

Partnership Pitfalls

One of the most common and potentially disastrous pitfalls for any partnership is not to have a valid and up-to-date partnership agreement. The consequences of getting this wrong are like having no house and contents insurance - nobody worries until it all goes wrong, but when it does go wrong the consequences can be catastrophic.

The risk of dissolution

Dissolution happens if there is no partnership agreement preventing this and (amongst other things):

- Any partner dies
- Any partner serves notice of dissolution on the others (and there is no minimum period of notice).

Not all partnership agreements are worded to avoid dissolution in these circumstances.

Dissolution means:-

- The partnership's bank account will be frozen
- The contract with the PCT will end.

Unless the partners agree, dissolution also means:

- The employees may have redundancy claims against the partners
- Any notional/cost rent receivable will end and the freehold value of the property will drop
- All the partners need to find a new position.

Having a properly worded partnership agreement to avoiding dissolution is, therefore, really important. It will also avoid a disaffected partner using the threat of dissolution to negotiate terms.

Partners joining the practice

When a partner joins a partnership, the existing agreement is no longer valid at all (even between the continuing partners).

Any sensible GP who is offered partnership will wish to see the partnership agreement. The existing partners should be ready with a draft which is up to date and reflects the current factual, contractual and regulatory framework relating to the practice. They should have ironed out any issues as between themselves long before they offer the draft agreement to the prospective partner.

If a new agreement cannot be agreed before the accession

Profile

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Jim joined Nelsons 27 years ago on qualification and was a partner for 22 years until the firm incorporated in 2010. He heads Nelsons' Commerce and Technology Group of commercial, intellectual property and information technology lawyers.

For over 20 years Jim has specialised in partnership law and is a leading lawyer in this field in the East Midlands. He has long-standing expertise in advising GPs in relation to all aspects of partnership agreements, accessions, retirements and other departures, changes, and disputes between partners.

Jim also regularly presents LMC approved seminars on all aspects of partnership law to GPs in the region.

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of the new partner, the existing partners and the new partner should sign a deed of accession and adherence – saying that the old agreement continues to apply as if the new partner was named as a partner – but then there will have to be additional clauses about liabilities before admission, and capital and profit shares.

If there's a period of mutual assessment – avoid the temptation to leave the formal paperwork until after that has been completed, as this leaves uncertainty. Even if the new partner is paid as an employee in this period, he may be held out as a partner creating uncertainty as to his true position.

Partners leaving the practice

If there is no partnership agreement, no partner can retire without the agreement of all the other partners – he has to dissolve the partnership.

A well drafted partnership agreement avoids the risk that any individual partner can dissolve the partnership. It will include a mechanism for the partnership to continue as between the other partners after a retirement, expulsion, death or compulsory retirement.

There are many other issues which should be properly addressed in a well drafted partnership agreement and we will consider these in future issues.

Jim Carter, Director, Nelsons Solicitors