



## Can a GP practice have limited liability?



// As Primary Care changes, we are frequently asked about different business vehicles and in particular whether a GP practice can have limited liability. Choosing the right type of business vehicle for your GP practice is not always straightforward, and managing risk is likely to factor highly in the decision making process. In this factsheet, we look at the issue in more detail, // explaining the different business vehicles and their potential implications.

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## • Unlimited liability partnership

Most GP practices currently operate as unlimited liability partnerships. This means partners are “jointly and severally” liable in the case of any financial problems. Creditors and other litigants are free to sue all the partners in the partnership to recover their losses, regardless of who caused the problem. What is more, each partner is liable up to the value of the whole of the debt. This means that creditors are able to look to the personal assets of all of the partners until the debt is settled in full or there are no personal assets left. Although your partnership deed will specify how you share profits and losses between you, your creditors will have no regard to this and will typically simply look to find ‘the deepest pockets’.

Although unlimited joint and several liability can be a frightening concept, it has historically not been a major concern for GP Practices since the clinical negligence risks are mostly insured against. However, as practices have become larger and more complex, other risks have become important and need managing or protecting against.

## • Limited Liability Company (Ltd)

A limited company is the vehicle of choice for most businesses in the UK. A limited company is managed by directors and owned by shareholders. If a limited liability company is unable to pay its debts, it becomes insolvent. Creditors are not normally able to ask the shareholders or directors to contribute to losses, so liability is limited to the capital which the shareholders have introduced to the company, plus any other assets (such as retained profits) the company might hold. Importantly, the personal assets of shareholders and directors are generally protected from creditors.

GP practices are, in principle, able to operate as limited companies. However, the consent of NHS England is required to move the GMS or PMS contract to a limited company and they have historically been reluctant to agree. There are also regulatory restrictions about who can own a company delivering GMS or PMS services, which will need to be secured in the Company Constitution. Moving a practice from an unlimited liability partnership to a limited company is not a straightforward process, so anyone thinking of going down this route should always seek specialist legal advice first.

Another way limited companies can be used is to manage the largest risks in the partnership. For example, the surgery could be held in a limited company, while the practice is kept as an unlimited liability partnership. This is a reasonably common model for practices to adopt.

## • Limited Liability Partnership (LLP)

An LLP is an alternative legal structure that is commonly used by professional services firms, such as accountants and solicitors. It enables a business to operate with a partnership structure (where ownership and management are one and the same), whilst limiting the liability of the partners and protecting their personal assets. As with a limited company, it is a matter of public record how much capital each of the partners have put at risk. We are often asked about LLPs since they superficially appear to be an obvious solution for GP practices, but they are unfortunately not permitted business vehicles for GMS or PMS contractors. If a practice were to be set up as an LLP, it would put these contracts, staff pensions, and much more at serious risk.

## Other options for managing liability:

### Insurance

One route partners may take to gain greater protection for their personal assets, is the purchase of specialist insurance. All NHS GPs are obliged to take out professional indemnity insurance against one of their biggest risks - professional negligence claims. The same approach can be taken to other risks to the financial wellbeing of the practice as well. Possible examples include life insurance, key man insurance, or mortgage repayment insurance.

### Indemnities

As discussed above, to the outside world all partners are jointly and severally liable for the losses of the partnership. This can, of course, seem quite unfair so it is reasonably common for Partnership Deeds to provide that partners are responsible for the consequences of their own negligent or unapproved actions. These clauses are called ‘indemnities’. Whilst fine in theory, the obvious problem with this approach is that if the individual concerned runs out of money, the other partners will still be exposed to the remaining debt. Also, it is often difficult to link a loss directly to the negligent actions of a single individual. More commonly a problem is a result of a series of unfortunate events, where several people could have intervened, but failed to do so.

## Our recommendations

Sadly, there isn’t a single, simple solution when it comes to managing liability in a GP practice. All the options we have detailed come with their own difficulties, and we are conscious that as healthcare becomes more ‘commercial,’ it is becoming more risky commercially.

We would always recommend seeking professional accounting and legal advice before making any decisions, to ensure you understand the full implications of the options which are available to you. The ‘right’ answer for your practice will depend on your individual circumstances and your appetite for risk.

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