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GPC

~~General Practitioners~~
Committee

Partnership Agreements

Guidance for GPs

BMA 

IMPORTANT

This guidance applies to practices in England, Wales and Northern Ireland. Scottish partnership law differs in some respects from the provisions that apply in the rest of the UK. Scottish partnership law is therefore covered in a separate guidance document.

Generally there are only slight differences between GMS and PMS in relation to drafting partnership agreements, but any differences relevant to this guidance are noted in the appropriate places.

Please note it is not part of the BMA service to provide commercial/management advice to practices or GPs. This guidance is for general use only and mainly concentrates on how partnerships should be considered in the light of any GMS/PMS/APMS contract/agreement together with the basic elements of partnership law. Practices/GPs are strongly urged to seek the specialist advice of accountants and independent lawyers in their relevant country in relation to the more detailed aspects of their partnership agreements, including drafting and the application of tax and accounting. This is especially important where advice is required on whether the arrangement is appropriate to an individual GP or practice's needs.

A partnership agreement is a contract between the partners and should be kept up to date at all times in order to be valid and thus effective.

Further information is available to BMA members through the BMA and to LMCs through GPC.

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List of abbreviations

APMS	Alternative Provider Medical Services
BMA	British Medical Association
GDS	General Dental Services
GMS	General Medical Services
GPC	General Practitioners Committee
LLP	Limited Liability Partnership
LMC	Local Medical Committee
MPIG	Minimum Practice Income Guarantee
PCO	Primary Care Organisation
PDS	Personal Dental Services
PMS	Personal Medical Services
SFE	Statement of Financial Entitlements

Basic elements of a partnership

Whether a partnership exists depends on the relationship between the parties involved. A relationship does not become a partnership simply by calling it one. Under section 1 of the Partnership Act 1890, a partnership is defined as “the relationship which subsists between persons carrying on a business in common with a view of profit”.

In English law a partnership is not an entity distinct from the partners who at any time may compose it. The partnership cannot acquire rights nor can it incur obligations. A partnership also cannot hold property (eg buildings). The rights and liabilities of a partnership are the collection of the individual rights and liabilities of each of the partners. Therefore the relationship between partners requires the highest degree of trust. This is because partners are jointly and severally liable for their own and 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).

Implications of the new GMS contract

The new GMS contract was introduced in 2004 and provides greater flexibility in the way its contractors are structured. Contractors can be single-handed GPs, partnerships or certain types of limited companies. This means that GMS contracts are now mostly held between practices (known as contractors or providers) and the PCO. This is very different from the previous arrangements, where contracts were between PCOs and individual GPs (known as principals). The implications of this fundamental change, and its effects on their partnerships, must be understood by all partners in a practice, as well as intending partners.

Non-GP partners

The new GMS contract also makes it possible for practice partnerships to include non-clinical members. Although at least one of the partners must be a medical practitioner whose name is included in the GP register, other partners may be:

- (i) a medical practitioner who is an employee of a PCO or NHS Trust
- (ii) a health care professional who is engaged in the provision of services under the 1977 Act (including general dental practitioners)
- (iii) an NHS Employee
- (iv) an employee of a PMS or PDS provider (or equivalent in Scotland or Northern Ireland)
- (v) an individual providing services under a GMS, GDS, PMS or PDS contract (or the equivalent in Scotland or Northern Ireland).

When drawing up partnership agreements with non-GP partners, partners will need to consider, among other issues, the following:

- whether there are any aspects of decision-making which should be specifically reserved for the health professional partner(s) or categories of health professional partner(s)
- what mechanism would be appropriate for determining profit share given:
 - (i) that the nature of the work of the GP partner(s) will be different from that of other partners
 - (ii) the relative ability of the various categories of partners to influence the income and business prospects of the partnership.

PMS Agreements

As mentioned above, the new GMS contract is held by the contractor (the practice), rather than by individual partners. Operating as a partnership is therefore more closely related to the fulfilment of the obligations under a GMS contract and it follows changes to the partnership may affect the contractual relationship between the partnership and the PCO. This may not be the case where PMS is concerned. PMS agreements are held by individuals, not by the contractor as defined above. This does not prevent

GPs holding PMS agreements from organising themselves into a partnership, but changes to a partnership may be less significant in terms of the PMS agreement, depending on the nature of the change.

