

# Practice Mergers Guidance

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## 1. Introduction

The aim of this guidance is to give practices a steer on the key points to consider when merging. This guidance is not exhaustive and we recommend that practice should seek legal advice when merging.

BMA Law offers specialist legal advice in relation to mergers. If you would like advice, please do not hesitate to contact us on 0300 123 2014 or email [info@bmalaw.co.uk](mailto:info@bmalaw.co.uk) for further information.

### 1.1 What is a practice merger?

In simple terms, a practice merger is when two or more practices join together to form a single practice. A practice merger can occur in a variety of ways, for example when two or more practices merge, or where one practice takes over another. Ultimately, each practice wishing to merge will need to weigh up the potential advantages and disadvantages of merging to establish whether it is right for them.

### 1.2 Potential advantages of merging

It is important to weigh up the advantages and disadvantages of the merger. Merging may offer several benefits, which include:

- Sustainability in providing services
- Economies of scale through the ability to increase the volume and type of service offered to patients
- The ability to offer increased/extended patient access
- A greater chance of successfully bidding for contracts
- The ability to bulk buy and reduce costs
- The ability to share facilities and premises
- The possibility of sharing administrative work
- The potential to gain greater clinical expertise and skills
- The ability to offer greater training functions to develop a more skilled workforce
- The potential to reduce workload pressures
- The opportunity to become a proactive practice

### 1.3 Potential disadvantages of merging

There are also disadvantages to merging:

- Poor planning and preparation can lead to a breakdown in relationships
- The liabilities which belong to each practice may pose an issue unless positive action is taken to mitigate the liabilities or ring-fence them
- Cost and time constraints may post difficulties during the infancy of a merger
- Patients may have difficulty in accessing the services if the practice operates from one location
- Individual GPs may have less influence in decision making within a large partnership
- Each practice will sacrifice an element of their independence
- It may result in a reduction in funding, for example a reduction in the value of the core contracts

## 2. Initial considerations

Below are several points that practices should consider when preparing to merge.

### 2.1 Aim and vision

It is important that all of the parties have a shared aim or vision. This is so the parties are working towards the same objectives and are aware of each other's expectations.

### 2.2 Who will be responsible for coordinating the merger?

The practices may wish to elect representatives who meet regularly to discuss the merger. The group or representatives coordinating the merger should monitor the progress of the merger, ensure that any resources needed for the merger are in place, and keep a record of the cost involved. It is important that the practices communicate effectively throughout the merger to ensure that it is successful.

### 2.3 Business case

The parties to the merger may decide to prepare a business case to set out whether the merger is a viable option. The business case should detail what the practices' issues are, what the potential solutions are, and why merging is the best option. The practices may find it useful to conduct a cost analysis of the merger so that the financial implications can be considered.

### 2.4 Business plan

A business plan should set out how the merger will operate. It will establish a clear and concise strategy on how the merger will achieve the aims set out in the business case. The business plan can be used to measure the progress and success of the merger. It can also be used to identify areas that require improvement. A business plan may include the following:

- The business proposal
- Objectives, aims and vision
- Background of practice A
- Background of practice B
- The plan
- Reason and benefits of merging
- Communication and consultation strategy

### 2.5 Patient consultation

You will be expected to carry out patient consultations and obtain feedback on the proposed merger. You should communicate what the purpose of the merger is, and how it will affect the patients. You should also give your patients the opportunity to express their views.

There are several ways in which you can communicate the proposed merger to your patients. You may wish to publish information regarding the merger on the practices' websites, or hold an open meeting where patients from the practices can attend and ask questions. It is important to communicate the benefits of the merger to your patients to gain their support and trust.

## 2.6 Timescale

Setting out a clear and realistic timescale for the merger is important. You will need to provide adequate time to deal with aspects of the merger such as the premises, retiring partners, the transfer of staff, switching IT and telephone systems, and the legal documents.

## 3. NHS England

All merger applications will have to be approved by NHS England and the Care Quality Commission (CQC).

NHS England will consider any application to merge in accordance with the NHS England policy 'Managing Regulatory and Contract Variations' and in line with the local processes developed by the NHS England Area Team.

