

Focus on Last partner standing

What the issue is and how it arises

'Last partner standing' (commonly referred to as the 'last man standing') is a phrase used to explain a situation where, due to either an exodus of partners and/or lack of successor partners being recruited, one partner (or perhaps more) finds themselves shouldering the full extent of the liabilities and obligations owed by the practice.

This can result in the partner being unable to retire or, to the extent that they decide to wind up the practice, being left to personally fund what can be significant financial liabilities.

Liabilities of a partnership (Joint and several liability)

In a partnership, and unless otherwise agreed in writing, each individual is liable for any debts or "liabilities" of the partnership on a joint and several basis. This means that any third party to whom the partnership owes a debt can recover that debt from any one or more of the partners. They effectively can choose the route of least resistance to realise payment of the monies they are owed.

In a healthy partnership, this is not usually an issue, but when individuals leave a partnership, and unless there are express provisions dictating otherwise, their liabilities end. They become the responsibility of the remaining partners.

This has become an increasing concern as partnerships reduce in the number of individual members with the current recruitment crisis, where practices find it difficult or impossible to recruit GP partners when others are looking to retire or leave the practice.

In these circumstances, the last remaining partner can be left with sole responsibility for liabilities that were once shared by a larger group of members of the partnership.

If the last remaining partner finds that he/she is unable to carry the burden of the practice on their own, and chooses to handback their core contract (to the extent that they are an NHS contracted practice) and close the practice, he/she will be responsible for settling the debts of the partnership, including (without limitation) mortgage repayments, redemption penalties, negative equity in practice premises, lease payments and the entire cost of redundancy payments for employed staff who lose their jobs as a result of the practice closure. Please see guidance on handing back your GMS/PMS contract [here](#).

How to avoid being the 'last partner'

In a time where recruitment is difficult the possibility of being the 'last partner' standing can never be completely avoided. However, significant steps can be taken to mitigate the possibility. These include:-

- Before taking on a partnership, undertake due diligence. In other words, you should obtain independent accountancy and legal advice on the financial health of the partnership and its potential liabilities.
- Establish a robust Partnership Agreement that contains provisions which secure the stability of the partnership and avoid the possibility of partners leaving in quick succession. Provisions that can achieve this include:



- stipulating a minimum amount of time between partners leaving; six months is not unreasonable. A shorter time period could potentially allow a partnership to become non-viable in a matter of months if several partners retire in quick succession.
- making it an option as opposed to a requirement that partners have to continue a practice after a partner serves notice to leave.
- Maintain a fund for unfunded practice obligations that may arise in the case of a last partner standing situation.
- If you consider your practice is potentially vulnerable, try to negotiate joining an existing partnership or merging with another practice. This can be done in a number of ways and further guidance on merging with another practice can be found [here](#).
- If you rent your premises, negotiate a break clause in your surgery lease in case a situation arises where the GMS/PMS contract will be terminated and ensure that your exposure to non-reimbursable costs is limited. More information on the things to consider when entering into a lease can be found [here](#).
- Look at what insurance products you can take out to protect yourself, such as mortgage protection, illness cover etc.
- Always be compliant with the terms and procedures of your lease or mortgage. Failure to do this will compound the problem and could leave you liable in subsequent civil court proceedings.
- Seek advice at the earliest possible stage from your LMC. They will have experience of dealing with other practices who have already faced similar situations. They could help with negotiations regarding merger with other practices or renegotiation of your GMS/PMS contract.

If you have any concerns about the issue of being a last partner standing, please [contact](#) the BMA to see what support we can offer.

Further considerations

There are now an increasing number of examples where practices have resolved the issues associated with being the 'last partner standing' and secured practice stability by working collaboratively. This has included:-

- i) Practice mergers
- ii) Establishing and/or joining super partnerships (being a larger scale form of merger which can either have a centralised or decentralised partnership model depending on the level of autonomy that is required at each individual practice level)
- iii) Support being provided by federations
- iv) Federations or the local hospital or community trust assuming the core contract and the practice liabilities as a whole.

With the above in mind, GPC would urge any practice that is facing a last partner standing situation (and who may be considering the possibility of voluntarily handing back their core contract) to explore all potential options and to understand the full extent of their potential exposure to liabilities before making any final decision. To help in this regard we have worked with our legal services provider, BMA Law, to develop a "practice health check" service. Read more [Here](#).

Ultimately GPC would suggest that a solid starting point in addressing concerns over being the last partner standing is to understand your exposure and explore your options. Merging with another local practice or practices is clearly preferable, as by doing so the GMS/PMS contracts are retained as is the GP led approach towards primary care.

'Last Partner Standing' in Wales

GPC Wales have been lobbying the Welsh Government regarding last partner standing liabilities and progress has been made in developing options and recognition that an individualised solution is required on a case by case basis. The Health Boards can provide solutions to premises issues including last partner standing, in a number of ways such as:

- Working with practices and providing a letter of comfort detailing the approach to sustainability in the event of "last partner standing"
- Taking the head lease in the case of a managed practice
- Taking the head lease for a period whilst practice sustainability solutions are put in place and then the lease assigned over to the practice
- Taking the head lease and subletting this to the practice for a term of 5/10 years or such agreed between both parties.

These solutions cannot easily be translated to an English context as CCGs do not take on the running of failing GP practices. However, in England it is NHS England's, or the CCG's in the case of full delegated co-commissioning responsibility, to commission primary medical services and if a practice fails, NHS England then have an obligation to find an alternative provider for the patients on the practice list.

If you need legal advice and support in relation to any of the matters raised in this note our legal services' provider, BMA Law, can help. They can be contacted on:

BMA Law

Tel: 0300 123 2014

Email: info@bmalaw.co.uk

Web: www.bmalaw.co.uk

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BMA 20170217