Contractual obligations

A partnership agreement entered into for the purpose of providing services under a PMS, GMS or APMS contract should take into account the obligations under that contract. The terms and conditions of any partnership agreement should therefore be consistent with those obligations where applicable, whether or not the contracting party is the partnership or individual partners. Some of the key considerations for GMS and PMS contracts are outlined later in the guidance.

A note on discrimination

It is unlawful for any partnership to discriminate on grounds of sex, sexual orientation, disability, marital status, race, religion or religious belief, ethnic or national origins, and soon age:

- 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.

In addition, 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.

It is also unlawful to discriminate during dissolution of the partnership or when determining expulsion of a partner.

Types of partnership and related entities

Partnership at will

A partnership without a written agreement is a partnership at will, ie one which subsists at the will of the partners from day to day. 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 on notice by any partner.** Such notice may be served by one partner on the others without their prior knowledge or consent and will take immediate effect, unless it can be proved that a notice period has been agreed. No reason need be given to justify such notice. In addition 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.

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 having been agreed and most decisions are made by simple majority. A written agreement will reduce significantly the potential for serious disagreements and instability.

The BMA strongly advises that all partnerships have a written, up-to-date partnership agreement.

Written partnership agreement (Deed)

It is best that a partnership is conducted under a written agreement governing the business relationship between the partners. The agreement defines the rights, liabilities and responsibilities of the partners in the business. Every partnership agreement should be the result of detailed consideration by all the partners and intended partners. A clear statement of the terms to be included should be referred to the partnership's legal advisers 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 membership of the partnership.

Limited Liability Partnership (LLP)

LLPs are governed by the Limited Liability Partnership Act and not by the Partnership Act. In addition, large parts of the Companies Act 1985 and the Insolvency Act 1986 are adopted for use by LLPs. LLPs are usually adopted by large firms of solicitors or accountants who have several offices all over the world. They are normally adopted to reduce the liability risk resulting under normal partnership rules. Having an LLP means that liability incurred by one partner in one country does not inevitably bind another partner in a second country. For most GP practices LLPs will probably not be considered appropriate.

Key features of LLPs include:

- LLPs have to be registered at Companies House and a Certificate of Registration must be issued
- An LLP is a body corporate, ie a separate legal entity distinct from its members. LLPs hold property, employ people and enter into contracts. LLPs are liable for the debts they incur up to the full extent of their assets
- the members of an LLP generally have limited personal liability for the LLP's debts and liabilities
- an LLP continues in existence despite any change in membership
- an LLP is required to maintain proper accounting records, prepare and deliver audited annual accounts to Companies House, and submit an annual return (there are some exemptions for smaller LLPs).

LLPs are not specifically mentioned in the GMS and PMS regulations as they currently stand. GPs may wish to check with their PCOs if they wish to operate as an LLP.

Limited Liability Company

As mentioned above, it is possible for practices to be set up as limited liability companies. This is a similar concept to the qualifying body provided for in Section 28D of the 1977 NHS Act. The ownership rules for GMS companies are that:

- (i) all shares in such a company must be legally and beneficially owned by a person who could lawfully enter into a GMS contract as an individual or as part of a partnership
- (ii) at least one share must be legally and beneficially owned by a medical practitioner whose name is included in the GP Register (or is suitably experienced)
- (iii) any other shares owned by a medical practitioner must be so owned by a medical practitioner whose name is included in the GP Register or who is employed by a PCT, a Local Health Board, an NHS trust (including an NHS Trust in Scotland), an NHS foundation trust, a Health Board, or a Health and Social Services Trust

Further detail of these arrangements lies outside the scope of this guidance.