The NHS England Area Team will consider a number of factors when assessing the merger, including:

- **Core contracts:** what core contracts do the practices wish to merge, and how do they intend to do this?
- **Benefits to the patients:** how will the patients of each practice benefit from the merger? You will need to provide information on what services will be offered to the patients, and how the patients will be able to access the services. You will also need to provide information on the outcome of the patient consultations.
- **Costs:** what are the financial consequences of merging contracts?
- **Premises:** what are the plans in relation to the premises? Are they achievable and cost effective?
- **Impact on Quality Outcomes Framework:** how will the merger affect this?
- **Additional services and out-of-hours services:** will the merger increase the provision of these?
- **Procurement regulations:** in some circumstances the admittance of a new contracting party may give rise to procurement obligations. Will the contract be subject to procurement regulations?
- **IT and telephone systems:** how will this work? How long will this take to complete?

## 4. Core contract considerations

It is important to consider how the core contracts will be dealt with when merging. There are several ways in which the core contracts can be merged. The policy regarding the process and principles of mergers is contained in the NHS England policy 'Managing Regulatory and Contract Variations'.

### 4.1 Merging GMS Contracts

A General Medical Services (GMS) contract is a nationally directed contract between NHS England or Clinical Commissioning Group (CCG) and a practice. If two or more GMS practices wish to 'merge' their GMS contracts, the GMS contract regulations state that you must notify NHS England of certain changes that you wish to make to your contract so that a variation can take place.

The practice may wish to 'merge' their GMS contracts by either:



- Varying each GMS contract to include partners from the merging practice (example 1), or
- Varying Practice A's contract to include the partners from Practice B's contract, with a view to terminating Practice B's contract (see example 2)

It is important to note that where a sole practitioner is appointing a new partner as a contract holder, they should give at least 28 days' notice. Where the practice consists of more than one partner who is a contract holder, the practice should aim to give at least 28 days' notice of the addition of a new partner as a contract holder, however there is no prescribed timeframe for doing so. Where an individual contractor serves notice to terminate a contract, three months' notice is required. The practices should bear in mind that they may lose what is left of their correction factor payments if they terminate one of their GMS contracts.

#### **4.2 Merging PMS contracts**

A Primary Medical Services (PMS) contract is a local contract agreed between NHS England or CCG and the practice. If a practice wishes to make changes to their PMS contract, they will require the agreement of NHS England as there is no automatic right to vary the names of the contract holders. As such, there is no agreed time scale however it is advisable that no less than 28 days' notice is given the NHS England when seeking their agreement.

When merging PMS contracts, practices may seek to do this by either:

- Seeking NHS England's agreement to vary each PMS contract to include partners from the merging practice (see example 1 below), or
- Seeking NHS England's agreement to vary Practice A's contract to include the partners from Practice B's contract, with a view to terminating Practice B's contract (see example 2), or
- NHS England may decide to grant a new GMS contract and terminate both of the existing PMS contracts (see example 3)

It is important that the practices weigh up the funding agreements that NHS England propose. If the PMS contract(s) are part of the planned PMS reviews, then the contractual value of the PMS contract(s) may change and this will need to be considered.

#### **4.3 Merging GMS and PMS contracts**

A GP or a partnership may hold more than one form of core contract, and be party to more than one contract. For example, a GMS contractor can also be a party to a PMS agreement and both can hold a PMS contract. GMS providers and GMS providers can merge by:

- Varying the GMS contract and PMS contract so that each contractor becomes a party to the other practice's contract (see example 1). The practice would have to seek the necessary approval from NHS England as detailed above.
- Varying one contract to include the partners from the other practice(s), with a view to terminating the other contract(s) (see example 2). The practice would have to seek the necessary approval from NHS England as detailed above. The contractor would also have to give notice of their wish to terminate their contract.
- Terminating both of the existing contracts and entering into one new contract (example 3). The contractors would have to give notice of their intention to terminate their contract with NHS England.

#### 4.4 Informal arrangements

The practices may wish to enter into informal arrangements instead of merging contracts. This could simply be where practices enter into agreements to share resources or staff. We recommend that you seek specialist legal advice before entering into such contract.

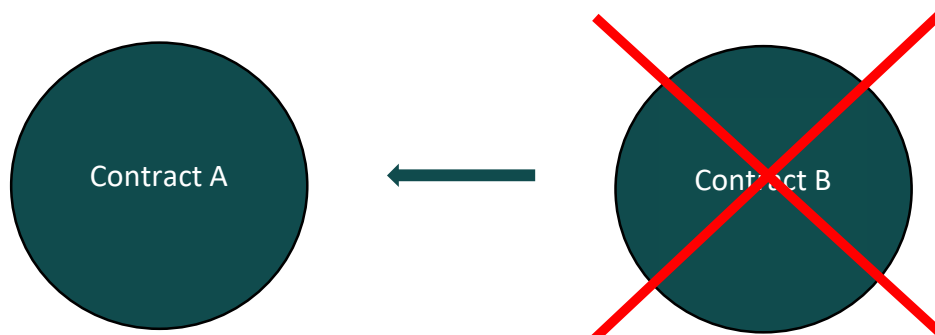
##### Example 1

Each party becomes a party to the other party's contract by varying each contract. This means that the separate contracts will be retained along with two separate registered lists of patients. This may be an option where the practices wish to preserve their contracts.



