

GPC

General Practitioners
Committee



PARTNERSHIP AGREEMENTS

GUIDANCE

May 2004

Partnership agreements – guidance

This guidance has been prepared by the General Practitioners Committee of the BMA, in consultation with the BMA's regional offices and the BMA's legal advisors and the GPC's legal advisors. It is intended to help general practitioners to identify matters they may wish to cover under a partnership agreement when practising either under the new General Medical Services Contract or under Personal Medical Services.

Whilst all reasonable efforts have been made to ensure the information contained in this guidance is accurate, no representations or warranties are made (whether express or implied) as to the reliability or completeness of such information. The BMA's and the GPC's legal advisors therefore cannot be held liable for any loss arising directly or indirectly from the use of, or any action taken in reliance on, any information appearing in this guidance.

REMEMBER!

- The new GMS contract arrangements came into effect from 1 April 2004. The absence of a partnership agreement cannot prevent a Primary Care Organisation awarding a practice a contract under the new GMS arrangements.
- This guidance applies to practices in all four UK countries, save where individual variations are identified.
- Please also note that Scottish partnership law and Scottish and Northern Irish property law are in some respects different from the provisions that apply in England and Wales. Discrimination law is also different in Northern Ireland.
- Practices should seek specialist legal, accountancy and tax advice in each of the four countries in relation to new agreements or amendments to existing agreements. Partnership advice may be obtained from the Local Medical Committee. BMA members may also obtain partnership advice from their local BMA office.
- Partnerships with an existing agreement may not need to draw up completely new agreements, but will need to consider their existing agreements and amend or supplement these where necessary.
- Without a written partnership agreement, a 'partnership at will' will almost certainly be in existence, and the relationship between partners will be governed by the provisions of the Partnership Act 1890. A practice without a written partnership agreement is an unstable business arrangement.
- A partnership agreement is a contract and must be kept up to date at all times in order to be valid and thus effective.
- A well-drafted agreement can and should provide for a partner's retirement without disrupting the relationship of the remaining partners.
- A new partnership agreement/supplemental agreement **must** be in place, signed and dated by **all** partners **before** the first day of an incoming partner's period of mutual assessment. Failing this, a 'partnership at will' will almost certainly arise where the effect of dissolution may include:-
 - the forced sale of all the partnership assets including surgery premises
 - the redundancy of all staff, and
 - the loss of the existing NHS contract for services.

There will be no restrictive covenant to protect any subsequent practice.

We strongly advise that all practices should enter into written partnership agreements.

When preparing a new partnership deed, or amending an existing one, it is very important to consider what arrangements will apply if there is a partnership split. This is one of the most difficult areas for any practice and the one that can incur significant legal costs if the agreement is not clear or disputed. The nature of disputes between partners means that they can become very protracted and expensive as well as having a corrosive effect on the practice.

Important Note

Attention is drawn to the sections relating to the exclusion or expulsion of a partner and dissolution of the partnership.

The essence of a well-drawn agreement is to provide security and stability for all the partners. Clauses allowing exclusion or expulsion of one partner at the discretion of the others may be seen as a way of avoiding deadlock and lengthy procedures in the interest of the practice in the event of relationships breaking down. However, partnerships will wish to give very careful consideration to these areas as they relate to complex and sensitive issues, not least because, with any potential suspension or expulsion, the dynamics and impact on individual partners/prospective partners and the remainder of the partnership are very different.

Dissolution of a partnership can cause difficulty and partners are urged to exercise great caution in determining whether dissolution should take place as this can have damaging effects. The effects of dissolution are set out in section 3 of this guidance. However, whilst dissolution can be damaging, it is prudent to include clauses concerning the process of dissolution in any agreement.

More detail is given in each of the relevant sections of this guidance and partners are advised to consider most carefully whether they wish to include clauses about exclusion or expulsion in their agreement.

1. THE NEW GMS CONTRACT

1.1 Introduction

The old general medical services contract was a set of statutory arrangements made with an individual GP. Since 1 April 2004, different arrangements apply.

The new GMS contract legislation changes the nature of the contract. The main difference is that instead of being a statutory type of agreement made by individual GPs, the new GMS contract is a private law contract between a Primary Care Organisation and a GMS contractor which, except for single-handed practitioners, means with the practice and **not** the individual doctor.

This GMS contract is subject to national rules and procedures in each of the four UK countries that set out the requirements for the new contract. These requirements have been translated into a standard contract, *The Standard GMS Contract*.

The Statements of Financial Entitlements (SFE) for each country are sets of Directions to PCOs that replace the Statement of Fees and Allowances (the Red Book). The SFE relates to the payments to be made by Primary Care Organisations to a contractor under the new GMS contract.

There are a number of changes to the arrangements, particularly the practice-based nature of the contract, that will impact on partnerships. These are set out in this section.

1.2 Contractors

In new GMS the practice will be the GMS contractor. The relevant GMS Regulations in each country set out the conditions that apply to GMS contractors. GMS contractors can be:

- an individual medical practitioner,
- two or more individuals practising in partnership, at least one of whom must be a medical practitioner, or
- certain types of companies limited by shares where at least one share in the company is legally and beneficially owned by a medical practitioner.