Terms of a partnership agreement

Parties

The agreement must start with a list of the names and addresses of the parties. This will include any non-health professional parties (see above). It should also be stated that there must be compliance with the Business Names Act 1985. The Act requires the partnership to disclose the name of each partner on the business letter head or any correspondence. The address that appears for each partner in the partnership agreement must be the address to which any legal documents could effectively be served. If the partnership carries on under a different name from those of the partners, this should be specified in the agreement and on the business letter head.

Definitions

It is always helpful to have a list of definitions of certain terms of the agreement, for example, bankers, accountants, practice name and area.

The business

It is vital to specify the nature of the business because this limits the extent to which each partner can, in his or her capacity as their agent, bind the other partners. This is important since otherwise liabilities arising from any other business activity of any partner might inadvertently be shared by all the other partners.

Dissolution, retirement, death and expulsion

Many problems encountered in respect of partnerships relate to termination of partnerships either through dissolution, death, retirement or expulsion. The duration of the partnership agreement should be defined. The partnership will usually be declared to exist during the joint lives of the partners, or any two or more of them and the agreement will usually state that the leaving of the partnership by any partner for any reason shall not determine the partnership between the remaining partners. Exceptionally, a partnership may be entered into for a fixed period of time. There should be adequate provision in all partnership agreements for how a partnership is terminated. Part 8 of the GMS contract regulations covers this eventuality to a certain extent where partners have entered into a GMS contract. However, PMS providers should note that there are no equivalent provisions for PMS on partnership splits, although there are specific provisions regarding variation.

Dissolution

The dissolution of a partnership is the putting an end to the partnership. This is distinct from the determination of a partnership by other means such as retirement, death or expulsion. The agreement should consider the position of dissolution of the partnership and the circumstances in which this may arise. The agreement would ordinarily specify that a unanimous vote would be needed to dissolve the partnership. Time spans should be considered carefully in any dissolution, mainly to give the partnership time to divide assets and cater for any liabilities. It would be prudent for the agreement to state that dissolution should not take effect until such time as the terms of dissolution have been agreed between the partners.

Retirement

The partnership agreement needs to provide for what happens to a partner and to the partnership on retirement with regards to both assets (including premises – see below) and the relevant NHS contracts. Regulation 108 of the GMS contract requires that the PCO is given three months notice of an individual medical practitioner terminating their contract.

Partners under a GMS contract may consider the inclusion of a clause requiring any outgoing partner to nominate the others to succeed to the GMS contract, whatever the circumstances of his or her leaving (eg retirement, expulsion etc).

Death

Where a partner dies the remaining partner or partners should notify the PCO of the death. A GMS contract would normally continue with the remaining partner or partners (except for example where the surviving partner is not a medical practitioner). Consideration should be given to what happens to a deceased partner's share of partnership assets, otherwise, on death, the assets may be retained by the surviving spouse or civil partner.

Expulsion

A specific list of grounds for expulsion should be set out within the partnership agreement, which could specify that any notice served should take effect forthwith (obviously bearing in mind that a period of time would be necessary to deal with a division of assets). Grounds for expulsion would usually include for example the maximum period of time a partner may remain absent from the partnership on grounds of sickness (see 'sickness and incapacity'). 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. For this reason agreements have sometimes included an expulsion or compulsory retirement clause which does not specify the need for any grounds to be satisfied but which instead allows for the service of notice simply on the basis that the other partners no longer wish to be in partnership with the individual concerned. Such a clause undermines the stability of the partnership. Partners should also be aware of possible discrimination claims resulting from such decisions. Expulsion clauses must apply equally to be enforceable and any expulsion notice must be signed by all other partners to be valid.

Partners should also be aware that, in GMS partnerships, any expulsion or compulsory retirement, unless concluded amicably, may result in problems with the PCO and may have a detrimental effect on the status of the contract as well as the partnership (see non-amicable splits below). Where PMS is concerned, although there are no detailed clauses regarding partnership splits or death in the regulations, it is advisable that fundamental changes to a partnership which may affect the delivery of services under PMS are communicated to the PCO.

