

BMA

Collaborative GP Networks

Guidance for GPs on the Basic Legal Structures

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British Medical Association
bma.org.uk

IMPORTANT

This guidance mainly applies to practices in England, but the principles of collaborative alliances and federations can also be applied across the UK. The General Practitioners Committee (GPC) does not endorse or support any specific model, but is merely highlighting the different ways that GPs can and do organise themselves.

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GP Networks

The ever changing landscape within General Practice has brought with it significant challenges, with a backdrop of rising demand and diminishing resources leaving many practices in a vulnerable position.

The latest expression of future trends is clearly defined in the NHS England 'Five Years Forward View' (FYFV).

Whilst this environment brings with it a number of threats to General Practice as currently constructed, it also presents an opportunity and impetus for practices to take forward new ways of working which can be used to both help alleviate these pressures and provide opportunities for practices.

Whilst many suggestions for reforms to general practice have been made by numerous parties, GPC believes that the formation of GP networks provides the most effective way of allowing practices to adapt to this landscape, providing the ability for practices to offer 'at scale' provision whilst retaining the independence and local basis of traditional general practice.

Why Form Networks?

Recent months have seen a growing trend towards policies based upon 'at scale' provision of general practice and an increasing number of practices have begun to move towards collaborative working models which can take advantage of the opportunities this offers.

The primary advantage of such a model of collaborative working is the extension and management of the services that such a network is capable of providing. The ability to take advantage of the respective attributes of all the practices involved, and spread incoming workload across a number of practices, gives the network the capacity to commission extra services outside those possible by individual partnerships.

It is clear from NHS England documents such as FYFV that commissioners will increasingly want to do business with larger primary care organisations that cover populations consisting of tens of thousands. This is where new investment will occur, and this area should be controlled by general practice.

By increasing their portfolio of services networks have the potential to offer a more varied and comprehensive service which in turn would place those practices who are involved, in the best possible position to attract young trainees and salaried doctors so as to help further alleviate workload pressures in the short term, and begin succession planning for the long term should employed GPs wish to pursue a partnership position in the future.

Each practice and locality must assess this environment in the light of the needs of their patients and the future of their business. Some practices will decide that working at scale does not fit with their current plans. There is no doubt that the NHS will evolve at different rates and into variable structures over the next few years and all practices should be prepared to regularly evaluate their position within the local health economy.

Maximising provision of services and managing workload

GP networks can have a large impact upon the ability of practices to bid for service provision across a wider array of areas than individual practices can offer alone, whilst at the same time allowing the constituent practices to manage the incoming workload by enabling the co-ordination of services between practices within a given geographical area.

For example, a network may bid to provide a LES commissioned by the local CCG. Provision of the service could then be distributed between the separate practices, allowing those with capacity to provide it, whilst protecting those without capacity.

A network system can also allow practices to offer direct support to each other if, for example, some members are experiencing short or long term clinical staffing issues.

Workforce benefits

Networks could offer new and flexible employment options for GPs and other clinicians. They could also offer trainees a wider array of experiences with a sharing of the administration and workload increasing the capacity to widen the scope of training.

Such innovative employment opportunities will undoubtedly provide portfolio careers to salaried GPs, will increase the flexibility of working hours for GPs, and will assist in recruitment and retention of clinical and administrative staff.

They will also assist in the growing need and opportunity to expand workforce development thinking to include other allied health professionals, such as nurse practitioners, physicians' assistants and pharmacists, to provide a larger pool of labour capable of meeting increasing patient needs.

Back Office Functions

This can include sharing HR and payroll functions to sharing staff between practices, utilising economies of scale to reduce administration and staff costs whilst helping to expand the sharing of good practice & ideas, with the potential to affect a consistency in service to patients across the area.

Practice managers in many areas share ideas and business practices and a network encourages this activity and can provide support and development across the district. For example, some areas are providing networked telephony solutions for both business resilience and optimal access to practices. By sharing such functions over a single platform, economies are generated with support practice expenses and mean overhead costs within any service bid are competitive.