The relevant contract regulations in each of the four UK countries are:

England: - The NHS (General Medical Services Contracts) Regulations 2004 – SI.2004/291
Scotland: - The NHS (General Medical Services Contracts) Regulations 2004 – SSI. 2004/115
Wales: - The NHS (General Medical Services Contracts) (Wales) Regulations 2004 – SI. 2004/478
Northern Ireland: - The Health and Personal Social Services (General Medical Services Contracts) Regulations (Northern Ireland) 2004 – SI 2004/140.

The contractor can therefore be made up of one or more individuals, and can include practice managers, nurses, dentists, consultants, pharmacists or other allied health professionals. However, the contractor must always include at least one general medical practitioner:

- who from the coming into force of the General and Specialised Medical Practice (Education, Training and Qualifications) Order 2003 ('the 2003 Order') is a medical practitioner whose

name is included in the General Practitioner Register otherwise than by virtue of paragraph 1(d) of Schedule 6 of that Order, and

- until the coming into force of that article, is a medical practitioner who is either:
 - until the coming into force of paragraph 22 of Schedule 8 of the 2003 Order who is suitably experienced within the meaning of section 31(2) of the National Health Service Act 1977, section 21 of the NHS (Scotland) Act 1978, or Article 8(2) of the Health and Personal Social Services (Northern Ireland), or
 - upon the coming into force of paragraph 22, is an eligible general practitioner pursuant to that paragraph other than by virtue of having an acquired right under paragraph 1(d) of Schedule 6 to the 2003 Order.

1.3 Non-GP partners

The broadening of the provisions in relation to the definition of a contractor allows practices more flexibility in the structure of their partnerships. When considering whether to admit non-GP partners, it would be useful to consider the following issues:

- whether there are any aspects of decision-making which should be specifically reserved for the clinician. This could include matters of clinical practice and, for example, whether the practice should commence or withdraw from enhanced services, etc
- whether the accountability or line management for staff should be specified e.g. whether the GP partner should have a more than proportional impact on any decisions relating to any employed medical staff
- current partnership deeds usually contain provisions regarding obligations and expulsions which tend to be specifically related to medical partners. There will be a need to ensure that corresponding commitments apply to other partners e.g. the professional obligations of nurses
- what mechanism would be appropriate for determining profit share given that the nature of the GP partner's work will be different from that of the other partners
- non-GP partners who are likely to have professional obligations. The practice should consider whether special provisions should be built into the agreement relating to time off (whether for CPD or for other reasons).
- non-GP partners will have the ability to join the NHS pension scheme.

1.4 Lists

Patient lists belong to the contractor practice. Although patients now register with a contractor rather than individual GPs, patients can still ask to be treated by a particular practitioner, and contractors should ask patients if they want to name a preferred practitioner. Choice is not absolute and will depend on the availability of the practitioner.

There is nothing to prevent patients being distributed between individual doctors but this is purely an administrative arrangement for the contractor practice to make and for the partners

to agree, and it confers no benefits on the individual partners. We would not expect a deed to cover the relationship between patients and doctors.

1.5 PCO role in partnership splits

A GMS contract cannot generally be terminated by the Primary Care Organisation simply because there is a change in the structure of the partnership e.g. a partner leaves or retires, or a new partner joins.

A PCO does, however, have the ability to terminate a contract in two circumstances:

1. if the contractor has breached the contract and as a result of that breach, the safety of the contractor's patients is at serious risk if the contract is not terminated; or
2. if the contractor's financial situation is such that the PCO considers that the PCO is at risk of material financial loss.

Also, where there is a sudden or acrimonious change in the partnership, the PCO can serve notice terminating the contract but it is expected that the PCO will then enter into short-term temporary contracts (for no more than 12 months) with the parties. Where the temporary contract(s) come(s) to an end, the practices would normally be offered a permanent contract, or, where they agree, they could continue to provide services e.g. through merging with a neighbouring practice.

This is dealt with in the relevant Regulations for each country (see above).

2. PMS

The ability for contractors to provide primary medical services in the form of personal medical services under a pilot scheme started in England and Scotland on 1 April 1998 under the provisions of the NHS (Primary Care) Act 1997. On 1 April 2004 pilot schemes became permanent and new regulatory arrangements will become fully effective from 1 October 2004.

Generally there are only differences in terminology between GMS and PMS partnership deeds but any differences that are relevant to this guidance are noted in the appropriate places.

3. WHY HAVE A PARTNERSHIP AGREEMENT?

Partnership disputes are highly disruptive. Although a properly drafted partnership agreement may not prevent disputes it will help clarify the position and lessen any adverse impact.

A partnership without a written agreement is a 'partnership at will'. This means that relations between partners are governed by the Partnership Act 1890. A 'partnership at will' is an unstable business relationship as it can be dissolved at any time with the following consequences:-

- notice may be served by any one partner on the others without their prior knowledge or consent
- such notice may take immediate effect and no reason need be given to justify it

- the notice may result in the forced sale of all partnership assets (including the surgery premises) and the redundancy of all staff incurring potentially large financial liabilities
- following dissolution, a group of partners may want to set up on their own but there is no certainty that they will be able to obtain a new GMS or PMS contract
- there is no restrictive covenant.

During the lifetime of a 'partnership at will', all partners are deemed to have equal profit shares unless there is clear evidence to the contrary and most decisions may be made by simple majority. Hence a written agreement should reduce significantly the potential for serious disagreements and instability.