Other determinations of a partnership

Amicable splits

Where a contractor consists of two or more individuals practising in a partnership and for whatever reason that partnership is terminated or dissolved, a GMS contract will only continue with one or more of the remaining partners if that partner or partners is nominated in writing and if this nomination is agreed and signed by all the partners (hence the need for partners under GMS to consider inclusion of a clause requiring outgoing partners to nominate the others to succeed them in the contract).

As PMS contracts are silent with regard to amicable splits, the above rule will not necessarily apply to PMS contracts and these splits may instead be treated as a variation.

Non-amicable splits

Problems usually arise where the dissolution or split of the partnership is non-amicable. The GMS contract does not detail actions to take in this eventuality. However, partners must be careful to note the following consequences for their GMS contracts if a non-amicable split occurs.

Where there is a non-amicable split or substantial variation in the partnership, the contractor must give notice to the PCO. Although the notice period is not always specified in the contract, the longer the notice period the more beneficial it will be to the partnership as a whole. Once the PCO receives this notice, it will assess whether or not the change in membership is likely to have a serious adverse impact on the ability of the contractor to fulfil its obligations under the contract. If it judges this to be the case, the PCO may be able to terminate the contract forthwith or may allow the contractor to continue for a period up to six months in order to assist the contractor in providing clinical services by employing or supplying another GP(s). This is why it is important for a contractor to ensure that adequate notice of any major change is given to the PCO. This must be reflected within the partnership agreement by providing that departing partners give as much notice to the partnership as possible.

Where a contractor is aware that the partnership is likely to dissolve or will dissolve, then the duty upon the contractor is to give the PCO six months notice in writing. From the partnership point of view regulating as far as possible in the agreement the manner in which dissolution or splits occur, will be a deciding factor in whether or not the PCO terminates or allows the contract to continue.

In the event of dissolution, or a non-amicable determination, the practitioners may be in the position of having to reapply separately for individual GMS contracts with no guarantee of obtaining these. Parties will be required to submit separate business cases to the PCO setting out robust reasons supported by sufficient evidence as to why they are able to continue to deliver essential services (and any other services). Amongst other things, this will entail proving that they have sufficient infrastructure, experience, staff and premises.

In instances where there has been a split between two partners there have been occasions when neither partner has been granted a GMS contract. Obviously, single-handed GPs may be more costly to maintain than a group of partners operating together, but what the PCO decides to do will be wholly dependent on its individual attitudes, local requirements and budgets. In some instances the individual doctors might be offered a position within a health centre run and owned by the PCO. In the interim they may be granted temporary accommodation in order to continue providing services to patients until a position becomes available. In any event, there are no guarantees.

There appears to be nothing in the regulations that prevents the above rules from applying equally to PMS practices, although it should be emphasised that unlike GMS regulations, PMS regulations contain a termination by notice provision which allows the PCO as well as the contractor to terminate by serving notice in writing on the other.

Termination periods

Whatever an individual partnership agreement might state in terms of notice periods for termination, Regulation 108 of the GMS contract requires that the PCO is given six months notice before termination takes effect in the case of a partnership or company and, in the case of an individual medical practitioner, three months notice. So, although non-amicable disputes may lead to partners wishing to dissolve the partnership quickly, the obligations under the GMS contract must be adhered to, failing which the PCO may consider termination as a result of breach by the contractor and instead of terminating the contract forthwith, could impose a contract sanction. A sanction could include withholding or deducting money otherwise payable under the contract. These provisions are similar for PMS.

Effect on premises

It is important to note that in the event of one partner leaving a practice, there may be a knock-on effect with respect to premises funding where property is leased by the partnership from a third party and the rent is funded by the PCO. In these circumstances, the PCO will send a surveyor to review the premises and re-evaluate the actual space being used to deliver essential services under the contract. This may well result in a cut in funding owing to the fact that following a partner's departure, not all of the premises are being used to deliver services under the contract. This inevitably results in practitioners/partners having to fund the difference out of their own pockets. It is therefore important that the occupation of the practice premises is carefully defined in the partnership agreement. This will be dependent on the circumstances of each partnership. It may be that each partner has a legal interest in the premises in which case they must be advised to seek both conveyancing advice from a lawyer and financial advice. Special consideration must be given where one or two of the partners own the premises and lease the premises to the partnership. Appropriate clauses should be inserted within the partnership agreement to ensure that, if the owner decides to leave the partnership and terminate the lease, any remaining partnership has sufficient time in which to find new premises or make alternative arrangements. The same will apply in respect of any tenancy agreement and GPs are advised to seek advice from a specialist property lawyer.

