

WHY A PARTNERSHIP AGREEMENT IS CRUCIAL

Partnership agreements are crucial but are often ignored or drawn up badly – in the fourth of his series on financial management, accountant Ian Tongue urges GPs to recognise just how important they are

The partnership agreement is one of those areas that GPs think they will get round to arranging, but in many cases this never happens. Yet having a sound partnership agreement is extremely important to the smooth running of the practice's affairs.

It acts as a 'rule book' to ensure that everyone knows where they stand and what is expected of them. And it helps ensure the long-term survival of the surgery. A partnership agreement is a legally binding document and should not be entered into lightly, but it offers partners protection against uncertain future events. Specialist advice should be obtained throughout the process to ensure that the agreement covers as many relevant areas as possible.

Some partnerships may already have agreements but it is important that they are kept up to date. If the agreement was drafted before 1 April 2004 it is likely it will need updating for the new contract.

Why is one needed?

There are many other professions where partnerships are common, such as accountants and solicitors. It would be unthinkable that any of these firms would not have a partnership agreement, and yet there are many GPs in partnerships without them.

A partnership agreement is a framework for the operation of the surgery's financial affairs. It therefore acts as a tool for internal governance of the practice.

The prevention of misunderstandings and disputes is a key benefit of a robust agreement. However, it is very important that a process is established for resolving such situations, otherwise lengthy legal disputes can be experienced. Setting out such issues ensures that each partner knows what is expected of them and what they can expect of their fellow partners.

What should it cover?

Internal governance The agreement should set out how the business is run. This would include aspects such as how the partners share profit, who has the voting rights and what happens when there is a deadlock.

Entry and exit of new partners The entry and exit of new partners is a common part of running a partnership. In today's changing financial environment this could be equity,

non-equity or fixed share. The partnership agreement should allow for each type of partner and determine the requirement for entry. This could be unanimous voting or majority.

There should be provisions for the removal of a partner and the procedure for the extremely difficult scenario of a partner's death.

Succession planning The continued success of any partnership relies on new partners continuing the business. As GPs are not currently allowed to sell goodwill in relation to the patient list, for most GPs this will be centred round having an exit route for their share of the surgery premises.

Retirement of partners It is inevitable that each partner will retire and the agreement should make the process clear and unambiguous. One of the key areas to consider is the sale of any surgery property that the retiring partner owns. It is becoming more common for GPs to retain their ownership of the surgery premises following retirement with the surgery paying them rent – the agreement must facilitate this.

Property valuation At the point of entry or exit of a partner, the surgery premises will have to be valued. The process and method should be set out in the agreement as this can lead to disputes. This is very important as the surgery premises are a specific type of commercial property and therefore their valuation has more subjectivity.

Resolution of disputes Inevitably there will be a difference of opinion or dispute at some point and a process to resolve this is essential. There are many cases of GPs entering into expensive legal proceedings that could have easily been avoided if there was due process.

Outside earnings Many GPs have earnings outside of the practice. The agreement should state what type of work is acceptable to ensure this work is not carried out to the detriment of the practice.

Divorce Unfortunately, divorce affects many people and it is important that such events have minimal impact on the partnership. Areas such as the prevention of joint property ownership will require consideration. Partnerships that contain both parties may also require specific considerations.

Recruitment The conditions for hiring and firing should be set out in the agreement to prevent disputes later on.

Accounting The accounting procedures are also an important consideration. The partners should set out their timescales for the signing of the year-end accounts and providing personal expense information to the accountants. Delays in establishing the accounting and tax position can be avoided in this way.

Who drafts it?

A solicitor will draft the agreement for you but they will require significant input from the GPs. You may want your accountant to review the agreement as their input can be invaluable. There are several firms of solicitors with experience in acting for doctors. The BMA can also assist you in this area.

How much will it cost? This will ultimately depend on the complexity of the agreement and whether there are many changes made throughout the process. Average legal fees would be in the region of £1,500-£3,000 plus VAT.

Is it really worth it? The simple answer is Yes!

In the absence of a partnership agreement, the Partnership Act 1890 becomes the legislation that binds the partnership. As you can imagine, legislation this old has little context in the modern world that a GP practice faces.

Partnerships that rely on this act will find few solutions to the problems they will face and therefore it is not recommended.

Clearly, the partnership agreement is an important document for any GP surgery run as a partnership. The preparation of this document will take time and effort from all partners but this should be seen as an investment to prevent and manage future uncertain events. Your accountant and solicitor will be able to advise you further on partnership agreements.

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