

Partnership Agreements

A partnership is defined as the relationship which subsists between partners carrying on a business with a view of profit. Whether a partnership exists or not depends on the actual relationship between the parties. Just because the parties call themselves partners does not mean there is a partnership between them. The relationship can be fully described in a written agreement, but is more difficult to establish without a written agreement. Indeed, the BMA advises that all practices enter into written partnership agreements.

Where there is no written partnership agreement, a 'partnership at will' will probably be formed (where the existence of a partnership can be established) and this will be governed by the provisions of the Partnership Act 1890. A partnership at will is an unstable business arrangement because there are no provisions in place to govern what will happen if there is a disagreement between the partners, and, importantly, the partnership is dissolved if one of the partners leaves or retires from practice – which can happen immediately on notice being given. The effect of dissolution could include:

- The forced sale of the partnership assets – this could include the surgery premises
- The redundancy of the staff, and
- The loss of the NHS contract for services and no certainty that a new one will be granted.

In addition, none of the partners will be under a restrictive covenant preventing them from competing with the practice, which could mean that if one partner acquires the right to take over the practice, s/he would not be protected from the other partners acting in competition.

A written partnership agreement can deal with all of these issues: it can provide for the events which will trigger retirement or expulsion and ensure that this will not by itself lead to the partnership being dissolved; it can put in place provisions concerning dispute resolution or how to resolve a deadlock – and thereby help the partnership to keep operating if there is a dispute or deadlock and avoid unnecessary costs and expense; and it can deal with what is to happen if there is a split and what each partner's rights are. In addition, a written partnership agreement can provide for different profit shares between the partners which could reflect different contributions they provide, for example if one is part time, or one is not a GP.

If these points are properly discussed and agreed at the outset, and properly incorporated into a written agreement, it can avoid uncertainty later on.

The CWJ medical partnership team is very experienced in preparing partnership agreements to suit a wide variety of situations. We have many GP clients in Kent and the South East. Our expertise is, in fact, recognised on a nationwide basis as the firm and Michael North, who has for some time been regarded as a leading practitioner in this field, are both featured in the Chambers Guide to the Legal Profession.

We have adopted an established procedure to prepare Partnership Agreements based on the completion of a questionnaire. This questionnaire can be accessed

through our medical partnerships page on our website. On receipt of a completed questionnaire, we will give a firm estimate of the fees involved to prepare a draft Agreement.

In addition to the drafting of Partnership Agreements and advising on property matters the firm is able to offer particular expertise in the related aspects of disputes, employment law and financial advice.