Factors to consider when appointing a new partner

When taking on a new partner, existing partners may consider the alternative of employing a salaried GP 'with a view to partnership' eg for six to 12 months. Partners need to be aware that, with the passage of time, salaried GPs will accrue employment rights, such as the right not to be unfairly dismissed and, after 12 months, eligibility for redundancy pay. Periods of mutual assessment, included in the agreement or in successive supplemental agreements, are preferable.

Partners must ensure that a prepared draft of the partnership agreement is available to show prospective partners. The draft will usually 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 are able to give notice – often a period of one month. Such notice would not, however, end the partnership between the existing partners.

The agreement should take into consideration how any new partner will buy into the existing partnership, cover the issue of the sale of goodwill for NHS services, where prohibited, and should make arrangements for determining his or her profit share.

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. It is important to remember that having a mutual assessment period on the introduction of a new partner does not change the fact that there is a new legal partnership from the first day.

It is essential that the partnership agreement is kept up to date, particularly when there are changes to the membership of the partnership.

Bank accounts

It is advisable to limit the financial powers of individual partners so that expenditure over a certain amount requires two signatures on the cheque for security reasons. There should also be some provision for signatories if partners are on holiday or leave. There should be arrangements for any partnership credit card use. All bank accounts of the partnership should be identified by bank, branch and account number.

Capital assets

Capital must be defined and is probably best recorded in a separate deed, particularly where not all capital assets, especially property, are held by all members of the partnership. This is important because the initial divisions may be subject to change in the future and, with a separate deed recording capital, a change may be effected without altering to the main body of the agreement. Capital assets may consist of, for example, surgery premises, drugs, furniture, equipment and/or money. It is worth checking to see whether or not there are certain occasions where individual partners may be required to provide equipment at their own expense (for example, a mobile phone or car). Items can only be regarded as partnership capital if they are owned jointly (in whatever proportions) by all the partners.

Tax and accounts

All the partners are entitled to have access to the books of account and supporting documentation without exception. The partnership will be responsible for maintaining proper books. There will also be a requirement for all the partners to sign the annual accounts once approved. One partner should be nominated to file a Partnership Tax Return with the Inland Revenue. Each partner should warrant that their expense claims are reasonable, accurate and complete and they may warrant that they have supplied the partnership accountant with all relevant information. Partners who incur late filing penalties and

interest may agree to indemnify (reimburse) the other partners in respect of such penalties. Agreements will typically include a general and mutual indemnity for all partners against the debts and liabilities of the others, including tax debts.

Pensions

Partnerships should consider the implications of a pension provision in the partnership agreement. Usually all partners and staff, unless already in receipt of an NHS Pension are eligible for automatic entry to the NHS pension scheme and need to opt out if they do not wish to contribute. The practice is responsible for all employer contributions, currently at the rate of 14% in England, Wales and Scotland and 7% in Northern Ireland. This applies to partner or staff income. Individuals pay 6% contributions from their salary or drawings. In the case of partners' pensions, pensionable pay is defined as NHS Profits and these are determined following the production of practice accounts. It is therefore necessary to include provision for paying contributions after the closure of the financial year for any late earnings that relate to that year. Any partner who leaves a practice will have outstanding contributions to pay on any outstanding payments (the 'employee' 6%), and the practice will have outstanding employer's contributions to pay.

Practices should nominate one person to be responsible for pension matters. Partners and staff would normally be eligible for membership of the relevant NHS pension scheme for their nation and help and training is available for employers from the pensions agencies.