##### Example 2

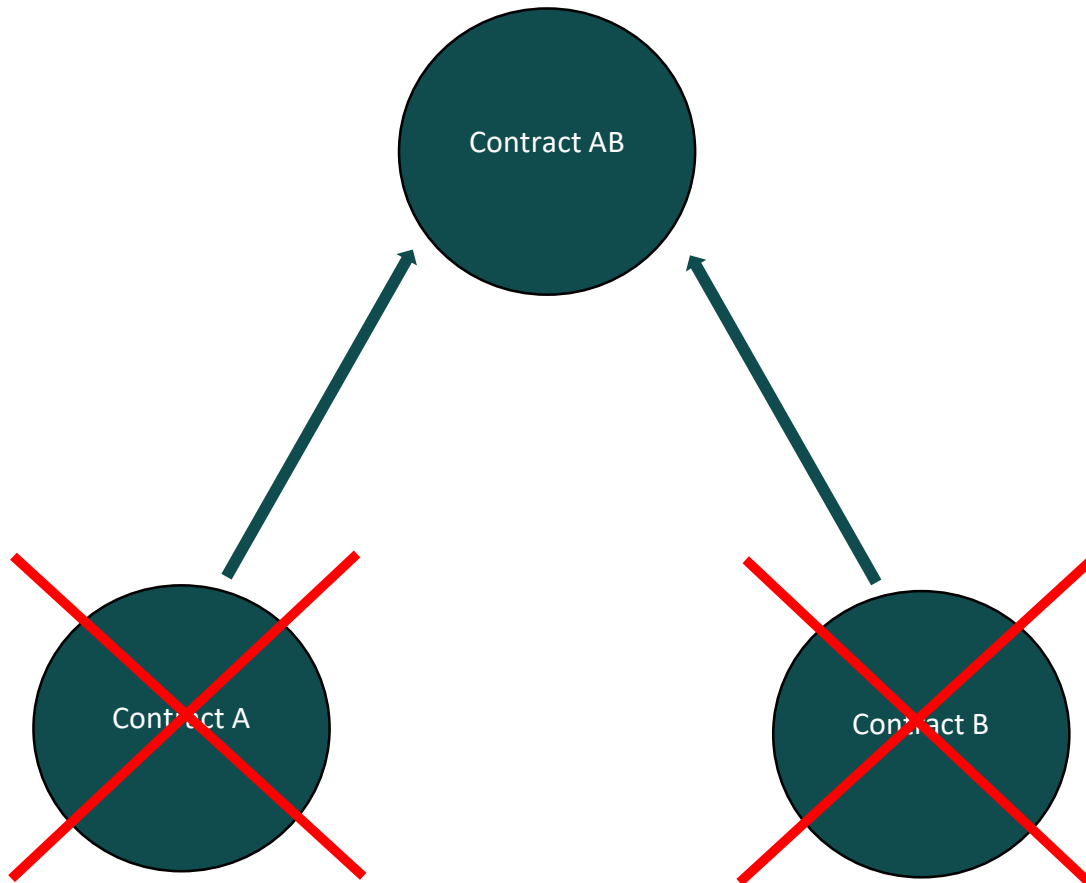
Terminating one of the existing contracts and varying the other contract to include the other contractors as a party to the contract.



##### Example 3

The parties enter into a new contract and the existing contracts are terminated. It is important to bear in mind that if a new contract is issued then it will be subject to the procurement rules. This effectively means that the new contract may be put out for tender.





## 5. Care Quality Commission

A merging practice will need to inform the Care Quality Commission (CQC) of the changing status of the partnership. It is advisable to inform the CQC as soon as possible. The type of notification(s) required will depend on how the practices intend to merge.

When the CQC consider a merger they will look at who is responsible for carrying out the regulated activity. A merger generally gives rise to one of two scenarios: either a registration for a new provider, or a change in registration for an existing provider. Examples of these circumstances are detailed below.

### 5.1 Registering a new provider

Practice A merges with Practice B to create Practice C.

Where two providers have merged to create a new provider, the new provider will need to register as a new provider of the regulated activities with the CQC. The registration of the new provider will entitle that provider to provide the regulated activities listed in the Health and Social Care Act 2008.

