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## New GP Contract: Time to update your Partnership Agreement or enter into a new one?

### Introduction

If you have read the draft regulations for the new GP contract together with the guidance notes for GMS2 and PMS, you will realise that it has never been so important to clearly identify your partnership arrangements in a written agreement.

In my experience most medical partnerships do not have a partnership agreement or if they do have one, it is out-of-date. Deeds that I drafted as recently as March 2003 may already need modification. For example:

- Does your Deed address the new Licensing regime or the Appraisal and Revalidation requirements?
- How are phased income payments apportioned between the partners? Is a new Incoming Partner included even though he/she was never involved in, e.g. the service preparation work?
- Have you considered the enhanced levels of PCT reimbursement available for Maternity Leave, Paternity Leave and Adoption Leave? If so, who pays for any shortfall between what the PCT pays and what it costs you to cover the Absent Partner's sessions?

Increasingly practices are undertaking an annual 'legal healthcheck' of their partnership deed at the same time as meeting to approve the annual accounts.

### Scenario 1

Four GMS2 Doctors are in partnership, practising under the name of The Hobbit Medical Centre. They consider a partnership agreement to be unnecessary. They have practised together very happily for the last ten years on the basis of a verbal 'gentleman's agreement'. They have heard that the neighbouring practice spent over 1,500.00 having a Partnership Agreement drawn up and the four GPs feel that they can quite do without such an expense. Also, they are too busy preparing for the new GMS2 contract.

On 1 April 2004 the neighbouring practice offers one partner at The Hobbit Medical Practice, Dr Frodo, a very lucrative post which he cannot turn down.

Dr Frodo decides to leave The Hobbit Medical Practice on Thursday, 9 April 2004, just before the Easter holiday and when the senior partner, Dr Gollum is on annual leave for two weeks.

Dr Frodo seeks the advice of DR Solicitors. Their advice includes:-

### 1. Termination of Partnership

There is no Agreement and so there is nothing to prevent Dr Frodo from terminating his partnership verbally which takes immediate effect. However, whilst this is the position under Partnership Law, consideration must be given to the terms of the PCO Contract and the draft NHS (GMS Contracts) Regulations 2004. [Note that these Regulations are currently in draft form]

As a GMS2 practice, all the partners at The Hobbit Medical Centre, including Dr Frodo, signed up to the PCO Contract in February 2004, in line with the DoH's recommendations. A routine change such as Dr Frodo leaving the partnership will not normally have any effect on the PCO Contract but it may be necessary to vary the PCO Contract to take into account the departure of Dr Frodo. For instance, has Dr Frodo been providing certain services that the practice can no longer offer once he leaves? The PCT must agree to any variation to the PCO Contract as well as all the partners who signed the PCO Contract. Dr Frodo cannot unilaterally change the terms of the PCO Contract himself by leaving the practice with no notice.

### Partnership Agreement

A Partnership Agreement would have given the Partners in The Hobbit Medical Practice a stable working environment and it would prevent a Partner leaving with no notice and disrupting the practice.

**Voluntary Retirement:** The Agreement would contain a 'voluntary retirement' clause setting out how Partners can voluntarily leave the partnership. This clause should mirror the variation and termination clauses in the PCO Contract. For instance, a requirement that each Partner gives at least 3 or 6 months notice to the Partnership if he/she wishes to leave with the notice expiring on the last day of the month.

**Suspension:** A 'gardening leave' clause might also be useful if the Partners wish to prevent a Partner from damaging the interests of the practice, either after he has served notice of his intention to retire or to give the other Partners the opportunity to investigate a serious point of concern.

### 2. Restrictive Covenants

Dr Frodo is not bound by any restrictive covenants so there is nothing to stop him from moving to the 'rival' neighbouring practice.

### 3. No Medical List

Dr Frodo no longer has a 'medical list' under GMS2 so he is not entitled to take his patients with him as would have been under GMS1. This will be a relief to his continuing partners whose income will remain the same under their PCO Contract as long as they continue to provide the same services at

the same standards. Has Dr Frodo checked with the neighbouring practice to ensure that they understand that he has no 'following'?

## Conclusion

If Dr Frodo is not happy to wait and amicably agree a unanimous variation to the PCO Contract then this matter could easily escalate into a nasty partnership dispute. If that were the case, DR Solicitors would also need to advise on the termination provisions under the 2004 Regulations and the various sanctions that can be imposed by the PCT in this respect. The legal costs could very easily escalate far beyond the 1,500.00 that the neighbouring practice paid for their Partnership Agreement.

## Scenario 2

Two GMS Partners entered into a Partnership Deed in 1989. In October 2002 they admitted a third Partner at the same time as opting into a PMS Pilot scheme. The three Partners always intended to update their Partnership Agreement to include the third Partner but they have not got round to it. Whilst they have met to discuss the agreement generally, they decide to update it when they have read the draft GMS2 regulations and the PMS guidance.

On 2 April 2004, Dr Burns announces his wish to reduce his hours – he'd like to write more poetry. Also, he says that he no longer wishes to be solely responsible for the minor surgery work and he will leave the practice if he cannot go part-time. The other partners do not undertake minor surgery work and they know that it is very difficult to recruit new partners in their area of the country. The matter develops into an acrimonious partnership dispute and Dr Burns seeks legal advice, which includes:

### 1. Termination of Partnership

The Agreement lapsed when the third partner was admitted in 2002 and so Dr Burns is free to leave the practice at any time, serving no notice period. His departure terminates the partnership. As with GMS2, consideration needs to be given to the PMS Contract and the powers of the PCT.

### 2. Variation of PMS Contract

In most circumstances the PCT cannot terminate the PMS Contract simply because there is a change in the structure of the partnership, e.g. the loss of a partner such as Dr Burns or a variation in the partners' workloads. Such a change is regarded as a routine variation and the PMS Contract continues with the continuing partners.

### 3. Termination of PMS Contract

The PCT can terminate the PMS Contract, with immediate effect:

- if the PCT considers that the changes in the partnership seriously impact on the ability of the practice to perform its obligations under the PMS Contract. The lack of minor surgery work is now an issue.

if there is a sudden and/or acrimonious change in the structure of the partnership and it is not clear which partner or partners are continuing

- to provide the agreed services under the PMS Contract. Are Dr Burns' partners willing to continue in partnership with one another? The PCT can enter into short-term PMS Contracts with those parties wishing to continue to provide PMS services providing that the doctors meet certain GMS2 provider conditions
- if the PCT take the view that patients are at risk.

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