There is an element of funding for pensions costs included in GMS practices' Global Sum or MPIG. Funding for pensions for PMS practices should have been added to their baseline. Practices should ensure that any additional work they consider is paid at a rate appropriate for all costs. Any shortfalls in contributions may have to be picked up by the practice. This should be clearly set out in the agreement.

GPs are required to sign an annual return, which tells the PCO how the profits of the partnership are to be divided among the partners. This is used by the PCO to allocate pensionable income among the partners according to their share of the profits. Special arrangements may be made in respect of pensionable income received by a partner from other NHS employment.

Partnership income

The definition of partnership income and the manner in which it is distributed is a matter for the partners to agree, for example, whether or not each partner may be allowed to keep private patient income or whether seniority payments should go to the relevant partner. Partnership agreements should also consider how any earnings from other NHS or non NHS sources are dealt with by the partners. Under new GMS and PMS, there are many different streams of payment available to practices and each one must be catered for in terms of division of profit. The same principle will apply to expenses.

Partners should clearly define what should be treated as partnership income as distinct from personal income. There may also need to be a provision about who receives any insurance proceeds and who pays for locums.

The agreement should state that the division of profit can be reassessed should the duties of the partners change.

Holidays – Study leave – Parental leave – Sabbaticals

It is up to the partnership to decide how much leave an individual can take. Provision must be carefully agreed to cover additional costs of any leave and to ensure equality and prevent any breach of statutory provisions on sexual discrimination. This is particularly important in small partnerships where the strain of one partner being away is greater for the others. It may also be necessary to consider whether profit share and any cost of the employment of locums paid for by the partnership will be affected during any

prolonged leave. It is normal for a practice to hold locum insurance but individual locum insurance is also an option.

Where maternity leave is concerned, partnerships should be careful about imposing stringent conditions regarding division of profit and take specialist legal advice regarding any clause in this respect. It is advisable for practices to provide at least the minimum requirements for maternity leave as to do otherwise may leave that practice open to claims for sexual discrimination. Arrangements for maternity pay for partners can vary widely between practices because partners are not subject to all the provisions of employment law. It is however advisable that these do not vary from sickness and incapacity pay because of the possibility of a discrimination claim arising. Prospective partners should carefully check the arrangements in place before signing.

Sickness/incapacity

It should be considered whether or not a locum should be employed, especially where the period of sickness is lengthy. It could be considered whether a long period of sickness would give the other partners the right to terminate the sick partner's membership or the right to seek a medical report on a sick or possibly sick partner.

Duties of partners

It should be considered whether or not there should be restrictions on the right of each partner to take up other employment, self employment, voluntary or public office work or membership of committees or councils which may detract from the business of the partnership. This is a matter for the partners to decide and agree. Partners should also decide whether fees or honoraria and financial loss allowance payments received through committee work should be paid to the practice or kept by the individual, and whether the individual should meet the cost of providing cover during absences. This principle may also apply to other payments, eg seniority payments.

Restriction on a partner's authority and decision making

This is an important section of any agreement. The agreement should cover the calling of partnership meetings, both urgent and routine. It might be necessary to consider restricting the voting rights of any partner on long-term leave (holiday or sickness) so that the general running of the practice is not inhibited. It should also be clearly set out what the duties of a partner are and what that partner is prohibited from doing on his/her own in terms of binding the partnership to any liability or agreement. It is wise to insert an indemnity clause in this respect so that the other partners are protected. In effect, any liability incurred by the partnership by an individual partner acting without authority vis a vis the partnership will be indemnified by that partner. Following from this, each partner should be properly insured.

Suspension

PCOs have powers to suspend GP performers from the Medical Performers List. Any GMS GP performer suspended on/or after 1 April 2004 may be entitled to payments directly from the PCO (Regulation 13 (17) Performers List) or the practice may be eligible for payments under section 11 of the SFE. These payments are made in order to preserve the performer's earnings or provide financial assistance to the contractor under the GMS contract in respect of the cost of engaging a locum. The cost may not necessarily be the maximum amount payable under the SFE which currently (2006) stands at £978.91 per week. It is normal for the PCO to determine whether or not it is in fact necessary to engage the locum depending on the circumstances of the practice (paragraph 11.4 of the SFE). The GPC has produced separate guidance on the suspended GP and specific advice is available from LMCs, medical defence organisations and the BMA.

