

Partnerships – Top Tips & Traps to Avoid

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Partnership

Property

NHS Contracts

Employment

Disputes

DR Solicitors Services

Our **award-winning** expertise is associated with all areas of law required to run a professional healthcare provider. Our recent work includes:

Partnership

- Partnership deeds
- Super-partnerships

Property

- Surgery developments, purchases & sales
- Leasehold negotiations & transfers

NHS Commercial

- GMS, PMS, APMS, NHS negotiation & disputes
- PCNs & Federations

Employment

- Clinical & non-clinical employment contracts
- Business reorganisations

Disputes

- Partnership & contractual disputes & litigation
- Employment tribunals

Agenda

- **What does 'partnership' mean?**
- Key legal relationships
- Comparing salaried GPs, locums and partners
- Partnership Deeds – common problems and traps to avoid
- Surgery Premises issues
 - freehold
 - leasehold
- Partnership Disputes

Why might you want to become a Partner?

- Influence over direction of the business
- Share in the profits (and losses)
- Status recognition
- Increased responsibility
- Tax advantages

Things to ASK YOURSELF before becoming a Partner

- Do I want to be a business owner?
- What additional value will I bring to the partnership?
- Do we all trust each other implicitly?
- Can I work alongside the other Partners as an equal?
- Do I understand the difference between being a partner, a locum and an employee?
- Do I understand the risks as well as the benefits?
- Have I undertaken sufficient due diligence?

Things to LOOK FOR before joining a Partnership

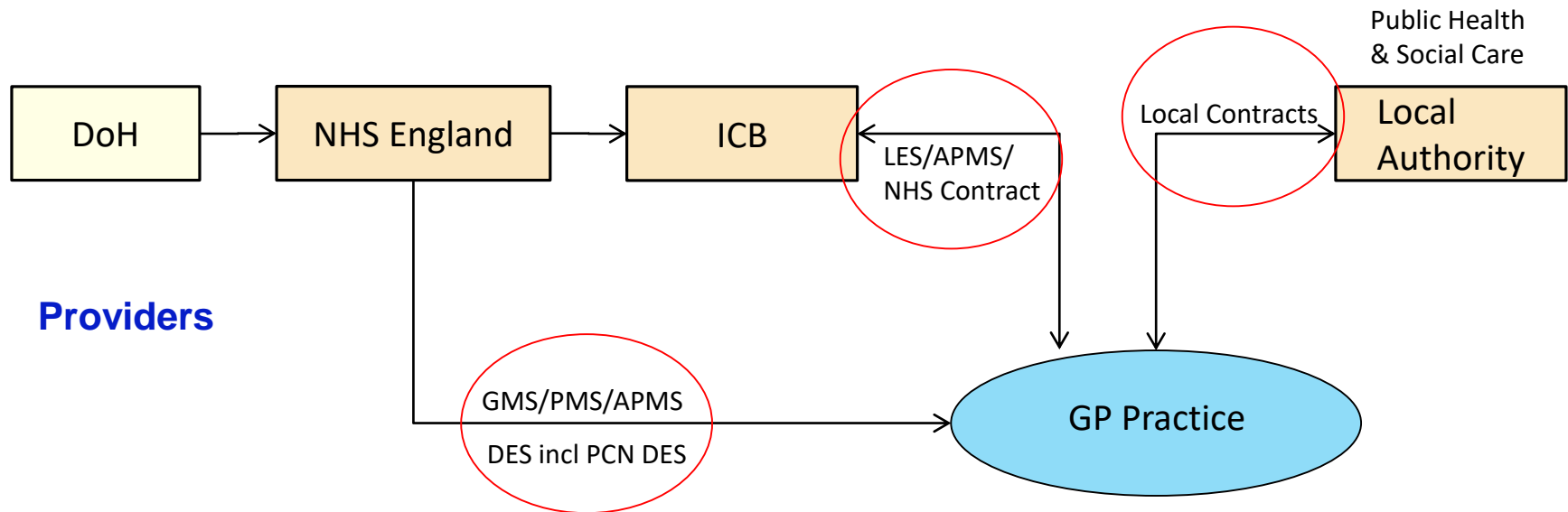
- Do I fully understand the Partnership Deed?
- Do I understand the risks of the business?
 - Contribution required to Working Capital
 - Commitment to buy into the Surgery Premises
 - Indemnities for previous activity
 - Onerous lease
 - Adequate insurances
 - Pension liabilities
 - Regulatory problems
 - Staffing problems
 - History of disputes/litigation
 - Mutual Assessment Period
 - PCN Agreement & accounts