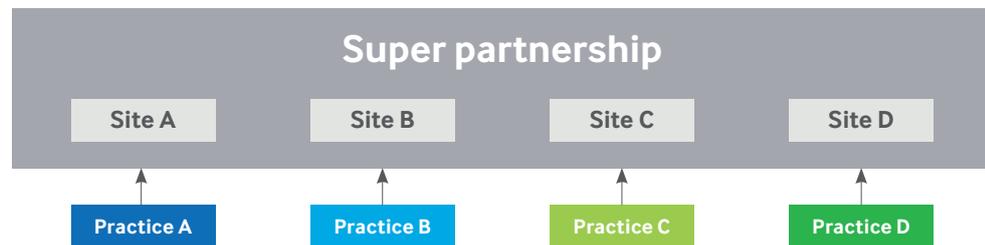
Delivering General Practice at scale

When considering GP Networks, it is important to differentiate between the two most common approaches that can be adopted.

Both of the models described below can be used as a vehicle to deliver economies of scale, extra services for patients or bid for new contracts. The major difference between the two approaches is the extent to which individual practices retain or lose their autonomy, and their exposure to risk and financial liability.

1. Practice Merger

A number of individual practices merge into a single business unit (forming a 'super partnership') covering multiple sites across a large geographical area. This model operates in much the same way as a regular partnership but generally at a much larger scale. A diagrammatical representation of this model is as follows:-



Multiple practices *merge* to form a single entity

2. A Corporate Entity owned by the Practices

A number of practices join together as stakeholders in a new corporate entity, which can be used to provide back office services to each of the individual practices (e.g., jointly administered back office functions) or bid for new service contracts that can be delivered at one of the individual practices. Unlike the merger, each individual practice maintain some degree of autonomy and is linked to the corporate entity by their shareholding or membership in the same. The individual practices need not be consumed by the new larger organisation, nor merged into a single unit. A diagrammatical representation of the model is as follows and an brief overview of the most common corporate structures by which practices can form GP networks are covered over the following pages of the :-

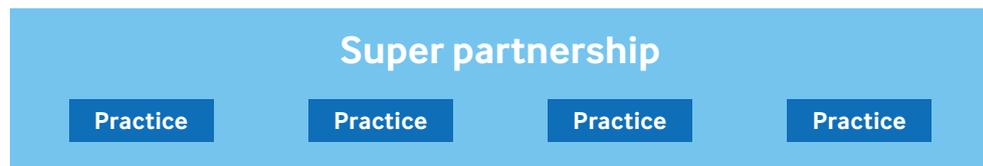


Multiple practices join together as *shareholders* in a new entity

Irrespective of the type of model involved many GPs may initially find the prospect of networking daunting, especially if viewed as a risk to their own independence. Despite this it's useful to keep in mind that there are many ways for such ventures to be structured, based upon the needs and wants of the respective practices involved, so as to ensure that concerns are alleviated and a sound basis for collaborative working is achieved

For example, some may worry that merging a number of other practices to form a large 'super partnership' will threaten their own independence and autonomy of practice. In this case, the practice may prefer to form a network with neighbouring practices under a separate corporate structure. This would protect the independence of the individual practices whilst providing the necessary legal platform for coordinated and joint provision of services. Having regard to the above the rest of this guidance provides an insight into the most common corporate structures by which practices can form GP networks.

Super Partnerships



Practice mergers have previously involved two or more neighbouring practices that are confronted with similar limitations. A desire for larger, better equipped premises is one driver for this, as is the opportunity to increase the patient list size and practice income. The benefit of sharing staff is also a significant factor.

A partnership agreement between the partners of the practices will usually be sufficient for a merger to take place, but this may eventually be in addition to another structure, e.g. a company limited by guarantee or a company limited by shares, thus limiting individual partner liability.

Advantages

- Merging parties do not have to have equal viability
- This model can be applied to multiple practices, e.g. the Midlands Medical Partnership
- Merged practices can hold GMS, PMS and APMS contracts
- Equitable funding changes should make merging easier
- Can offer significant benefits through economies of scale
- Enables rationalisation of quality frameworks and policies
- Can establish joint ventures with other GP or NHS organisations

Disadvantages

- Poor planning and preparation can lead to future splits following disintegration of relationships
- Joining a larger GP organisation can lead to an initial decline in income due to profit sharing arrangements
- Involves a considerable amount of effort and motivation to establish large organisations
- Individual GPs may have less influence in decision making within a very large partnership
- Risk of losing local connections and continuity with patients if staff become remote or too centralised
- There is financial risk to practices if not also incorporating a limited company (in a standard partnership model the individual partners are, unless contrary written agreement dictates otherwise, all equally and personally liable for the liabilities and losses of the partnership they are involved in)

Company limited by shares



These companies are generally formed when a group of private individuals wish to form a business into which they, or the practices they represent, will each contribute but in doing so wish to protect the interests of their respective practices.