It is important to bear in mind that under section 10 of the Health and Social Care Act 2008 it is an offence to carry on a regulated activity without being registered with the CQC. Failure to do so can result in prosecution or refusal of your application.

## **5.2 Varying an existing provider**

Practice A joins Practice B.

In this situation, the partners from Practice A are being added to Practice B's registration by amending Practice B's registration and terminating Practice A's registration. If the patient list is spread across two sites, Practice B would need to add Practice A as a branch surgery.

If you are varying an existing provider's registration, you will need to consider making the following applications depending on how the merger is expected to occur:

- Add or remove a location
- Add or remove a partner
- Add or remove a regulated activity
- Vary or remove a condition
- You should ensure that your statement of purpose is up to date

Please note that this is a non-exhaustive list of applications that you may need to make to the CQC. It is advisable to contact the CQC to discuss the applications that you will need to make well in advance of the proposed merger date. A practice can submit their application(s) to make changes to their registration by using the CQC Provider Portal on the CQC website. Alternatively, the paper forms are available online. The current processing time with the CQC is eight to ten weeks.

A practice should not implement the changes until a Notice of Decision has been received from the CQC. If the practice does not think that they will receive the Notice of Decision before the date of the merger, they should make the CQC aware of their situation. The CQC may be able to expedite the application, however their decision will ultimately depend on why there has been a delay. If a practice has ignored their responsibility to inform the CQC of the changes to their registration their decision may not be favourable towards the practice.

## **6. Premises considerations**

Practices should consider how best to utilise their surgery premises if they choose to merge. They may wish to continue to operate from separate premises, join together to operate from one premises, or invest in a new purpose built surgery premises. The decision on how they operate will depend on several factors, including whether the premises are leased or owned, your future plans, the costs involved, patient feedback and CQC requirements. Nevertheless, there are some core questions that you should ask yourself in respect of premises if you are looking to merge. These include the following:

Key questions to consider	
Premises are owned	Premises are leased
Who are the owners (current or old partners)?	Is there a lease in place?
Do they own the premises as a personal asset or as an asset of the partnership they operate in?	What are the lease terms? In particular, consider:
Will the 'merged practice' and/or its partners buy the premises?	<ul style="list-style-type: none"> <li>• If there is an ability to break the lease</li> <li>• If there is a provision to ensure that rents track the level of reimbursement</li> </ul>
Will new partners be expected to buy in?	<ul style="list-style-type: none"> <li>• If the terms allow for the lease to be assigned into the name of the 'merged practice' or partners running the same</li> </ul>
How will you determine the value of the premises?	<ul style="list-style-type: none"> <li>• What the repair and maintenance obligations are</li> <li>• What the service charge liabilities are and could be</li> </ul>
Will a lease back to the 'merged practice' and/or its partners be agreed?	Are there historic liabilities (such as dilapidations) that will rest with the partners of the practice who, prior to the merger, originally operated from the premises?
Who will be responsible for repairs and maintenance?	

The answers to the above will play an important role in determining your long term strategy towards premises. In general, these strategies fall into one of three categories:

### 6.1 Multi-site surgery premises

The merged practice may decide to operate across several sites. This is an option where the practices want to continue to operate from their respective premises. If the practice holds a merged patient list, this may give patients better access to appointments and services that are offered at different sites. For example, if a patient is unable to obtain an appointment at one practice due to the staffing, size or resources, then another practice may have the capacity to offer the appointment or service.

### 6.2 One surgery premises

If a practice wishes to operate from surgery premises, they would need to consider whether one of the premises is able to accommodate the merging practices. Operating from one surgery premises may not be suitable if the practices are based in a rural location as patients in remote areas may struggle to access the premises.

### 6.3 New surgery premises

Investing in a new surgery premises may be an option if the current premises do not meet the current CQC standards. Moving to a larger and better equipped premises will be beneficial to the patients as the practice will be able to provide better quality of care. It may also be easier to manage the merged practice if it operates from one premises.