The GPC recognises that not all GPs wish to commit themselves to a full profit-sharing (equity) partnership with the risks and commitments that it entails. This guidance therefore recognises that some practices may wish to make provision for 'partners on a prior share of the profits' (often known as 'fixed share partners') who, are partners in their own right, who have a full range of partners' obligations, who are held out as partners and who receive a fixed income. A fixed share is a fixed sum of e.g. £X per annum which is paid to the fixed share partner before the other partners divide the balance of the profits in their percentage shares. A fixed share partner is not a salaried GP who is an employee of the partnership. However, specialist advice should be sought concerning the liabilities of 'fixed share partners' particularly with regard to taxation matters.

This position should be contrasted with that of salaried GPs for whom separate arrangements should be put in place. This guidance does not cover their position and GPs are recommended to obtain advice from BMA local offices and LMCs.

It should be noted that whether a partnership actually exists or not depends on the actual relationship between the parties involved. A relationship does not become a partnership simply by calling it one. A partnership is defined as "the relationship which subsists between persons carrying on a business with a view of profit".¹ For a partnership to exist there has to be a clear consensus of intent between the parties.

4. A BASIC FRAMEWORK FOR A MEDICAL PARTNERSHIP AGREEMENT

4.1 General points

This framework supplements the partnership checklist (see pages 11 & 12). It is not meant to be approached on a 'pass' or 'fail' basis, but as a list of the main issues that should be considered when preparing or revising any partnership agreement.

Every partnership agreement should be the result of detailed thought and consideration by all the partners and intended partners. A clear statement of the provisions to be included should be referred to the partnership's legal advisors so that an agreement can be prepared. It is essential that the agreement is kept up to date, particularly when there are changes to the partnership where a new partner is to join the partnership.

4.2 When considering appointing a new partner

¹ Section 1 Partnership Act, 1890

The relationship between partners requires the highest degree of trust, because they are jointly and severally liable for each other's actions; for example, if one partner commits the partnership to incur a debt of £10,000, the partners may be sued jointly for the recovery of that debt, or any one partner may be sued individually for the whole debt (even though he or she was not the partner who entered into the contract).

Partners are also collectively responsible for the provision of services in accordance with the terms of the GMS contract or their PMS agreement and would be jointly and severally liable for the obligations of, or defaults of, the practice.

When taking on a new partner, existing partners are advised to consider the alternative of employing a salaried GP 'with a view to partnership' e.g. for six to twelve months. Partners need to be aware that with the passage of time salaried GPs will accrue employment rights.

Partners must ensure that a prepared draft of the partnership agreement (deed) is available to show prospective partners. The draft will almost certainly provide for a period of mutual assessment, which will normally either be six or twelve months in duration. During this period either the existing partners or the new partner would be able to give notice – often a period of one month. Such notice would not, however, end the partnership between the existing partners.

4.3 Changes within the partnership

Any change in the constitution of a partnership should be dealt with under the terms of a partnership agreement. Otherwise, a 'partnership at will' could arise with all its disadvantages. For example, admitting a new partner on a mutual assessment period produces a new legal partnership from the very first day of the assessment period. Only in Scotland do partnerships have a separate legal entity and specialist advice relating to Scottish partnership law should be obtained.

4.3.1 Admitting a new partner

In order to provide maximum protection for all the partners, a new partnership agreement/deed of variation to an existing agreement is **almost certainly** required and **must** be signed **before** the first day of any period of mutual assessment to avoid the possibility of a 'partnership at will' arising. Any other arrangements may not give adequate protection in this respect. Partnership deeds can come into effect after a partner joins but this should be avoided wherever possible. However, such an agreement may allow for a mutual assessment period allowing either the existing partners or the new partner to give notice if either side does not wish to continue the arrangement, whilst leaving the original partnership agreement intact. Without such an agreement any termination of the arrangement could cause a dissolution as any original partnership agreement would cease to be binding even on those partners who originally signed it.

4.3.2 Retirement of a partner

This should be dealt with within an existing partnership agreement, thus avoiding the need for a further agreement at the time of retirement. However, advice should be sought on how to deal with the retiring partner's disposal of a share in the surgery premises or other assets.

4.3.3 Other changes to partnership arrangements

If any other changes are made throughout the duration of the partnership, evidence of such changes must be recorded. Depending upon the significance of any new arrangements these may be recorded in either the partnership minutes (e.g. a decision to change the partnership bank) or a deed of variation to the partnership agreement (e.g. a change relating to the ownership or development of the surgery premises).

5. VALUING SURGERY PREMISES

It is illegal for GPs to buy or sell the goodwill of the essential services provided by an NHS practice e.g. valuing essential services premises at anything above current market value may (depending upon the circumstances) represent a sale of goodwill in the essential services. Other components of GMS or PMS may be traded, but must be operated by a separate business as providers of essential services cannot trade in goodwill at all. Practices considering trading in goodwill in other than essential services must seek expert advice from specialist lawyers. The GPC will produce guidance on trading in goodwill shortly.

Valuations of GPs' premises often do not reflect the original building costs.

There are differing views relating to the valuation of premises. Whatever the partners may agree upon, it is essential to record this in the partnership agreement.

Any GPs contemplating a new surgery development should seek specialist advice at an early stage. In particular, it may not be prudent for a partner approaching retirement to enter into such a scheme. Furthermore, if GPs are considering altering existing premises, they should consider valuation issues before proceeding.

