

The logo consists of the word "Weightmans" in white, sans-serif font, centered within a dark teal, rounded rectangular shape with a slight wave at the top.

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GP Partnerships

Some tips when contemplating partnership

28 January 2021

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A series of overlapping, wavy teal lines of varying thicknesses that flow from the left side of the slide towards the bottom right, creating a dynamic, abstract graphic element.

Agenda

- What is a partnership and types of partnership
- Some basic principles
- Partnership at will
- Express agreements
- Terms
- Partners as employers

Partnership– What is it

- A relationship
- between 2 or more people
- carrying on business together
- with a common view of profit

Creation

- Express or
- Implied
- Which is best?
- Why ?

Basics

- Close working relationships
- Joint and several liability
- Mutual Trust and Confidence
- Utmost Good Faith

Personal principles

- Communication
- Competence
- Respect
- Commitment
- Trust

Partnership at will

- How does this arise ?
- Where does the framework for the relationship come from ?
- What is included ?

Easily created

- New partner joins an existing partnership – no deed update
- People start to work together without thinking about it ‘ we just all get on so well ‘
- If a new partner is brought in – on probation – when is the partnership formed – on the expiration of the probation – or on the day he joins you?

Terms implied

- Are they suitable to your business ?
- Partnership Act 1890
- Equal right to manage the business
- All profit shared equally

Case study

- Practice X
- PMS contract
- Partnership at will
- Dispute between the partners and they refuse to work together
- No right to give notice to each other
- What is the commissioner going to do with the contract if they cannot work together
- Partnership at will – Dissolution

Partnership agreements

- Advantage ?
- An opportunity to set out the framework for the management of your business
- Consider the kinds of things you should include
- Mitigate the opportunity for dispute and
- Provide for dispute resolution

Common themes for dispute

- Money
- Ownership
- Working practice

Terms for inclusion

- Start Date
- Account Date/ and banking provisions
- Capital / Assets
- Specify how capital owned and any cash injection ?

Payments

- Practice income
- Personal Income
- Practice expense
- Personal expense
- Drawings – share ratio
- Superannuation

Work obligations

- Clinical
- Managerial
- Commitment exclusive to the practice
- Work outside the practice – eg for the CCG (payment / outside core hour)
- PCN or other work
- Restrictions – things you don't want partners to do
- Decision making – are all decisions equal ?

Decisions

- Are all decisions equal
- Which are day to day
- Which are more policy related
- Decisions in 2 person partnerships – mediation
- Majority / unanimity

Absences

- Reasons – wide and varied – not just annual leave
- Payment ?
- Payment of locums
- Parental leave

Ending the partnership

- Retirement – voluntary
- Compulsory / Expulsion
- The green socks clause
- Temporary
- Dissolution

Effect of retirement

- Set out expectation of behaviour on retirement
- Restrictions
- Reasonable?

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Legal considerations – Employment Law

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Legal considerations – ACAS Code of Practice

- Status of the ACAS Code of Practice and the accompanying guidance
- The ACAS Code establishes certain key principles, including:
 - Disciplinary and grievance **procedures** should be written, specific and clear
 - Parties should deal with issues **promptly** and should act **consistently**
 - Employers should carry out any necessary **investigations**
 - Employers should **inform** employees of the basis of any problem and employees should have an **opportunity to defend themselves**, before any decisions are made

Legal considerations – ACAS Code of Practice

The ACAS Code provides guidance when dealing with disciplinary matters, including:

- The employer should carry out all necessary investigations and, when doing so, keep an open mind...the employer should look for evidence both for and against the accused employee
- The employer should inform the accused employee of the problem in writing, including:
 - Sufficient information about the allegation(s) & possible consequences to enable the employee to prepare his/her defence
 - Copies of all relevant documentary (and other) evidence

Legal considerations – Fair Dismissal legislation

The Employment Rights Act 1996 (“ERA”) gives employees the right not to be unfairly dismissed (subject to certain pre-conditions)...

...For a dismissal to be fair, the employer must show that:

- The dismissal was for one of five potentially fair reasons set out in the ERA (which include misconduct)
- The employer adopted a fair procedure when dismissing the employee; and
- That the decision to dismiss fell within the band of reasonable responses open to the employer

Legal considerations – Fair Dismissal legislation

Adopting a fair procedure: key elements include...

- An employer should follow a written policy that employees have access to
- All interviews, warnings, key stages of any disciplinary process should be recorded in writing
- The employee should receive adequate notice of any investigation interview, disciplinary hearing or appeal hearing
- Employees should have an adequate opportunity to comment upon the evidence and defend themselves
- The manager responsible for the disciplinary decision must not be influenced by others
- The employee should be given an opportunity to appeal to a more senior level of management not previously involved in the case

Legal considerations – Fair Dismissal legislation

- The burden of proof and the balance of probabilities
- Establishing guilt and then determining the sanction are separate exercises
- Claims for unfair dismissal should be brought in the Employment Tribunal
- Potential exposure

Legal considerations – impact of discrimination law

The Equality Act 2010 – the nine ‘protected characteristics’:

- Age
- Disability
- Gender reassignment
- Marriage & civil partnership
- Pregnancy & maternity
- Race (includes colour, nationality, ethnic or national origin – & ‘caste’)
- Religion (or other similar philosophical belief)
- Sex
- Sexual orientation

Legal considerations – impact of discrimination law

The Equality Act 2010 – who's protected?

- Job applicants, current employees and ex-employees
- Contract workers (for example, agency workers)
- Apprentices
- Work experience placements

Legal considerations – impact of discrimination law

The Equality Act 2010 – prohibits various different types of discrimination:

- Direct discrimination (including by association & perception)
- Indirect discrimination
- Harassment (including by association & perception)
- Victimisation
- Additional disability-related protection:
 - Discrimination arising from disability
 - Failure to make disability-related reasonable adjustments

Legal considerations – impact of discrimination law

Equality Act 2010 – liability & enforcement:

- Employers are vicariously liable for discrimination by employees which occurs in the course of employment, subject to the ‘reasonable steps’ defence
- Employees and agents are personally liable for their own discriminatory acts
- Claims for discrimination should be brought in an Employment Tribunal
- Potential exposure

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Sara Frost
HR Manager, BARDOC

“ The team is professional, informative and work in timely manner. Their approach is business-centred whilst considering individual needs.”

Klaudia Donegani
Practice and Area Manager, Beacon GP Care Limited

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