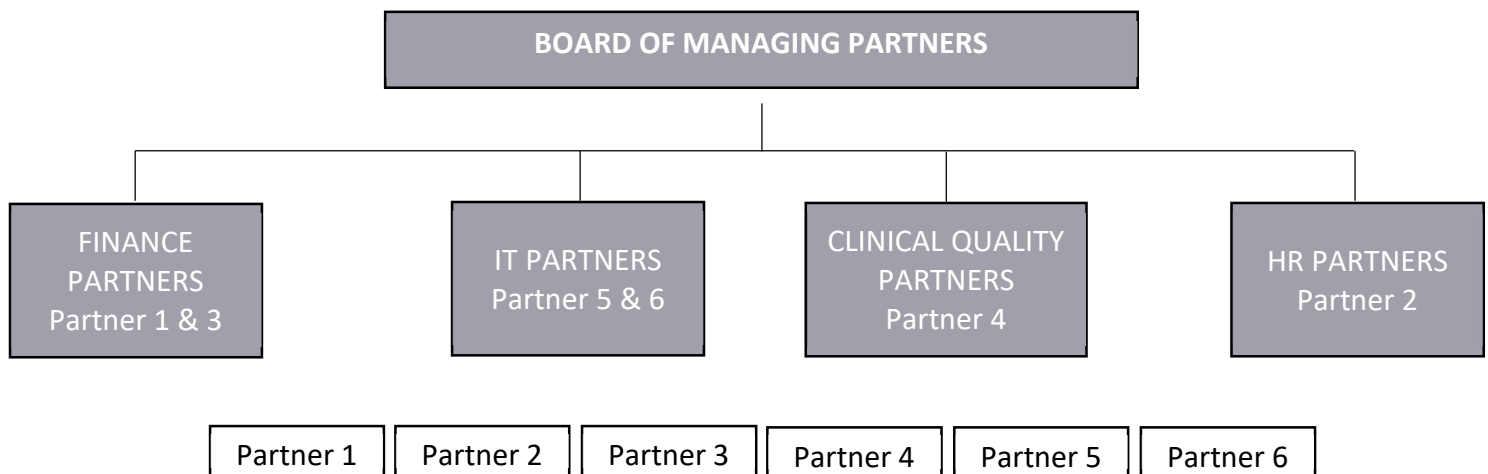
When moving to a new premises, it is important to consider the basis on which the current premises are held, e.g. are they freehold, leasehold or are they occupied under some other arrangement? If the existing surgery premises are leased, the parties should consider how long is left on the lease, whether there is a break clause, and if there are dilapidation and service charges. If the existing surgery premises is held on a freehold basis, consideration should be given on how this will be handled.

## 7. Decision making considerations

Making decisions within a large partnership can be complicated. It is advisable to put a decision making structure in place so that decisions can be made with ease.

In large partnerships, the partners may wish to create an elected body to make decisions on behalf of the partnership. The elected body may consist of a group of partners who have the authority to make decisions on matters affecting the day to day running of the partnership, policy decisions, financial matters and human resources. The body may be elected by the partnership and the composition may either be rotated or re-elected every few months. Each partner may have a role on the board, such as Finance Partner or HR Partner. It is important to ensure that the decision making powers of the board are clearly defined. This can be set out in your partnership agreement. You will need to have clear terms setting out how many partners are required to participate in these meetings before a vote can be taken.

An example of a decision making structure is below:



## 8. Retiring partners

In some cases, partners may wish to retire before or after a merger. If a partner wishes to retire, it is important to establish the terms of his/her retirement. This can be dealt with in the partnership agreement or in a deed of retirement.

If the retiring partner wishes to be employed in the merged practice, it will be important to ascertain the terms on which the partner will be employed. It is important to note that if the practice holds a GMS contract, the terms of the partner's employment can be no less favourable than the nationally agreed contract.

If a partner is to take 24-hour retirement shortly after the merger, provisions relating to this should be dealt with in the partnership agreement or merger agreement.

## **9. Employment considerations and TUPE**

Mergers can create several workforce benefits, including additional expertise, the opportunity to share the administrative staff and solutions to recruitment issues. In contrast, practice mergers can also produce issues such as the duplication of roles, inconsistencies in duties, and differences in salary and leave entitlements. Careful planning is required when harmonising the workforce of the merged practice and practices may find it helpful to follow some or all of the points below:

- Check whether the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) apply (see below)
- Consider whether you have/need employer's liability insurance to cover you for claims under TUPE
- Communicate effectively with staff/employee representatives
- Give your employees the opportunity to ask questions
- Listen to any concerns that are raised
- Keep all HR documentation up to date (e.g. employee contracts, employee details, staff handbooks, disciplinary records etc.)
- Establish an organisational structure for the merged practice

### **9.1 Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)**

When organising the workforce, practices should take into account their legal obligations and duties. In particular, the merging practices should consider the Transfer of Undertakings (Protection of Employment) 2006 (TUPE) Regulations. The TUPE regulations apply where there is a transfer of business (or part of a business) or a change in the identity to the party providing the service. In simple terms, this is when a practice, or part of a practice, is transferred to another practice. Under the TUPE regulations, the staff of the merged practices should continue to be employed by the partnership under their existing terms and conditions. The TUPE regulations act to preserve the employees' existing terms and conditions when a transfer takes place. The merged practice will inherit the contractual terms and liabilities owed by the previous practice to the employee (subject to any indemnities or warranties agreed between the practices).