GPs should remember that investment in property always incurs some element of risk. GPs are referred to the GPC guidance on valuation of surgery premises, published in 1999, and available on the BMA website at www.bma.org.uk.

6. DISCRIMINATION

It is unlawful for any partnership to discriminate on grounds of sex, sexual orientation, disability, marital status, colour, race, religion or religious belief, nationality (including citizenship), ethnic or national origins:

- when advertising for a new partner
- when appointing a new partner
- in the terms on which a new partner is offered a partnership
- by refusing, or deliberately neglecting, to offer a partnership.

If someone is already a partner it is unlawful to discriminate:

- in the way he or she is afforded access to any benefits, facilities or services
- by refusing, or deliberately neglecting to afford access to those benefits, facilities and services

- by expelling the partner, or treating him or her unfavourably.

Partnerships will be bound by any relevant changes in discrimination legislation in each of the four countries relating to partners and partnerships.

7. SPECIALIST ADVICE

No outline can cover all aspects of an intended partnership. GPs should seek specialist legal, accountancy and tax advice whenever a change in their partnership or to their premises is anticipated.

If a partnership is considering engaging a firm of solicitors, LMCs or other local practices may be able to suggest firms who have experience of working with general practices, as expertise in this specialist area of partnership law in relation to NHS general practice is scarce.

Expert advice taken at an early stage may save thousands of pounds in subsequent costs and furthermore should draw out any pitfalls of the proposals, giving adequate time to work around alternative solutions to a problem.

GPs should not be surprised if advised that the legal position of partners within the practice, and particularly in the case of a retiring or incoming partner, is different. This could give rise to what is known as a 'conflict of interest' and may necessitate individual parties seeking independent legal and accountancy advice.

Your LMC secretary or, if you are a BMA member, the BMA local office may be able to give additional guidance.

A BASIC FRAMEWORK

The following issues should be included in a partnership agreement as essential clauses. Further guidance is set out in the table below.

Business Details:

Details of the parties, and commencement date and duration of the partnership

Dissolution

Assets:

Capital assets

Valuation of partnership assets

Premises

Income and Expenses:

Statement identifying the nature of the business

Details of income, including treatment of private income

Details of personal expenses

Details of expenses charged to the trading account

Profit and loss

Fixed share partners

Accounting:

Details on production and location of annual accounts

Agreed profit shares of each partner

Details of partnership accounts

Signing annual accounts

Statement about taxation

Partners leaving in year and the apportionment of achievement and aspiration payment

Practice policy on a partner doing outside work

Superannuation:

Details of the superannuation arrangements

Retirement/expulsion:

Details of voluntary retirement

Period of mutual assessment

Expulsion

Compulsory retirement

Suspension

Effects of retirement, expulsion or death of a partner on the practice

Restrictive covenants

Partners' obligations to each other:

- Statement about partners' obligations to each other
- Statement as to how partnership decisions are taken
- Partners' holidays, study leave and CPD arrangements
- Illness of a partner and leave/insurance arrangements

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-
-
-

Management:

- Leave – maternity, paternity, adoptive and compassionate
- Gifts and legacies

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Disputes

-

A basic framework for a medical partnership agreement

PROVISION	NOTES
BUSINESS DETAILS	
<p>Details of the parties, and commencement date and duration of the partnership</p>	<p>If the partnership is to be carried on under a different name from those of the partners, e.g. if it is known by a surgery name, this should be specified.</p> <p>It should also be stated that there should be compliance with the Business Names Act 1985. The Act imposes an obligation on the partners to disclose the name of each partner, and in relation to each named partner, an address to which documents could be effectively served if necessary.</p> <p>The period during which the partnership shall exist must be stated, if a partnership at will is to be avoided. The partnership will usually be declared to exist during the joint lives of the partners, or any two or more of them. Exceptionally a partnership may be entered into for a fixed period of time e.g. two years. Additionally, the position on the death, bankruptcy, retirement (voluntary or compulsory) or expulsion of a partner should be covered and it is recommended the agreement should include a declaration that these should not dissolve the partnership subsisting between the remaining partners.</p>
<p>Dissolution</p>	<p>Note that this is one of the areas that can cause extreme difficulty as highlighted at page 3 above.</p> <p>The agreement should consider the position of dissolution of the partnership and the circumstances in which this may arise. This could occur following the application of only one partner for an order of the court that it would be just and equitable to dissolve the partnership.</p> <p>Alternatively, the partners may agree to dissolve the partnership and go their separate ways. In such circumstances, the agreement would ordinarily specify that a unanimous vote would be needed, and it would be prudent to state that dissolution should not take effect until such time as the terms of a deed of dissolution have been agreed between the partners. It is not practical to legislate in advance precisely what those terms should be.</p> <p>GPs are urged to exercise great caution in determining whether a dissolution should take place and are reminded of the damaging effect of a dissolution as set out in this Guidance.</p>