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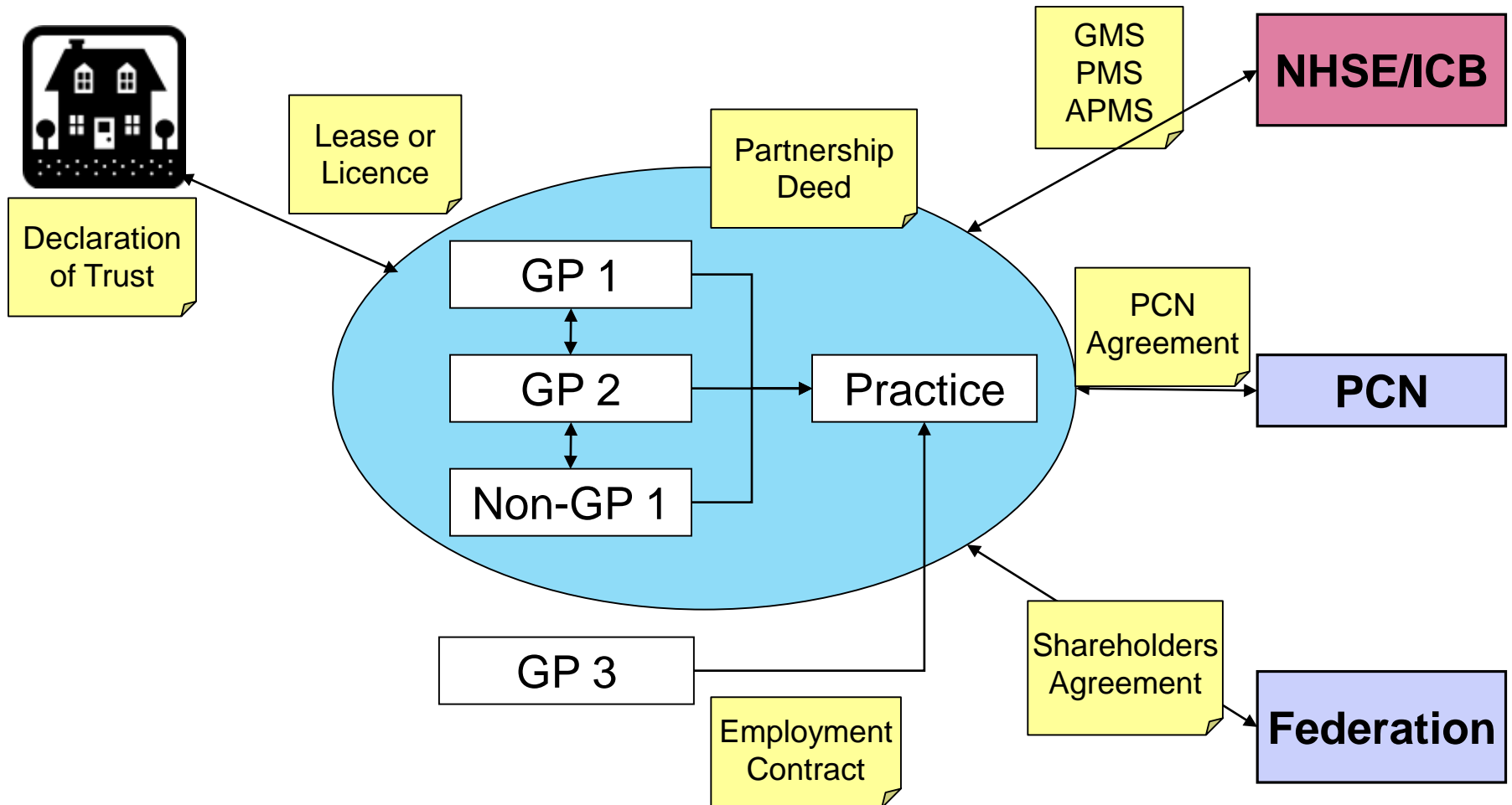
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GP Practice contracting

Commissioners



GMS partnerships: key contractual relationships



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Types of workers

- The law recognises only 3 categories of workers:
 - Partner
 - Employee
 - Contractor - locum
- A Partner must be:
 - Carrying on a business in common (with other persons) with a view to profit (1890 Act)
 - Participating in the management of the business
 - Sharing risk (profits and losses)
 - Contributing to capital

Partner or Employee?

Partner	Employee
Business owner	Take direction from Partners
Share in profits & losses (take risk)	Fixed income regardless of profit
Own a share of the capital	No capital contribution
Managerial responsibility	May be allocated managerial responsibilities
Self employed	PAYE & NI
Do not need to be called 'Partner'	Can be called 'Partner'
Governed by 1890 Partnership Act	Governed by employment legislation
High Court	Employment Tribunal

Determined by case law...

