

## **Important Information on Partnership Agreements - including a fit for purpose 2-minute checklist**

Could you get caught in a messy dispute just because you are not clear what an adequate partnership agreement should entail and whether you have one?

Investing 5 minutes to read this document now could save you a great deal of time and expense in the future!

It is becoming increasingly apparent that many practice and partners believe they have an adequate and valid partnership agreement only to find – too late and to their detriment – that they are unprotected due to their agreement not standing up to scrutiny or being out of date. For many this is due to misunderstanding rather than mismanagement.

It is hoped that this short and simple document will assist practices to understand more fully what is required from a partnership agreement.

As you will be aware, partnership agreements provide an important safeguard – both for existing partners as well as for those joining an established partnership. It is vital you have a full, signed partnership agreement which is legally drawn up and executed. All too often the words ‘partnership agreement’ are heard and a box is mentally ticked without real understanding of what a ‘partnership agreement’ should contain.

We have drawn up this simple 2-minute checklist to provide greater understanding. We urge you to check you agreement against this list to ensure you are not left wanting. If your agreement does not comply, it is time to seek professional advice.

### **Partnership Decision making**

There are currently a number of decisions to be made that will impact on practices and partnerships that require a Partner(s) to ‘sign up’ on behalf of the practice – most notably CQC and CCG Constitutions. **It is important that this decision is correctly documented in partnership meeting minutes** and that all parties agree as to whom can sign what and it within what parameters on behalf of the practice.

When you are reviewing your agreement please take this additional decision making into account and discuss with your legal advisor how this can be incorporated into your agreement.

In the meantime, you should, as a bare minimum, ensure that there are clear, SIGNED minutes on the discussions that have taken place and the decisions reached. It would be sufficient to document something in the style of your usual minutes but along the lines of:

Agenda item: xx e.g. CCG Constitutions or CQC

Discussions: brief summary of discussion

Outcome: PARTNERS AGREED THAT DR XXX IS EMPOWERED TO SIGN THE APPLICATION FOR CQC/THE CCG CONSTITUTION (delete as appropriate) ON BEHALF OF THE PARTNERSHIP. ANY PENALTIES OR FINES AS A RESULT OF CQC ARE CONSIDERED NOT THE RESPONSIBILITY OF THE INDIVIDUAL BUT THE PARTNERSHIP.

## Partnership Agreement Checklist

**Please note:** Cleveland LMC excludes all liability and has no responsibility for decisions made on the basis of this checklist which should be treated and used as **guidance only**. Always seek professional legal advice in drafting and/or updating/amending partnership agreements. This checklist is guidance for general use to start you on the track to develop a valid partnership agreement and only covers basic considerations rather than the more detailed aspects of partnership agreements. It is designed to focus discussions to identify if further development is needed. You must always consider the individual circumstances of your partnership. **Have you got an up to date (post 2004), signed partnership agreement and does it include:**

**Commencement and Interpretation** – lays out basic information such as:

- Details of all parties**
  - Names and addresses of the parties
  - Address (for each partner) where legal documents could be served
  - Compliance with the Business Names Act 1985
  
- Definitions**
  - Key terms e.g. bankers, practice area
  
- Nature of business**
  
- Duration of partnership**
  
- Terms of dissolution**
  - Circumstances that would cause the dissolution of the partnership
  - Time span following dissolution to agree division of assets and cater for liabilities
  - What will happen if the partnership is dissolved mid financial year
  
- Grounds for expulsion from the partnership**
  
- Death/retirement**
  - Impact of death/retirement of one partner on the partnership subsisting between the remaining partners
  - What happens to partnership assets and GMS/PMS contract on death/retirement of one partner

**Partnership Finances** – usually the most common reason for practice disputes so it is important that this section provides full details covering:

- Premises clauses**
  - Define if lease or own (including ownership details) practice premises
  - Time span to find new premises/alternative arrangements if premises used are owned by one or more partner and they leave
  
- Bank accounts**
  - Limit of expenditure a single partner can authorise
  - Signatories if partner(s) are on leave
  
- Capital assets**
  - Provision of equipment at partner's own expense (e.g. car, mobile)
  - Assets properly defined in the partnership deed or separate deed
  
- Tax and accounts**
  - Filing of the Partnership Tax Return with Inland Revenue and receipt/handling of details of personal expenses for completion of the return
  - Indemnity of other partners if one (or more) incurs late filing penalties

- Details regarding production and location of accounts and entitlement of access for all partners
- Signing of accounts once approved
- Accounts binding unless error discovered within a specified period
- Details of bank account(s) and accountant
- Expense claims - should be reasonable, accurate and complete and accountant furnished with relevant information

**Pensions**

- Responsibility for pensions
- Provision for non-NHS income or staff/partners excluded from/opting out of NHS scheme
- Liabilities for outstanding pension on dissolution/resignation/retirement/death
- Specialist pension advice
- Shortfalls – payable by practice or individuals

**Partnership income**

- Division of private income
- Seniority payments
- Division of profit (from all practice income streams)
- Definition of partnership income and personal income
- Receipt of insurance proceeds
- Payment of locums
- Reassessment of division of profits should partners' duties change

**Partnership Expenses**

- How all necessary expenses will be met

**Leave, Absence or Suspension** –details usually be covered in a contract of employment including:

**Holidays, leave and sabbaticals**

- Profit sharing and covering locum costs during leave

**Sickness and incapacity**

- Locum employment and funding
- Right to terminate membership of long term sick partner
- Requirement for medical examination after a period of incapacity

**Partnership Management** –smooth running of the practice is aided by clarity in areas such as:

**Duties of partners**

- Restrictions on other employment or committee membership

**Restrictions on authority and decision making**

- Voting rights when on leave
- Limitations of each partners' decision to bind other partners
- Indemnity clauses to protect partners if one acts without authority
- Indemnity insurance
- Decisions requiring unanimity e.g. admission of new partner

**Suspension**

- Administrative responsibilities if partner suspended
- Responsibilities for locum cover and funding