The partnership agreement should clarify that where one partner is suspended they should not be precluded from carrying out normal administrative and non-NHS responsibilities subject to any conditions imposed as a result of the suspension, but that the remaining partners shall have the power to prevent the suspended partner from such activities as they reasonably believe will be detrimental to the partnership.

The partnership agreement should contain clauses to cater for the provision of locum cover in order to protect the income of both the suspended partner and the other partners. There are, broadly speaking, two ways of doing this:

1. the partnership agreement can stipulate that the suspended partner will continue to receive their normal share of profit but that they will indemnify the other partners against locum expenses, such that the indemnity is deducted from any monthly drawings
2. to trigger payments under the determination the partnership agreement could stipulate that the suspended doctor will not receive any of their normal drawing, and that he or she will indemnify the other partners against locum expenses.

In either case, as the partner's drawings will be less than 90% of their normal amount, the doctor will be eligible for payments under the Secretary of State's determination. It is particularly important that non-GMS contracted GP partnerships contain such clauses because the provisions in the SFE for PCO support for locums during suspension do not apply automatically to non-GMS practices. Further information on suspension can be found in the GPC guidance *The suspended GP*.

Appendix A – A basic framework for a medical partnership agreement

The following check list is not intended 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.

Provision	Explanation	Check
Details of parties	Setting out the names and addresses of the parties is a basic requirement for the agreement	<ul style="list-style-type: none"> • Does the agreement start by listing the names and addresses of the parties? • Is the address listed for each partner that to which legal documents could be served? • Does the agreement specify any different name other than that of the partners under which the partnership operates? • Does the agreement state that there should be compliance with the Business Names Act 1985?
General definitions set out	It is always helpful to have a list of definitions to certain terms of the agreement	<ul style="list-style-type: none"> • Does the agreement define key terms eg bankers, practice area?
Specification of the nature of the business	This is vital since it limits the extent to which each partner can bind the others in her/his capacity as their agent	<ul style="list-style-type: none"> • Does the agreement clearly set out the nature of the business?
Duration of the partnership	Setting out the duration of a partnership is important to avoid a partnership at will	<ul style="list-style-type: none"> • Does the agreement define the duration of the partnership?
Terms of dissolution	Dissolution of partnerships is potentially problematic. Setting out terms of dissolution in the partnership agreement can help ameliorate these difficulties	<ul style="list-style-type: none"> • Does the agreement define the circumstances which would warrant the dissolution of the partnership? • Does the agreement ensure that the terms of dissolution allow a sufficient time-span to agree the division of assets and to cater for any liabilities? • Does the agreement specify what will happen if the partnership is dissolved in year?
Expulsion	Agreements may contain expulsion clauses and may allow for compulsory retirement though these options are unlikely to prove to be straight-forward.	<ul style="list-style-type: none"> • Does the contract set out grounds for expulsion from the partnership?
Death, retirement	The agreement should provide for what happens to a partnership on retirement or death of a member.	<ul style="list-style-type: none"> • Does the agreement include a declaration that retirement of one partner will not dissolve the partnership subsisting between those remaining partners? • Does the agreement provide for what happens to the partnership’s assets (including premises) and GMS/PMS contract on the