PROVISION	NOTES
ASSETS	
<p>A statement identifying the capital assets used by the practice and the arrangements whereby incoming partners acquire appropriate shares – ideally leading to a parity share - in such assets</p> <p>A statement of what is comprised in the partnership capital</p>	<p>These two provisions should establish what capital assets are used by the practice e.g. property, equipment, surgery fittings and furniture, and how and when, if at all, a new partner buys into its capital assets. The agreement should establish the amount of the partnership's fixed capital and how it is to be contributed by the partners. The capital of a partnership is separate and distinct from its capital assets. In addition, detailed consideration should be given to the financial and fiscal implications of these transactions.</p> <p>In the case of freehold or leasehold property, GPs should bear in mind that, as a maximum of only four names may appear on the title deeds, the position of any other property-owning partners should be covered in the partnership agreement or in a separate property deed. Furthermore, as the individual's mortgage arrangements (if any) become more complicated it may be prudent to write the principles into the agreement, to include reference to collateral life policies, term assurance policies etc, which would facilitate the change of arrangements as partners come and go. This is a complex issue and separate legal advice should be taken.</p>
<p>Details of how the partnership assets are to be valued on partners joining and leaving the practice</p>	<p>Contractors must bear in mind that under the National Health Service Premises Costs Directions applicable in each of the four countries, PCOs may recalculate cost rent reimbursement using the prevailing prescribed percentage if the contractor changes lender or negotiates lower loan costs. Contractors with fixed rate loans on their premises must inform the PCO of any change of lender or any reduction in interest charged on its loan.</p> <p>Therefore, any restructuring of loans carried out as a result of new or retiring partners buying into or selling their share of the premises may result in the loss of the higher cost rent reimbursement.</p> <p>Detailed regard may need to be paid to the provisions of the SFE and the effect on valuation of the modification of premises already owned by some or all of the partners.</p> <p>The valuation of non-premises assets should also be detailed; it is common practice to take the written-down book valuation to avoid the need for expensive (and contested) valuations.</p> <p>Consideration should also be given to the use of improvement or other grants, public monies or donations in the valuation of such assets.</p>

PROVISION	NOTES
ASSETS continued	
	<p>Further consideration should be given to the means of transfer of a partner's share in the assets in the event of retirement or death. Note also that under the Finance Act 2003 Stamp Duty Land Tax is now chargeable on the transfer of an interest in land into a partnership, within a partnership and out of a partnership. There are legal and taxation issues here and specialist advice should be taken. Consideration should also be given to the practical issues of how the valuer is appointed, who pays, that the valuation should be binding on the parties, and how disagreements about the appointment are dealt with.</p>
<p>A clause detailing the premises from which the partnership business will be carried on. If the partnership assets do not include the premises from which the partnership business will be carried on, these should be identified elsewhere in the Agreement</p>	<p>Unless the premises are owned by all partners, the occupation rights should be clearly defined. Alternatively it may be appropriate to enter into a separate agreement with respect to the occupation of property. It is essential any such agreement is kept up to date at all times.</p>
INCOME AND EXPENSES	
<p>A statement identifying the nature of the business</p>	<p>It is vital to specify the nature of the business, since this limits the extent to which each partner can, in his or her capacity as their agent, bind the other partners. Otherwise, liabilities arising from any other separate business activity of any partner might be shared by all partners. Possible wording might be that the partners 'will carry on the business of providing primary medical services under the [insert relevant national provision] or otherwise'.</p> <p>PMS practices should specify that they provide personal medical services and their basis of remuneration (which falls outside the Statement of Financial Entitlements) should also be considered.</p>
<p>Details of the income to be included (and excluded) from partnership earnings</p>	<p>Partners should clearly define what should be treated as partnership income as distinct from personal income. They should also address the matter of income generated on an individual basis by members of the partnership.</p>

PROVISION	NOTES
INCOME AND EXPENSES continued	
	<p>In GMS regard should be had to all the items covered by the Statement of Financial Entitlements and particularly seniority payments, returners' scheme payments, and golden hello scheme payments which have to be paid directly to the partner concerned, other NHS income (e.g. clinical assistant sessions or membership of or work for a PCO) and items arising from other sources including private practice. In addition, careful consideration should be given to reimbursement received from the PCO in respect of practice premises.</p> <p>Where the partners benefit from private income or profit from the provision of premises, amendments need to be made so as to ensure that relevant payments and receipts are passed through the partnership accounts so that account can be taken of them for superannuation purposes.</p>
<p>Details of the partners' personal expenses where they are not to be charged to the partnership's trading account</p> <p>Details of the expenses which are to be charged to the trading account</p> <p>Expenses which initially will be paid out of the trading account but which will be charged to the individual partner's current account at the end of the accounting period</p>	<p>It would be appropriate to set out the expenses which are certainly to be charged to the trading account, e.g. the expenses of the surgery at [insert location], staff and insurance costs and in addition, to provide that the chargeable expenses shall include such other expenses as the partners may, from time to time, agree.</p> <p>Partners may wish to deal with certain items of expenditure in this way to ensure they are paid e.g. medical defence subscriptions; sickness policy premiums</p> <p>Essentially, all expenses charged to the partnership will be deemed to be for the benefit of the partnership, e.g. if a sickness or accident policy is effected in the name of a specific partner, but the premium is paid as a partnership expense, the proceeds of such a policy will belong to the partnership and not to the named individual.</p> <p>There will also need to be provision about who receives the insurance proceeds and who pays for the locum.</p>
<p>A schedule setting out how profit and losses of the practice are borne between the partners, and how and over what period partners will advance to a parity share</p>	<p>Usually profit shares will be increased annually until parity (albeit pro rata for part time partners) is reached. Furthermore, in connection with the provision of essential services, a period to parity in excess of three years may be construed as a hidden sale of goodwill.</p>

