Incorporating your NHS Practice

Should GPs abandon their partnership status in favour of the limited liability offered by incorporating as a limited company or a limited liability partnership (LLP)?

Daphne Robertson of DR Solicitors examines these business vehicles and the different accounting treatment and legal issues.

What is a Limited Company?

A company is a separate legal entity with rights and obligations distinct from those of its members. This means that a company can enter into contracts and own assets in its own name, and these belong to the company and not to the shareholders. If a partnership decides to incorporate, the partners would become shareholders (owners) and directors (managers) in the Limited Company, and key information about the company (including finances and ownership) would be published at Companies House. The rules about ownership and management and set out in the Company Articles and the Shareholders Agreement. This is very different from a partnership where ownership and management are not separated and all information is kept private.

The expression "limited" refers to the limited liability of the members or shareholders for the company's debts. If the company becomes insolvent then each shareholder is only liable for the amount which remains unpaid on his shares, even if there are many thousands of pounds owed to creditors. This is in contrast to partners in a partnership who are personally liable for all the debts and liabilities of the practice.

Limitation of liability is one of the key attractions of Limited Companies, but the trade off is the increased public disclosure required, and an associated greater burden of regulation.

What is a limited liability partnership (LLP)?

An LLP is a partnership which benefits from limited liability. As such, LLP's can best be described as a hybrid of a company and a partnership.

Unlike an ordinary partnership, an LLP is a distinct legal entity. This means that, in common with Limited Companies, it can contract and hold assets in its own name. The limit of each LLP member's liability is agreed between the members and is whatever capital decide to invest plus any personal guarantees made. An LLP must be registered at Companies House, and financial, ownership and other important information must be publically disclosed. The key operational difference between an LLP and a Limited Company is that ownership and management are not split: a partner in an LLP is both an owner and a manager, just like in an ordinary partnership. This means that they have no shares, shareholders or directors, and as a consequence the management structure can be very flexible.

Tax treatment of Limited Companies and LLPs

Tax is a major difference between these two types of entities and it will always be important to take specialist advice on this area.

In summary, an LLP is taxed in a very similar way to an ordinary partnership. GPs would instantly recognise the allocation of profits and the concept of capital accounts, and they would be self assessed and pay income tax on their share of the profits.

For limited companies the position is very different. GPs would no longer be self employed, but would instead be employees and shareholders of the company. There would then be three inter-related taxes to consider: Income tax on any salary paid as an employee, corporation tax on any profits made by the company, and income tax on any dividends paid as a shareholder. Since the shareholders can jointly decide on salary and dividend policy, they are also able to plan their taxes in a way a partnership cannot. This can sometimes lead to significant tax savings which your accountant would be able to advise you on. The way that contributions are made to the NHS Pension scheme can also be structured differently as the dividends are pensionable.

NHS Contracts

There are important rules about incorporation in your contract(s) with the NHS, and this frequently determines the structure that you will use. GMS and PMS contracts cannot be held by LLPs, though they can be held by Limited Companies so long as these meet certain strict criteria. APMS Contracts and NHS Contracts can be held by Limited Companies or LLPs, unless the contract itself prohibits this.

If you want to use an LLP to deliver GMS or PMS services this will need to be carefully set up using a sub-contract arrangement or similar. If you want to use a limited company for this purpose it will need to be set up carefully to meet the regulations, and then you will have to secure the consent of NHS England before transferring your GMS or PMS Contract into the Limited Company.

So should you incorporate or not?

The most obvious advantage of incorporating is the limitation of liability. Whilst this appears attractive, you have to consider what liability you are trying to limit. The biggest financial risk in a primary care practice is normally for clinical negligence claims, and these are fully insured against.

The next biggest financial risk is generally being left as the last man standing with an unfunded lease or mortgage. If this is the risk you are seeking to manage, it may make sense to put the building into a limited liability entity, whilst leaving the rest of the practice in a 'normal' partnership.

Accounting for personal income and expenditure is a significant consideration. In a partnership or LLP, items can be allocated as prior shares with the balance split in the profit sharing ratio. This is very difficult to achieve in a limited company since profits, if distributed as dividends, are paid out strictly in accordance with shareholdings. Paying items such as seniority to particular individuals would require either highly complex share structures or expensive 'employee benefits' which would attract National Insurance.

The privacy and light regulation of normal partnerships is another a concern. Both LLPs and Limited Companies have significant public disclosure requirements, such that information about your practice is instantly available to anyone with a pc who is prepared to spend £1 at Companies House.

Finally, don't forget that if you do decide to incorporate your practice, you will need to make arrangements to transfer staff into the new entity (TUPE), ensure that the entity is properly insured, register it with CQC, and register with the pensions agency.

Conclusion

Questions about incorporation usually arise because of a desire to limit liability or save tax. Both are worthy aims, but it is important to understand that there are many other considerations and there are a number of pitfalls. Depending on what you want to do with the limited company, it may require a significant number of approvals, or it may not be possible at all.

We would be delighted to discuss your plans with you.

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