

Focus On Limited Liability Partnerships and the GMS contract

Background

Limited liability partnerships have existed in other professional spheres for many years, for example, accountancy, the legal profession, and dentistry demonstrating that within the right structure, they can thrive.

The England Conference of LMCs is clear that it is not the model of partnership for GPs that is broken, it is the GMS contract. Government needs to appreciate the cost-effectiveness and productivity which the independent contractor status can bring, whilst working with GPC England to negotiate the mechanisms which will allow sufficient resource to flow, in return for confidence around transparency. GPCEngland is keen to examine how the independent contractor model can be adapted to provide the necessary model fit for the future – providing a balance between stability and safety for contractors with governance and economic sense required by any government to deliver the outcomes that we know offer phenomenal value to the NHS, and enable it to successfully function as a health service free at the point of access.

Summary

The [GP Partnership Review](#), published in October 2018, recommended that “*The Government should introduce the option of GP Partnerships holding a GMS or PMS contract under Limited Liability Partnerships or Mutuals*”. GPs mostly operate under unlimited liability partnerships based on the Partnership Act of 1890 in their contracts to the NHS. This means partners are “jointly and severally” liable for any losses resulting from financial difficulties, with each partner potentially liable for the entire value of the debt. This places GP partners in an invidious financial position which is not palatable for future generations, and not sustainable for current partnerships. The ability to limit liability *must* be a central tenet of a new contract for GP practices across England.

Since April GP Partnerships holding an APMS contract are able to operate under a variety of legal structures, the catalogue of persons eligible to enter into GMS contracts is more restricted.

The current position is therefore inequitable, partners in a GP practice holding GMS contracts are unable to take advantage of limited liability protection and are subject to the 1890 Partnership Act, which does not reflect the current complex structures of the NHS and its partners. LLPs also offer flexibility in the management structure, allowing partners to define specific roles and responsibilities more clearly. This, in turn, can help in streamlining decision making processes. LLPs allow more flexibility in terms of transferability of ownership interests. In a traditional GP partnership, transferring ownership may be more complex, involving the creation of new partnership agreements or the consent of all partners. LLPs

may allow for a more straightforward transfer of ownership. There are additional advantages in terms of succession, attracting new partners and reduced regulatory compliance.

The current regulations

The relevant regulations are [The National Health Service \(General Medical Services Contracts\) Regulations 2015](#)¹.

[Regulation 5](#)² states:

Where the Board enters, or is proposing to enter, into a contract with—

(a) a medical practitioner, that medical practitioner must be a general medical practitioner;

(b) two or more persons practising in partnership—

(i) at least one partner (who must not be a limited partner) must be a general medical practitioner.

Alternatively, the Board can also enter into a contract with:

a company limited by shares— (where)

(i) at least one share in the company must be both legally and beneficially owned by a general medical practitioner, and

(ii) any other share or shares in the company that are both legally and beneficially owned by a medical practitioner must be so owned by—

(aa) a general medical practitioner, or

(bb) a medical practitioner who is employed by a Local Health Board, (in England and Wales and Scotland) an NHS Trust, an NHS foundation trust, (in Scotland) a Health Board, or (in Northern Ireland) a Health and Social Services Trust.

[Regulation 6](#)³ sets out those persons who cannot enter into a contract with the Board.

What is a Limited Liability Partnership?

An LLP is a hybrid which takes on characteristics of both a limited company and traditional partnership.

An LLP is a separate legal entity, which means it has legal capacity to enter into agreements or contracts, assume obligations, incur, and pay debts, sue and be sued in its own right, and to be held responsible for its actions. It will continue in existence despite any change in membership.

¹ <https://www.legislation.gov.uk/ukxi/2015/1862/contents/made>

² <https://www.legislation.gov.uk/ukxi/2015/1862/regulation/5/made>

³ <https://www.legislation.gov.uk/ukxi/2015/1862/regulation/6>

Crucially, the members of an LLP have a collective responsibility, but no individual responsibility for each other's actions. As with a limited company, members in an LLP cannot lose more than they invest. Therefore, setting up an LLP can be an effective way of protecting the financial assets of the respective constituent practices (and their respective partners).