PROVISION	NOTES
INCOME AND EXPENSES continued	
	<p>Profit shares do not solely reflect sessions covered by the partner but take account of the contribution to the practice of an individual partner and can include contributions to management, administration, clinics and other work. However, specific doctor-based payments such as those for seniority, returners and golden hellos will need to be excluded. Usually the profit shares will be fixed in advance but partners may wish to consider a more flexible system whereby further adjustments can be made over a period of time. This system is not however to be automatically recommended as it may become divisive.</p> <p>Consideration may be given as to whether, and if so how, the wish of an individual partner to increase/decrease his/her working hours (and therefore his/her profit share) may be accommodated, bearing in mind the effect of this on the other partners, and the flexibilities available both under PMS and under the new GMS contract.</p>
Fixed share partners	<p>In the case of 'fixed share partners', their share of profits should be expressed to be a specified sum as "the fixed share of the profits" which should be subject to review on a regular basis.</p> <p>Furthermore, it may be considered appropriate for a 'fixed share partner' to be given an indemnity by the equity partners in respect of any liability he or she may incur as a result of being held out as a partner of the practice. This does not protect the 'fixed share partner' (see page 7) from third party litigation, but does give him/her the opportunity to seek protection from the other members of the partnership (assuming always that if an indemnity is to be taken the 'fixed share' partner needs to be satisfied that any indemnities can be paid).</p>
ACCOUNTING	
Details regarding the production and location of annual accounts (and quarterly accounts, if required) and the entitlement of all partners to have access to the books of account and supporting documentation without exception	<p>The partners and/or their accountant will be responsible for maintaining proper books of account. Such books of account, and other documents, will also need to be made available to a practitioner who is considering an invitation to join the practice or, for a specified purpose, a partner who has left, as well as all existing partners.</p>

PROVISION	NOTES
ACCOUNTING <i>continued</i>	
A clause specifying the agreed profit shares of each partner	There would be value in setting out this clause in a schedule to the agreement as this would avoid the need to redraft the agreement if amendments are needed following a change to the shares.
Details of the partnership bank accounts, including details of the bank mandate	It is recommended that cheques above a specified amount should be signed by at least two partners. In most practices, the practice manager or the practice manager and one other partner would deal with smaller specified amounts.
A requirement for all partners to sign the annual accounts once these have been approved. Also, a provision that the accounts will be binding unless an error is discovered within a specified period	NB: This is distinct from signing the Partnership Tax Return (see below) which is signed by only one Partner.
A statement about the taxation arrangements for the partnership	As a result of the Finance Act 1994, it is necessary for a Partnership Tax Return to be filed with the Inland Revenue. One Partner should be nominated as the Precedent Partner for the purpose of signing the Partnership Tax Return and authority should be given by all other partners to such a partner that he or she may receive details of their personal expenses (for completion on the Return) and the partners should warrant that such expense claims are reasonable, accurate and complete. Alternatively, the partners may each warrant that they have supplied the Partnership Accountant with the relevant information direct. Partners who incur late filing penalties and interest should agree to indemnify the others in respect of such penalties.
Partners leaving in year and the apportionment of achievement and aspiration payments	This would normally be on a 'straight apportionment' basis i.e. an end year apportionment in the same proportion as the partnership share, diminished by the number of days missing from the full year in question.
Arrangements for partners doing outside work	Partners doing outside work will become more common, especially in relation to out-of-hours arrangements. Provision should therefore be made for the arrangements where partners carry out work outside the practice. Arrangements should include provision to allow for the other partners to modify or withdraw agreement to outside work being undertaken where the work is causing a detriment to the practice.

PROVISION	NOTES
SUPERANNUATION	
Details of the superannuation arrangements	Superannuation arrangements would normally be made in accordance with the arrangement for profit shares. Adjustments may be required for circumstances where doctors have a mixture of officer and practitioner status.
RETIREMENT/EXPULSION	
Details of how a partner may voluntarily retire from the partnership	<p>Length of Notice: This should be balanced between the needs of the practice i.e. the time required to recruit a replacement, and the possible disadvantages of retaining a disaffected partner.</p> <p>It may also be considered prudent not to allow more than one partner to retire at the same time to preserve the stability of the practice and also to spread the burden on the remaining partners of making capital repayments.</p> <p>The retirement of a doctor from the NHS need not necessarily lead to his or her retirement from the partnership e.g. managing the practice and/or only doing private work.</p> <p>It is becoming increasingly common for partnership agreements to specify a retirement age, usually 65, but they may also state that, by mutual consent, the partner can continue on a year-to-year basis.</p> <p>A doctor who is over the stated age in the partnership deed can continue, other than as a partner, to practise as a locum, deputy or salaried GP, subject to the requirements of appraisal and revalidation with the approval of the other partners. It should be remembered that with the passage of time salaried GPs will accrue employment rights.</p> <p>Additional consideration would need to be given to the position of the partner whose name is removed from the Performers List in the relevant country but who continues within the partnership to undertake private practice. (See also section on Superannuation).</p>
Provision of a mutual assessment period (in the case of the appointment of a new partner)	<p>It is prudent to incorporate provision for a period of mutual assessment within the partnership agreement. This would allow a period of assessment on both sides.</p> <p>Consideration should be given to the length of the period and the length of notice required within a partnership agreement to bring it to an end.</p> <p>Failure to incorporate a mutual assessment period could prevent the partners from readily determining their relationship with the incoming partner as he or she would be subject to the same retirement provisions as the other partners.</p>

