and help establish a clear and reasonable process for the practice to follow.

In cases of harassment or violence, the police have a range of powers that can be used and there are various criminal offences. In certain circumstances, a practice might consider taking action itself. The Protection from Harassment Act 1997, which creates a criminal offence of harassment, also gives a civil court the power to issue an injunction (a court order) preventing someone from carrying out acts of harassment against other specified individuals.

The threshold for acts that constitute harassment is relatively high and to obtain an injunction it is necessary to show a course of conduct causing alarm or distress. In 2012, that Act was updated to include specific offences and remedies in relation to stalking. Whilst seeking an injunction from the court comes as something of a last resort, Capsticks have successfully obtained them: for example in regard to the release from a psychiatric unit of a patient known to be fixated on a former healthcare professional still living in the area.

What to take away

Here are some key tips to consider for protecting practice staff and complying with legal obligations:

- Have the environment and staff procedures been risk assessed and identified actions completed?
- Can the physical environment be adapted to be safer?
- Ensure policies are up-to-date (dealing with violent patients, lone working etc).
- Make sure staff are trained in how to respond.
- Are appropriate equipment and safeguards in place?
- Keep a record of any incidents that take place, and consider 'debriefing' staff.
- Where appropriate, report incidents to the police.
- Seek further advice if necessary.

Navigating the road to dispute resolution



GP Practices, like any commercial organisation, encounter disputes. These can be disputes with landlords, tenants, suppliers of goods and services, third party stakeholders such as the CQC or internally with practice staff. Unfortunately, disputes with partners, or former partners, are also not uncommon.

Disputes can escalate into formal legal action. This has an impact on relationships, is time consuming, expensive and stressful for all parties involved.

Types of disputes

Partnership disputes
Disputes between partners are often complicated and can be emotive. Common disagreements can involve property, employment, regulatory or commercial issues and they can involve current and/or former partners who may or may not own your property.

Property disputes
These can be more expensive. Because of the value of land and property, landlords, tenants and neighbours can be prepared to allocate greater resource to litigation.

Commercial/supplier disputes
You may experience problems with the supply of goods and services to your practice where an issue has arisen with a particular contractor and legal action may be the next step.

To find out more please contact:

Daniel Kirk
Associate

0208 780 4747
daniel.kirk@capsticks.com



How can disputes be resolved?

A robust partnership or lease agreement (see previous articles!) can help you avoid the need for legal advice later down the line but when you find that is not in place, we have experience of helping practices like yours with negotiation, mediation and court proceedings if needed.

Your Team Capsticks' GP Group



Sam Hopkins
Partner and Head of GP Group
London

sam.hopkins@capsticks.com
0208 780 4776



Lisa Geary
Real Estate Partner
Leeds

lisa.geary@capsticks.com
0113 322 5561



Joanna Bower
Litigation Partner
London

joanna.bower@capsticks.com
0208 780 4805



Henry Matveieff
Real Estate Associate
Birmingham

henry.matveieff@capsticks.com
0121 262 6568



Mike Clifford
Commercial Partner
Birmingham

mike.clifford@capsticks.com
0121 230 1513



Amy Milson
Employment Law Associate
Leeds

amy.milson@capsticks.com
0113 323 1064



Daniel Kirk
Litigation Associate
London

daniel.kirk@capsticks.com
0208 780 4747