The practice should obtain advice on TUPE before they merge. The duties and regulations that the parties are under are detailed in the TUPE regulations. Advice regarding Regulation 13 and 11 are detailed below.

### **9.2 Duty to inform and consult**

It is important that the practice informs and consults their staff on the proposed merger. Regulation 13(2) of TUPE sets out the information that should be provided to the appropriate representatives of the employees in their union. From 31 July 2014, micro-businesses (those with fewer than 10 employees) are not required to elect a representative to inform and consult where there is no existing recognised trade union or elected employee representative. Instead, the employer must inform and consult directly with each individual employee. The employer shall inform those employees, representatives or trade unions of:

- The transfer that is to take place, the date or proposed date of the transfer and the reasons for it
- The legal, economic and social implications of the transfer for any of the affected employees
- The measures which s/he envisages s/he will take, in connection with the transfer in relation to any affected employees or, if s/he envisages that no measures will be so taken, that fact
- If the employer is the transferor, the measures, in connection with the transfer, which s/he envisages the transferee will take in relation to any affected employees who will become employees of the transferee after the transfer by virtue of Regulation 4 or, if s/he envisages that no measures will be so taken, that fact.

An agreement should be reached as to when each practice should serve notice on their employees of the intended merger.

### **9.3 Notification of employment liability information**

Under Regulation 11 of TUPE the transferor is under an obligation to notify the transferee any employee liability information. Regulation 11(2) defines 'employee liability information' and this includes:

- The identity and age of the employees
- Those particulars of employment that an employer is obliged to give to an employee pursuant to section 1 of the Employment Rights 1996 Act
- Details of any collection agreements
- Details of any disciplinary action taken or grievances raised in the past two years to which a relevant ACAS code of practice applies
- Details of any legal actions against the transferor in the past two years by the transferring of employees and any potential legal actions

The employee liability information must not be provided less than 28 days before the transfer. Each practice should seek reassurance from the other practice that their obligations under TUPE have been complied with.

### **9.4 Recent case law**

In *Hyde Housing Association Ltd & Others v Layton* UKEAT/0124/15, the Employment Appeals Tribunal looked at whether a relevant transfer occurred under TUPE where an employee's employment was transferred to a group of companies which included the original employer after a restructure. It was held that a relevant transfer did not occur in this scenario. This decision is open to appeal and we recommend that practices seek legal advice on their obligations under TUPE when deciding whether there has been a relevant transfer.

## **10. Pensions**

The pension arrangements will depend on how NHS England proposes to deal with the core contracts. It is important to note that each GMS, PMS or APMS contractor is regarded as an Employing Authority (EA) under the NHS Pension Scheme (NHSPS) and is allocated a unique EA code (i.e. A123) to maintain their pension records at a local level and to make contributions. If a partnership holds two contracts and the contracts are held by the same GP(s), each contract will still be regarded as a separate Employing Authority.



If the core contracts are run side-by-side, each contractor will be an employing authority in their own right, regardless of whether they are operating from the same location. So, if an employee is shared equally by Practice A and Practice B, the employee shall have two separate part-time contracts of employment with each practice. Accordingly, the employee shall have two concurrent part-time pensionable posts. If the employee is solely employed by Practice A on a whole-time basis, but spends 50% of their working week maintaining Practice B, the employee can only superannuate half of his income.

If NHS England decide to novate one contract and terminate the other, the merged practice shall only retain one of the existing codes. For example, if Surgery A (EA code A123) holds a GMS contract and merges with Surgery B (EA code A124), who also hold a GMS contract and it is NHS England's intention to novate Surgery A's contract and terminate Surgery B's contract, the only one of the EA codes will be retained.

If the practice is granted a new contract by NHS England, a new code will be required.

## **11. IT systems, Telephone and Software**

The IT systems, telephone and software of the practices will need to be harmonised. The practices will need to consider which systems will be used, the timeframe in which the changes will take place, and the cost of the process. If the practices involved in the merger operate from different platforms, it may be difficult to unify the systems. Some of the considerations that may need to be taken into account are:

- The type of system that each practice uses
- The contracts that may or may not be in place in respect of these systems (particularly if they have committed to a lengthy contractual term or have provisions that are restrictive)
- The age of the systems
- The cost of data migration to one system

The practices will also need to ensure that all data protection issues have been addressed when sharing patient information.