PROVISION	NOTES
RETIREMENT/EXPULSION continued	
Details of how a partner may be expelled by the remaining partners	<p>A specific list of grounds should be set out within the partnership agreement which should specify that any notice served should take effect forthwith. This would usually include the maximum period of time a partner may remain absent from the partnership on grounds of sickness (See Leave below).</p> <p>However, partners should be aware that it can be difficult and expensive to prove to the satisfaction of the Court that any such ground has been adequately met as a result of which partners may wish to consider also the inclusion of a compulsory retirement clause. (See below).</p>
Partners may wish to consider including details of how a partner may be compulsorily retired from the partnership	<p>Note that this is one of the areas that can cause extreme difficulty as highlighted at page 3 above.</p> <p>A compulsory retirement clause would not specify the need for any grounds to be satisfied but could allow for the service of notice simply on the basis that the other partners no longer wish to be in partnership with the individual concerned. In a large partnership it would ordinarily be expected that such a clause would be used with great restraint and usually after a period of reflection and mediation (assisted by the LMC). In small partnerships, however, this can be very difficult and such clauses cannot be recommended. It would clearly be inappropriate in, for example, a 3 partner practice where inevitably there would be the 'taking of sides' which could result in unfairness to the one partner. In larger partnerships it would not be expected that this type of difficulty would arise because the personal interest of partners would be more likely to be put aside with the focus being on the good of the partnership.</p> <p>Furthermore, it is suggested that not less than six months' notice should be given by the other partners and that consideration could be given to the release of any restrictive covenant if the partner leaves the practice following the period of notice. The consequences of such a release however should be carefully considered to include the effect on the continuing partners.</p>
SUSPENSION	
Suspension	<p>Note that this is one of the areas that can cause extreme difficulty as highlighted at page 3 above.</p> <p>Consideration may be given to the right of the remaining partners to suspend a partner who has served notice of voluntary retirement, in circumstances where that partner may be considered to be disaffected and therefore likely to be a disruptive influence to the smooth running of the practice.</p>

PROVISION	NOTES
SUSPENSION continued	
	<p>Careful consideration should be given to the terms associated with the operation of any such suspension so as to be as fair as possible to the individual concerned.</p> <p>For example it would be unacceptable for a partner who had given notice to retire to use his/her voting rights to prevent the continuing partners from signing contracts which would allow them to develop new surgery premises. In such a case, the suspension should be on terms that did not affect the retiring partner's entitlement to receive his/her full profit share but simply excluded him/her from either voting at partnership meetings or if need be attending such meetings.</p> <p>A partner who has been suspended from any of the Performers Lists clearly will almost certainly be suspended from the practice but this is not mandatory.</p>
EFFECTS OF RETIREMENT	
Provision dealing with the effect on the practice of the retirement, compulsory retirement, expulsion or death of a partner	<p>This should include consideration of whether accounts should be drawn to the date of retirement/expulsion or whether they may run to the end of the usual accountancy period with an apportionment being made. The timing of the valuation and capital payment to be made to an outgoing partner should also be carefully considered with particular regard to the following points:-</p> <ul style="list-style-type: none"> • tax implications • dealings with third parties relating to the transfer of a property interest (e.g. the landlord, the mortgagee) • the timing of arrival of any incoming/replacement partner.
RESTRICTIVE COVENANTS	
Restrictive covenant/restraint of trade clause	<p>Such a clause will either limit a retired partner's entitlement to practise as a general practitioner within a specified area within a fixed period of time and/or provide that for a stated period he/she will not treat the patients of the practice who live within a specified area. It will only be enforceable if it is reasonable. It is suggested that partners should consult their solicitors for guidance as to what might be considered reasonable with regard to their practice.</p> <p>Provision may also be made requiring an outgoing partner to endeavour to transfer appointments and offices held by him/her to the continuing partners.</p>

PROVISION	NOTES
RESTRICTIVE COVENANTS continued	
	In any event, it would be unwise to seek to impose a restriction of more than one year. Usually, the area of restriction should be less than the practice area (as agreed with the PCO) and may more accurately be identified by reference to a plan or map attached to the partnership agreement.
PARTNERS' OBLIGATIONS TO EACH OTHER	
<p>A statement of the partners' obligations to each other. The agreement should also state the time and attention which partners are expected to give to the work of the partnership</p>	<p>Partners owe each other duties of good faith throughout the life of the partnership.</p> <p>Examples of obligations applicable to medical partners which should be included within the partnership agreement include the following:</p> <ul style="list-style-type: none"> • the partners must conduct themselves properly and in the best interest of the practice and should not do anything to prejudice the practice • they must be registered with the General Medical Council and have a current Licence to Practise where applicable. • they must make available to other partners and their professional advisers all books of account etc • they must be members of a recognised defence organisation • they must take all necessary steps to comply with their GMS contract or PMS agreement as appropriate, and must be on a Performers List • furthermore, details of the duties/hours of commitment of individual partners to the practice could be stated within the partnership agreement, particularly in the case of part-time partners. <p>The agreement should also state the arrangements whereby partners may take on commitments outside the partnership.</p> <p>It is recommended that the medical partners should all read and agree to comply with the latest edition of the GMC publication "<i>Good Medical Practice</i>", as published from time to time.</p>
<p>Decisions</p> <p>A statement as to how partnership decisions are to be taken, including reference to the voting position of part-time partners</p>	<p>There are a number of levels at which partnership decisions are required - on day-to-day matters, on major matters of policy (which might require the unanimous vote of all the partners) and on issues of great urgency – that do not involve a change in the established policy of the partnership.</p>