Provision	Explanation	Check
		death or retirement of a member?
Premises clauses	An agreement should take practice premises into consideration, especially where one or more partners owns and leases the premises to the partnership	<ul style="list-style-type: none"> • Does the agreement carefully define the occupation of the practice premises? • If the premises are owned by one or more of the partners, does the agreement ensure that if they leave any remaining partnership has sufficient time to find new premises or make alternative arrangements?
Bank accounts	It is advisable to limit the financial powers of individual partners	<ul style="list-style-type: none"> • Is there a clause to limit the expenditure a single partner can authorise? • Is there some provision for signatories if partners are on holiday leave?
Capital assets	Capital must be defined as part of the agreement, preferably in a separate deed	<ul style="list-style-type: none"> • Are there certain occasions where a partner will be required to provide equipment at their own expense (eg a mobile phone or car)? • Are capital assets properly defined in the partnership deed or in a separate deed?
Tax and account	All the partners are entitled to have access to the books of account without exception and the partnership is responsible for maintaining proper books	<ul style="list-style-type: none"> • Is one partner nominated to file the Partnership Tax Return with the Inland Revenue and does the agreement give them authority to receive details of all personal expenses for completion of the return? • Is there any agreement for partners who incur late filing penalties to indemnify the others? • Does the agreement set out details regarding the production and location of accounts and the entitlement of all partners to have access to the books of account and supporting documentation without reception? • Does the agreement set out the requirement for all partners to sign the annual accounts once these have been approved? Is there a provision that these accounts will be binding unless an error is discovered within a specified period? • Does the agreement set out details of the bank account and accountants? • Does the agreement contain a warrant from each partner that their expense claims will be reasonable, accurate and complete and that they will supply the accountant with all relevant information?
Pensions	<p>The agreement should outline the access to the NHS pension scheme which will cover most situations and provides detailed regulations</p> <p>Employer and employee contributions are payable by</p>	<ul style="list-style-type: none"> • Practices should nominate one person to be responsible for pensions • Consideration should be given to whether a separate arrangement is required for non-NHS income or any staff or partners excluded from NHS pension membership or who choose not to be NHS scheme members • Outstanding pension liabilities on dissolution,

Provision	Explanation	Check
	the practice to the Pensions Agency	including resignation, retirement or death of a partner, should be considered <ul style="list-style-type: none"> • Practices should consider the need for specialist pension advice • Shortfalls should be considered – are they payable by the practice or the individual?
Partnership income	The definition of partnership income and the manner in which it is distributed is a matter for the partners to agree	<ul style="list-style-type: none"> • What are the rules on division of private income? • Do seniority payments go to the relevant partner? • Make sure that all streams of payment available to the practice have been catered for in terms of division of profit. • Is it clear what will be treated as partnership income and what will be treated as personal income? • Is there any provision about who receives insurance proceeds and who pays for locums? • Does the agreement state that division of profit can be reassessed should partners' duties change?
Partnership expenses	Partners should decide how expenses will be split	<ul style="list-style-type: none"> • Ensure the agreement sets out how all necessary expenses will be met.
Holidays, leave and sabbaticals	It is very important to make provisions to cover additional costs of leave, to ensure equality and prevent and breach of statute	<ul style="list-style-type: none"> • Are there provisions for sharing profit and covering the cost of locums during leave?
Sickness and incapacity	The agreement should make provisions for sickness and incapacity	<ul style="list-style-type: none"> • Will a locum be employed in the case of sickness or incapacity? • Would a long period of absence give other partners the right to terminate the membership of the sick partner? • Does the agreement contain a requirement to have a medical examination after a period incapacity?
Duties of partners	Partners may wish to consider whether they wish to limit the activities of each partner.	<ul style="list-style-type: none"> • Is there any restriction on the right of a partner to take up other employment or committee membership?

Provision	Explanation	Check
Restrictions on authority and decision making	This is important to enable smooth running of the practice. It may be wise to insert an indemnity clause to protect partners.	<ul style="list-style-type: none"> • Are the voting rights of partners restricted while they are on leave? • What are the duties of each partner? • What are the limitations of the ability of each partner's decision to bind the others? • Are there any indemnity clauses to protect partners where one acts without authority? • Is there proper insurance to cover such indemnity? • Is there a list of decisions for which unanimity is required eg for the admission of a new partner?
Suspension	The agreement should cover suspension because suspension does not always prevent partners from undertaking managerial work. Also, PCO financial assistance for employing locums during suspension may not cover the full cost incurred by the practice.	<ul style="list-style-type: none"> • Does the agreement specify what will happen if a partner is suspended in terms of administrative responsibilities and responsibilities for funding locum cover?