Albeit that there are numerous ways of structuring such a company the general principle sees a nominated partner of each of the constituent practices being allocated a share or an agreed number of shares in the company. These shares are held on trust by the nominated partners for the constituent practice they represent. Such trust arrangement must be covered off in the partnership deed of each constituent practice. The liability of each practice is then limited to the nominal price paid for its share(s).

In order to both i) ensure the mutual involvement and motivation of all constituent practices and ii) avoid the negatives associated with a dominant shareholder emerging, it is often preferable for each constituent practice to be allocated one or (depending on their respective patient list size) possibly two shares. Despite this, it is often desirable for the company to be structured so that the split of profits is more reflective of each constituent practice's patient list size (as it is generally the case that a larger practice will be required to contribute a greater level of resource). To achieve this additional 'non-voting' shares can also be issued which take into account patient list size and attract rights to dividend payments.

The fundamental benefit of having a separate company with its own share capital is that the liability of each constituent practice is limited to the nominal price paid for its share(s). This ultimately means that the assets of each constituent practice, and the partnership which runs the same, are protected in the event that anything happens to the network in the future as well as ensuring that each practice retains an equal influence over the network company.

In addition to this, the company can be set up in such a way that i) enables practices to exit with ease at any point in the future, ii) prevents shares from being sold so as to protect the network from future takeover or exploitation by third parties, and iii) ensures that each constituent practice, regardless of size, is properly and fairly represented.

Ultimately the arrangement is highly flexible in the way in which constituent practices can come together. That said, it is extremely important for the relationship between the practices to be documented in a written shareholders agreement.

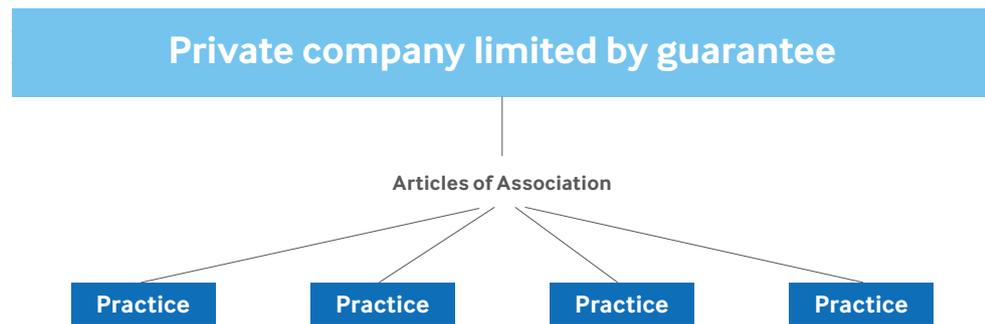
Advantages

- Limited liability company
- Private companies are flexible – subject to less exacting regulations
- Easy to set up
- Can return profit to practices in the form of dividend payments
- Access to debt and equity finance
- NHS Pension Scheme eligibility for GMS/PMS contracting (subject to ownership)
- All practices have a single "ownership" share
- Extremely flexible when it comes to the way in which it is structured

Disadvantages

- Must be floated by members' own capital (or their debt)
- Requirements to publish information at Companies House

Company limited by guarantee



This structure is predominantly, albeit not exclusively, used when there are no funds required for the running of the business, or where the necessary funds come from an alternative source such as endowments, donations or subscriptions.

In a company limited by guarantee, there are no shares. Instead, the company will have members bound by a guarantee in the company's articles of association, which requires them to pay the company's debts up to a fixed sum – usually £1. Again this protects the assets of the individual partnerships which constitute the network.

Companies limited by guarantee will be run by all the members (who each have one vote when it comes to deciding matters) or by an appointed executive board.

Advantages

- Minimises the risk and liability of members
- Has formal democratic controls by its members enshrined in its articles
- Eligible for charitable status where this is appropriate
- It is possible to set up a subsidiary company to hold capital and conduct non-charitable trading

Disadvantages

- Not generally used by profit making businesses due to inflexibilities not seen within companies limited by shares
- Not appropriate for businesses that need capital or wish to enter into profit share arrangements

Limited Liability Partnership (LLP)

Limited Liability Partnership

Practice

Practice

Practice

Practice

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

As an LLP is a separate legal entity it can form a legal relationship in its own right and will continue in existence despite any change in membership.