PROVISION	NOTES
PARTNERS' OBLIGATIONS TO EACH OTHER <i>continued</i>	<p>Partners may wish to include a specific list of decisions for which unanimity is required and it is suggested the following should be considered for inclusion within this category:</p> <ul style="list-style-type: none"> • the admission of a new partner • the service of a notice of compulsory retirement/expulsion/suspension (where voting excludes the subject) • the dissolution of the partnership • any alteration to any of the terms of the partnership agreement • the decision to change shares of ownership in the surgery premises • capital expenditure exceeding a specified limit • the service of dismissal notice to staff • the appointment of a senior member of staff such as the practice manager. <p>Any category of decision-making where there are a limited number of partners entitled to vote should be specified e.g. only the owning partners (which includes those who have an interest in the premises but whose name is not on the title) may be entitled to vote with regard to decisions concerning the ownership of the surgery premises (as opposed to the management of the premises which could be decided by the vote of all the partners). This can be an immensely complicated area and must be the subject of "one-off" advice.</p> <p>Part-time partners should each have a full vote as they remain jointly and severally liable for the outcome of the decisions taken.</p> <p>It is no longer considered appropriate for the senior partner to have a casting vote but this may be given to the chairperson for the time being, whose identity may rotate from one meeting to the next.</p> <p>A decision to dismiss a member of staff should be that of the whole partnership, save in matters of employee grievance and discipline where there is a need to ensure wherever possible that the partner/s taking the decision to dismiss has/have not previously been involved in the investigation. A dismissed employee could claim unfair dismissal and such a claim would be made against the partnership as a whole. Thus staff should be dismissed with the consent of all partners although the agreement may specify who is responsible for staff management in the first instance.</p> <p>The ability of partners to take decisions in the absence of one (or more) of their number, e.g. on holiday, should also be addressed.</p>

PROVISION	NOTES
PARTNERS OBLIGATIONS TO EACH OTHER <i>continued</i>	
Details of the partners' holiday, professional development and appraisal together with any sabbatical leave entitlement	All holiday entitlement, and permitted absence for professional development, appraisal and study leave should be equitable. Consideration should be given to the question of the employment of a locum during such absence and whether individual partners may be entitled to undertake the locum work and receive and keep payment in addition to their profit share.
Arrangements to be made during the illness or absence of a partner	<p>Consideration should be given to:</p> <ul style="list-style-type: none"> • whether the absent partner should continue to receive his/her share of profits throughout any absence • the arrangements for engagement and payment of any locum practitioner, including whether this is to be done internally or by an external appointee • determine who retains any reimbursement for locum costs. It would be usual for this to be the party who bears the costs • the extent of any unpaid sickness entitlement • how this relates to any insurance policy in place <p>Generally it would not be expected that a holiday entitlement would be reduced because a partner was absent on maternity, paternity or adoptive leave. (The expulsion clause (see above) will effectively provide the maximum period of absence in this respect.) It would be usual for the party bearing the cost of the locum at any particular stage of absence to be entitled to receive any reimbursement payable throughout that period. Consideration should be given to whether another partner should be entitled to act as locum and receive payment and at what level.</p> <p>Partnership deeds will need to consider the position where there is unauthorised absence.</p> <p>Consideration may also be given to an obligation for medical sickness/locum cover policies to be effected by individual partners/the partnership.</p>
MANAGEMENT	
Arrangements to be made for a partner's maternity/paternity/adoption/compassionate leave where appropriate	<p>Consideration should be given to the question of funding the cost of a locum, and who should cover the actual workload of the partner concerned and not merely his/her usual surgery sessions.</p> <p>The exercise of a partner's right to maternity, paternity or adoption leave should not abolish her/his entitlement to holiday and sickness leave.</p>

PROVISION	NOTES
MANAGEMENT <i>continued</i>	
	The partners may choose to specify, in addition, arrangements for adoption and paternity leave. If so, it is suggested a fixed period of time should be determined by the partners and recorded in the agreement. The period specified for adoption leave may vary according to the age of the adopted child and according to whether the absent partner is the main care provider for the child.
Gifts and legacies	Partners should consider whether legacies or gifts made to partners in relation to, or as a result of, their medical work may be retained by the recipient or be regarded as part of partnership income. Deeds should if required specify a value of the legacy or gift that may be retained personally. This is distinct from the GMS or PMS regulatory requirements about gifts and the maintenance of a gifts register.
DISPUTES	
Consideration of how disputes may be determined e.g. by mediation, arbitration or through the courts	Generally, mediation and conciliation, where the costs would usually be borne by the practice, are regarded as a more effective and economical way of resolving disputes. LMCs and the BMA's regional offices can usually offer advice and assistance. However, some partnerships prefer not to specify a particular method but to determine the best alternative depending upon the circumstances at the time. Arbitration can be both costly and time-consuming although it has the advantage of being private.

Abbreviations

BMA	British Medical Association
CPD	Continuous Professional Development
GMC	General Medical Council
GMS	General Medical Services
GPC	General Practitioners Committee
LMC	Local Medical Committee
PCO	Primary Care Organisation
PMS	Personal Medical Services
SFE	Statement of Financial Entitlements