Types of Partner

- Equity or Parity Partner
- Fixed Share Partner
- Salaried Partner
- Partner by 'holding out'
- Sleeping Partner

Equity Partner

- Typically:
 - Entitled to a share of the profits commensurate with their ownership of the business
 - Have a significant share in the Partnership Capital
 - Have full voting rights
 - May have a concept of “lockstep”: a number of years to parity
- Full joint and several liability
- Self employed tax status
- Last golden hello ‘New to Partnership’ rules specified ‘equity-share’ partnership

Fixed Share Partner

- Typically:
 - Entitled to a fixed share of the profits as a prior share
 - Should have an element of variable income based on the profitability or losses of the practice
 - What happens to losses? Can be indemnified
 - May or may not contribute to Partnership Capital
 - Limited or full voting rights
- Full joint and several liability subject to an indemnity from Equity Partners
- Self employed tax status but HMRC can interpret as employed

Salaried Partner

- Often (incorrectly) used interchangeably with 'Fixed Share' Partner
- Meaning is:
 - An employee of the practice entitled to a salary – PAYE
 - Partner is purely a title
 - May have an element of bonus based on the profitability of the practice
 - No share in the Partnership Capital
 - No voting rights
- Care! 'Holding out' risk and need for indemnity

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Partnership At Will – no Deed

- Governed by Partnership Act 1890 unless varied by unanimous agreement
- Agreement to vary PA 1890 can be written, verbal or deemed by course of conduct
- Written evidence:
 - Partnership Offer Letter
 - Partnership Deed
 - Partnership Minutes
 - Partnership Accounts (Ham v Ham 2016)
- Dissolution of a Partnership at Will - GMS terminates (Cheema v Jones 2017) BUT now we have the 2024 Bhat case!

Partnership Deed - key points to cover & traps to avoid

- Ring-fence liabilities to 'former partnership' so there is a cut-off
- GMS/PMS/APMS Contract
- Partnership Assets: unclear & often conflict with accounts
- Valuable assets such as the surgery, a pharmacy, non-list based contracts
- Profit share: income, capital and equity
- Decision-making: avoid high quorums
- Authorised Leave: how long and who pays?
- Last Partner Standing & Retirement rules inc. 24 hour retirement
- Restrictive covenants
- Primary Care Network (PCN) and GP Federation
- Regulatory: e.g. ICB obligations, Data Protection
- Arbitration or the Courts?

Practicalities

- Formal Offer
- Partnership Deed
- Inform:
 - HMRC
 - NHS E / ICB
 - CQC
 - Pensions Board
 - Staff
 - Bank
- Change letterhead and website
- Property considerations:
 - Ownership documentation - Financing / mortgage
 - Changes to Lease

Ensuring your Partnership Deed is valid

- Signed 'as a Deed' by all parties
- Witnessed independently
- Dated
- Specify commencement date of Partnership

Once signed, the Partnership Deed is binding!

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Freehold Surgery – ownership & structuring

- Is it a Partnership Asset?
- Owned by individuals outside of the partnership
 - Wholly
 - Partially
- Limited Company owning surgery
- Funding (notional rent/rent reimbursement)
- Sinking fund
 - take tax advice
 - Alternatively obtain surveying report on condition at buy in/buy out

Freehold Surgery - Buy-Ins/Outs Checklist

- Follow rules in Partnership Deed / Declaration of Trust
- Valuation – be careful of goodwill regulations!
- Secure bank financing
- Intra-partnership for SDLT
- Register change at HM Land Registry
- Update Partnership Deed & Declaration of Trust

Declarations of Trust (DoT)

- Most buildings no longer owned by all the partners in Income Profit Sharing Ratios (ie not an 'ordinary' partnership asset like the furniture)
- DoTs deal with different rules to other partnership assets:
 - Sub-set of partners as owners
 - Differing ownership shares
 - Options for buy out on retirement (tax purposes)
 - Valuation provisions
 - Allocation of income & expenses

Leasehold Surgery – Top Tips

- Is the lease in current names and is the Land Registry up to date?
- Partnership Deed – is there leasehold succession planning?
- Understand the Lease – Lease report
 - Demised premises
 - Diarise important dates - rent reviews, break dates, lease expiry
 - User clause
 - Alienation – ‘last person standing’ clause
 - Who is responsible for maintenance and repair – service charges
 - Alterations
 - Dilapidations

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Partnership Dispute checklist

- Find the signed business documents: Partnership Deed, Property documents; Shareholder Agreement; PCN Schedules; GMS Contract
- Follow the agreed dispute resolution process
- Ensure all meetings are documented
- Remember everything is disclosable unless privileged – including social media accounts and certain mediation meetings
- Be very careful with DSAR requests
- Act early and involve the right professionals
- Remember employees are employed by ALL the partners

Thank You



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