## **12. Legal considerations and process**

It is advisable that each practice seeks legal advice and has the necessary legal agreements in place when merging. Below are some of the legal elements that the merging practices should consider.

### **12.1 Due diligence**

It is important to conduct full legal and financial due diligence on the practice(s) that you are merging with. Conducting due diligence can help to uncover any potential obstacles such as onerous contracts or potential liabilities. It can also help practices who are intending to merge have informed discussions regarding any liabilities/obligations, or whether one practice will indemnify the other in relation to those liabilities/obligations. If any liabilities appear to be particularly onerous, the practice may choose to include indemnities and warranties in the merger agreement to protect the practice.

When conducting due diligence, you may wish to request copies of the following:

- Partnership agreements
- Commercial contracts e.g. IT contracts
- Employee information
- Clinical and non-clinical complaints
- CQC and compliance information
- Quality and performance information
- Information on health and safety compliance
- Details of any intellectual property
- Information relation to the premises (e.g. a copy of the lease, details of service charges, details of rent reviews, restrictions on use, details of any disputes with the landlord, and if freehold, land registry title numbers, the title deeds, details of any charges or mortgages on the properties)
- Details of any potential litigation
- Accounting information

Please note that this is not an exhaustive list and recommend that you seek advice when conducting due diligence. If you would like assistance with this, please do not hesitate to contact BMA Law.

### **12.2 Non-disclosure agreement**

If the parties to the merger wish to protect certain information from being shared, they may decide to enter into a non-disclosure agreement. A non-disclosure agreement is a legal agreement that sets out how information or ideas are to be shared. We do recommend that you seek legal advice before entering into a non-disclosure agreement.

### **12.3 Heads of terms**

Heads of terms set out the agreed principles and obligations upon which each practice is prepared to merge. The heads of terms are not legally binding however they can show the intentions and expectations of the parties. The heads of terms are not legally binding however they can show the intentions and expectations of the parties. The heads of terms should be signed by all of the parties who are intending to enter into the merged partnership. Some important things to cover when preparing the heads of terms are:

- Target dates for completion of the merger
- What assets will belong to the merged practice
- What assets each practice will retain
- What liabilities (if any are known) will be transferred to the merged practice and which liabilities will rest with respective practices
- What each partner will be entitled to post-merger – e.g. will they be salaried partners, what will their profit share be, etc.
- Will the partners retire, and on what terms will they continue
- The working commitments of each partner post-merger
- If partners are to retire, the sums that they will be paid out (if any) on retirement
- How the IT issues will be addressed and who will bear the cost
- Those know conditions that you want to place on the merger (NHSE and CQC approval obvious are the core regulatory requirements) and who will be responsible for these
- How the premises will be handled

If you would like assistance with drafting your heads of terms, please do not hesitate to contact BMA Law.

### 12.4 Partnership agreement

It is important that an up-to-date partnership agreement is in place for the merger. The parties may wish to create a new partnership agreement with provisions that deal with the merger or become parties to an existing agreement. Below are a few terms that should be included in the agreement:

- **Duties of the partners:** it is important to clearly define the duties of the partners. The partnership agreement should clearly set out what the responsibilities and duties of the partners are.
- **Decision making:** when a partnership merges, you will need to have a clearly defined decision making structure. The partnership agreement can detail how those decisions will be made and whether the authority to make the decisions can be delegated to other partners.
- **Restrictions:** the agreement should clearly define what the partners are prohibited from doing. Each practice should agree on whether they wish to include any restrictive covenants in the agreement and what the terms of those will be.
- **Assets (capital and premises):** it is important that the partnership agreement clearly defines how the capital assets and premises are held.
- **Profits and losses:** importantly, the agreement should cover how the profits are to be divided. Will the partners be entitled to a share of the profits and losses on the basis of their working commitments? Will the partners receive a fixed share?
- **Partnership income:** the agreement should clearly set out which income should belong to the partnership and the individual partner.
- **Leave:** the partnership agreement should cover the leave agreements of the merged partnership. This may include details on holiday leave, study leave, sabbatical leave, maternity leave, adoption leave and paternity leave etc. It is likely that the leave arrangements of the merging practice will have to be harmonised.
- **Provisions on retirement:** the partnership agreement should cover when and how partners can retire. If any of the partners wish to retire after the merger has occurred, details regarding this should be included in the agreement. The merged partnership should also discuss whether they want to provide for compulsory retirement.
- **24-hour retirement:** in addition to the above, a partner may wish to take 24-hour retirement after the merger has occurred. The agreement should provide for 24-hour retirement and detail the terms on which they are to return to the partnership once they have taken 24-hour retirement.
- **Expulsion:** the partnership agreement should list the grounds on which a partner can be expelled from the partnership.
- **Suspension:** it is important that the partnership deals with what will happen if a partner is suspended.

