



# GP Federations: Legal Issues for Consideration

Department Title

Many practices are now either part of a “federation” or network provider arm entity, or are in the process of joining one. Most of the responsibilities for becoming part of a provider arm network have rested with the relevant “steering group” or group of GPs, usually in conjunction with the local Clinical Commissioning Group, who have in many cases contributed to funding the process.

Practices are usually consulted fully on the main issues regarding their involvement and financial contribution to any structure, but post creation, there are a number of checklist issues that both individual practices and the board or committee leading on any provider organisation need to be aware of and ensure that they have in place.

This advice sheet is designed to help both practices and provider organisations to ensure that any entity and structure is robust and legally sound.

Naturally, structures will vary and therefore what is required may differ for each organisation. Most provider organisations have taken the form of a company limited by way of shares or a community interest company (which is based on a company limited by way of shares) and so the checklist of issues is similar for both of these entities.

## Company Limited by Shares or a Community Interest Company

### 1. Considerations for practices

A. Practices need to ensure that they are clear about who legally owns the shares in the company and how those shares are held. If each partner of each practice is a shareholder, then each partner is the legal owner of those shares and therefore this needs to be reflected in the partnership agreement. This will include clauses in respect of any dividends that may be issued, and how those are distributed. This is particularly important in terms of what happens if a partner leaves, dies or retires from the partnership. This should also be reflected in any shareholders agreement which should deal with these issues.

B. If the shares are held on trust by one partner (a trustee), for the benefit of the others, it is not enough to simply mention this in a partnership agreement. A trust deed should be put into place which amongst other things should also set out the obligations of the trustee. Any trust deed can be appended to the partnership agreement.

C. A practice needs to ensure that the provider organisation is clear as to the practice's responsibilities to it and, more importantly, whether the shareholders have the right to vote on certain major decisions that the company, through its board of directors, make take. Usually the Board will take on the management of any company, but in making decisions for example, in respect of buying property, merging with another federation, being bought out by another entity, ceasing to trade or changing something fundamental in its operation, then the shareholders may wish to vote on these matters. This can only happen if a shareholders agreement is in place.

D. A practice needs to know what will happen to its shares if the practice loses its core contract and closes down. In many cases the shares will simply lapse and the practice will not get a return on its investment unless the company has agreed otherwise. There are no guarantees on investment returns and everything will depend on the success of the provider arm organisation. Practices should not initially have to contribute to all the share capital at the outset. Usually it is sufficient to contribute half to get the company started and only contribute the outstanding amounts as and when the company requires the capital.

E. The whole purpose of the provider arm organisation is to ensure that they are best placed to bid and tender for commissioned contracts. When an organisation puts in a bid for a contract, practices need to be clear about:

1. Which practices will be expected to deliver under it; and
2. How are those practices “chosen”.

Naturally, it is likely to be those practices who have the relevant expertise or set up, but what if more than one practice wishes to deliver under a tendered contract? There must be an element of fairness in choosing who will deliver and any delivery must be under a separate agreement between the practice and company (a service level agreement). There are a number of other considerations that practices will need to know – for example, how much of the contract delivery funding will they get? What about extra insurance costs? What about extra staffing costs? This list is not exhaustive. More importantly, how much money will the company hold back for tendering costs or profit (if any)?

F. One of the questions that isn’t always asked is what happens if a practice makes a decision to withdraw from the provider organisation? Does it get back its initial investment at cost or current value? How is that calculated? Do they get anything back at all?

## 2. Considerations for the Company

A. The Company will be managed by a board of directors. They will be responsible for the day to day management of the network provider arm organisation. Once set up, it is important for the Board of directors to know what their legal duties are as directors of a company and the rules they will be subject to. This is important as the role of director is regulated by company law.

B. The Board will have to familiarise itself with how to bid and/or tender for a contract and the rules in respect of public procurement. How to cost any bid and how to present it is a challenge and vital for the organisation to ensure that it places itself in the best possible position to be able to win a contract. It is important to know which contracts the network can deliver and which of its shareholder practices/partners will be best placed to provide any service. The small print on any tender documentation must be carefully read. Any bids must be carefully thought out in terms of costing as costs cannot be adjusted significantly once the bid has been put in and won.

C. There are many board members who are NOT directors and have been co-opted onto the board for their input and expertise. This is perfectly permissible and these individuals usually carry no voting rights. However, the board needs to be very careful that these individuals are not regarded or classed as “shadow directors” and therefore inadvertently make binding decisions on behalf of the company. It is advisable therefore that the board puts into place

separate terms of “office” for these co-opted members of the board and ensures that their duties are clear and agreed in writing.

D. One of the biggest issues for any commercial organisation will be employees. Whether the provider organisation uses practices employees to deliver the service or whether the organisation employs or engages its own. It is important to ensure that existing practice staff are consulted properly before changing their terms and conditions of work, and although this will essentially be the responsibility of the practice, any negative impact on the practice from key employees will potentially impact on the company in terms of delivery on a contract.

Written by Shanee Baker, LMC Law on behalf of the Humberside Group of Local Medical Committees Ltd

**LMC January 2015**





## The Humberside Group of Local Medical Committees Ltd

Albion House  
Albion Lane  
Willerby  
Hull  
HU10 6TS

01482 655111  
[humberside.lmcgroup@nhs.net](mailto:humberside.lmcgroup@nhs.net)  
[www.humbersidelmc.org.uk](http://www.humbersidelmc.org.uk)

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