Subject to the members agreeing and documenting arrangements in a written LLP agreement, the LLP has organisational flexibility, and the members are free to decide key items such as how profits are shared, how decisions are taken and who runs the LLP. Despite this, and as is the case with a company limited by shares, it is recommended that general parity between members in relation to their ability to influence decisions is sought.

LLPs have significant operational freedom, plus limited liability, so the Partnership Review proposal that they would provide an incentive to enter General Practice is supported.

The key advantages and disadvantages of an LLP are set out below, but, crucially, as the regulations currently stand, GMS practices would be prevented from forming LLPs.

Advantages

- Limited liability
- Organisational flexibility
- Similarities to an ordinary partnership.

Disadvantages

- LLPs are more complicated and costly to set up and run
- Reporting requirements include annual returns
- There may be tax implications if limited companies form an LLP
- No access to equity finance

Pensions access

Partners in LLPs are not pensionable, which may mean that any changes to the GMS/PMS regulations would also require amendment to the NHS regulations that currently prevent members of an LLP from being contributors to the NHS pension scheme. Indeed, it would be unacceptable to do the former without at the same time doing the latter.

As noted above, GP partnerships holding an APMS contract can operate under a variety of legal structures, but changes to primary legislation would be required for a GMS or PMS contract to be held by a Limited Liability Partnership. There are also other considerations relating to LLPs, which mean they may not be the preferred model for all partnerships. For example, additional administrative requirements relating to the publication of accounts and other corporate information.

In the same way that a traditional partnership is regulated by default provisions if a partnership exists and either does not have a partnership agreement or, where there is one, it is silent in some respect, LLPs are also subject to default provisions. It would therefore be important that the members agreed on how benefits and responsibilities were to be shared amongst the partners.

External advice suggests that the practices most likely to benefit from the LLP business structure will be larger practices, in particular, those which are expanding and or developing specialist practice areas. The use of an LLP or a limited company may provide a more convenient vehicle for securing access to further investment.

Other considerations

Would establishing and developing an LLP mean that beyond a certain level a GP partnership would cease to be an actual partnership?

Not exactly, as they are distinct entities with different characteristics, different structures and governed by separate legislation; the [Partnership Act 1890](#) and the Limited [Liability Act 2000](#).

Would there be legal implications for GPs if establishing LLP status changed them from being independent contractors to just contractors?

The answer would depend on the relationship with the Board/Commissioner under the GMS contract. This is something that would need to be explored in any suggested legislative change to allow LLPs to contract. It should also be noted that LLPs have a more onerous administrative burden.

Changes to primary legislation

For a GP practice to contract with the Board or the Commissioner as an LLP, the current GMS and PMS Regulations would need to be amended. The current prohibition appears in Regulation 5 of the GMS Regulations, which is set out above. These allow the Board to enter into a contract only with a medical practitioner alone, two or more persons acting in partnership where one of them is a medical practitioner, or a company limited by shares, where at least one share in the company must be both legally and beneficially owned by a general medical practitioner.

In order to allow the Board to enter into a contract with an LLP, a fourth option would have to be included and the definition of the legal entity set out in the interpretation section. The specific wording would have to be drafted by the DHSC, but GPCE could suggest a format for consideration so that it meets our policy aims.

Risks

If partnerships were to consider forming into social enterprises, is there a potential that LLP status could open up partnerships to being taken over by private providers?

In order to prevent this possibility, an LLP would need to compile its own conditions of membership, in much the same way as the current Regulation 5, e.g. R.5 (1) (c). The same could be done to ensure that the current pension conditions prevailed under an LLP; there is no reason why this couldn't be done.

GPCE Position

LLPs are treated the same as traditional partnerships for tax purposes. There was a significant move post-2000 by law firms to reincorporate as LLPs and there is no reason to suppose GPs would not follow if the regulations were amended to allow it.

There would appear to be no significant disadvantages to the GMS contract being held by an LLP as opposed to a partnership or a company limited by shares, if the necessary legislation is amended to ensure individual GPs are no worse off as a result of the change. It would, however, make sense to explore what concerns GPs and other non-GP practice partners would have, so that these could be addressed.

GMS regulations should therefore be amended to allow an LLP to hold the core contract.