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. As a consequence the establishment of an LLP can be a good way of protecting the financial assets of the respective constituent practices (and their respective) partners that make up the same.

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.

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
- As the regulations currently stand, GMS practices would be prevented from forming LLPs
- No access to equity finance

Social Enterprise Organisations

The government defines social enterprises as “businesses with primarily social objectives whose surpluses are principally reinvested for that purpose in the business or in the community, rather than being driven by the need to maximise profit for shareholders and owners.”

In practice there is no simple definition of a social enterprise, but rather a core value, or common set of principles and behaviours:

- They are businesses driven by a social or environmental vision and purpose rather than a profit for private shareholder goal.
- They compete to deliver goods and services. The difference is that social purpose is at the heart of what they do, and the surpluses they make are largely reinvested towards achieving that purpose.
- They generally need to retain some profit or “surplus” in order to maintain an acceptable level of liquidity – so they can’t be described as “not for profit”. However they will typically operate at much smaller profit margins than the independent sector and will not pay a shareholder dividend.
- Their constitution will generally contain an asset distribution clause or asset lock.

Social enterprise organisations seeking to promote these values can hold the [Social Enterprise Mark](#).

Social enterprises can be legally structured in a number of ways. The most common forms are below:

Community interest company (CIC)

A legal form created specifically for social enterprises. It has a social objective that is “regulated” ensuring that the organisation cannot deviate from its social mission and that its assets are protected. The defining characteristic of CICs is that they include an asset lock preventing the distribution of profits, which must be reinvested within the company. The networks recently established in Northern Ireland are structured as CICs with a full lock on profit distribution, ensuring that subsequent profits must be reinvested into services.

Industrial and provident society (IPS)

The usual form for co-operatives and community benefit societies, and is democratically controlled by the members in order to ensure their involvement in the decisions of the business.

Charitable Incorporated Organisation (CIO)

A new legal form designed for charities registered in England and Wales and operating in a way more similar to a business than other charity forms.

Companies limited by guarantee or shares

The most common legal structures for businesses and often considered to be the most flexible. While they can ensure they have a social mission written into their Memorandum and Articles of Association, this is not regulated.

Advantages

- Flexibility and limited liability of members
- More lightly regulated than a charity
- Not-for-profit objectives are clear, and help patients and Local Authorities to feel more relaxed about their existence
- CICs have access to equity (in the case of a company limited by shares) and debt markets
- Social enterprises receive public recognition. Surveys have shown that the general public is strongly in favour of services with a social enterprise ethos
- Potential to convert to a charitable incorporated organisation from 2014
- Can qualify as an Employing Authority for the purposes of accessing the NHS Pension Scheme, however this will depend on the structure used

Disadvantages

- Does not share the tax advantages of charities
- Not suitable for direct profit-making but can make a surplus that can be used to support general practice
- Must file an annual community interest report

Structure	Limited liability?	Contract Status	Pension Status	Profit Status
'Super' Partnerships	No	Can hold GMS, PMS and APMS contracts in its own right.	Eligible for NHS Pensions Scheme if holding a GMS/ PMS/APMS contract	Profits distributed amongst the partners according to the partnership agreement.
Companies Limited by Shares	Yes	Can hold GMS, PMS and APMS contracts in its own right. Member practises can also retain their individual contracts	Eligible for NHS Pensions Scheme if holding a GMS/ PMS/APMS contract	Profits from the parent company can be distributed to shareholder practices as dividends
Companies Limited by Guarantee	Yes	Can only hold APMS contracts in its own right. However, Member contractors retain own individual contracts	Eligible for NHS Pensions Scheme as an independent provider if holding an APMS contract	A company limited by guarantee is not prohibited from distributing its profits to its members by the Companies Act or any other law, but it is commonplace for restrictions to be put on profit distribution in the company's articles
Limited Liability Partnership	Yes	Can only hold APMS contracts in its own right. However, Member contractors can retain own individual contracts	Eligible for NHS Pensions Scheme as an independent provider if holding an APMS contract	Profits shared amongst the member partners according to the limited liability partnership agreement.
Community Interest Companies (CICs)	Yes	Can hold GMS, PMS and APMS contracts in its own right if set up as a company limited by shares.	Eligible for NHS Pensions Scheme as an Independent provider if holding an APMS contract	Asset locks prevent (or heavily limit) the profit that can be returned to members, with surplus funds being recycled into the company