

# Do you have an up-to-date partnership agreement?

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 the 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 and comprehensively 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 It has to be kept up to date or it will become increasingly out of date and may become void.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: will the new partner 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.

## CONTACT



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