If you would like assistance with drafting the partnership agreement, please do not hesitate to contact BMA Law.

### 12.5 Merger agreement (business transfer agreement)

Some practices choose to have a separate document that deals with the merger, sometimes referred to as a merger agreement, or business transfer agreement. This agreement governs how the merger will occur and the commitment of the parties to the merger. The agreement should cover, amongst other things:

- How the core contracts are to be 'merged'
- What each party will be required to contribute (e.g. capital contributions of each partner)
- The assets that are being introduced by each practice
- The assets that are not to be included in the merger
- The liabilities of each practice that will be assumed by the merged practice
- Those liabilities of a practice that will not be assumed by the merged practice (for instance a known premises liability or potential liabilities such as a dilapidations claim may be left as a liability of the partners from the practice they originate from)
- The warranties that the partners in the merging practice make in respect of their respective practice (this could be in respect of staffing issues (i.e. there haven't been any grievances raised etc.), CQC etc.)
- The indemnities that the partners in respective practices have agreed to give
- The arrangements for the occupation of the premises

Some practices may choose to include the above points in the partnership agreement itself.

If you would like assistance with drafting the merger agreement, please do not hesitate to contact BMA Law.

### 12.6 Premises

Depending on how the surgery premises is held, you may wish to seek legal advice on how the partners can transfer the title of the surgery premises or assign the title. You should also seek advice on whether any changes in ownership could have capital gains tax and stamp duty land tax implications.

## 13. Financial considerations

The practices should seek financial advice on merging. It is important to look at the finances of the practices that are wishing to merge (this can involve requesting copies of the accounts). It is also important to establish whether any of the practices who are party to the merger have any liabilities such as loans, debts, overdrafts etc. the parties to the merger should be clear on what is to happen to these liabilities.

Some of the issues that should be taken in consideration when dealing with a merger as a potential option are listed below:

- **Profitability:** you will need to consider the profitability of the practices. When assessing this, you could look at profit per session and per patient. You will also need to consider what the profit shares will be between the partners. if one of the practices is a dispensing practice, adjustments will need to be made when comparing accounts.
- **Expenses:** you will need to consider how the practices deal with the expenses. You will need to negotiate who will be responsible for expenses such as medical defence

organisation subscriptions, locum insurance premiums e.g. will these be a partnership expense or an expense of the individual partner?

- **Capital:** are the partners expected to contribute to the capital in a merged partnership? If so, over what period will they be expected to contribute to the capital and will the partners have to take out a loan to finance this?
- **Operating fund:** how do the individual practices finance the day-to-day operations of the practice? Do the partners want to maintain a fund to finance the day-to-day operation of the practice?
- **Sessions:** how many sessions do the practices consider to be full time? Will the partners be expected to work the same amount of sessions or will these be changed?
- **Seniority payments:** although seniority payments are being gradually reduced and withdrawn, consideration should be given to how they are dealt with by each practice. Are they paid to the individual or pooled and shared between the partners?
- **Tax:** advice on the tax implications of a merger should be sought. Will capital gains tax and/or stamp duty land tax be incurred in relation to the property?
- **Liabilities:** careful consideration should be given to the liabilities of each practice. You should clearly set out prior to the merger how the liabilities of each practice are to be dealt with.
- **Property:** what is to happen to the premises? What are the cost implications?
- **Core contracts:** the value of your core contract(s) should be considered
- **Assets:** each practice should clearly set out what assets are to be transferred to the other practice and whether any warranties and indemnities should be given in relation to the assets
- **Business contracts:** the practice should consider the cost of amalgamating or terminating contracts held by the respective practice e.g. contract for IT or telephone systems
- **Redundancy payments:** the merged practice should establish whether redundancies are necessary and the cost of these

It is important to note that NHS England will consider the financial implications of the merger. You will have to ensure that the merger is a viable option.

## 14. BMA Law

If you are considering a merger, BMA Law offer comprehensive legal advice and assistance. Please contact [info@bmalaw.co.uk](mailto:info@bmalaw.co.uk) or call 0300 123 2014 for further information.