



LEGAL IMPLICATIONS OF FEDERATIONS

Shanee Baker, Director/Lawyer

LMC LAW

WHY FEDERATE?

- Commissioners want to contract with one organisation
- Old “LES’s now being commissioned by CCGs – so no longer available directly to practices as before
- Commissioners make costs savings in terms of performance management, issuing contracts and administrative costs and liability easily attributable
- Many commissioned contracts will be subject to EU procurement regulations and therefore may be subject to bidding and tendering rules

WHICH STRUCTURE?

- Company Limited by way of Shares: profit making, regulated by companies house, flexible model
- Community Interest Company: essentially not for profit, but can issue dividends, regulated by CIC regulator, caps on dividends, asset locked, distribution of assets on winding up goes to another CIC
- LLP – works like a company limited, need a robust agreement, section in Insolvency Act applies whereby partners who leave may still be liable.
- Need to know the differences before making a decision
- Is the decision commercial or political?

WHY LIMITED?

- GMS, PMS, APMS = CORE = low risk
- Commissioned contracts are generally “heavier” in terms of liability, KPIs, sanctions and obligations = high risk
- Need to separate your core from any federation work – your federation should not be running your core contracts.
- NHS Standard Contract used – non-negotiable.
- Better therefore to have limited liability when entering into arrangements with commissioned contracts – what does this mean?

DOCUMENTS – COMPANY LIMITED

- Articles of Association – tailor made – must consider :
- Share capital – based on list size? Bigger practices more votes?
- Objects
- Voting
- Board Structure/elections
- Co-option
- Who can be a shareholder (or who can't)
- Conflicts and restrictive covenants

DOCUMENTS – COMPANY LIMITED Cont.

- Trust Deeds
- Shareholder Agreements:
 - When are shareholders entitled to vote?
 - What happens if a practice closes, list disbursement, mergers?
 - Shareholder dies, retires, leaves?
 - What if a practice wants to leave a federation ?

WHAT HAVE YOUR COLLEAGUES DONE WRONG?

- Online articles of association
- Huge board of directors
- Not joined a federation at all
- CCG Governing Board members want to sit on Federation Board
- Arguments about restrictive covenants in respect of existing contracts e.g. urgent care, WIC
- Not thought about share capital – PMCF are a one off, Fed must be sustainable going forward
- Not factored in bidding, tendering costs

WHAT HAVE YOUR COLLEAGUES DONE WRONG? Cont.

- Service level agreements MUST be in place between Federation and practices delivering the service
- Practices/Federations not factored in the loss of pension, increased CQC costs, increased insurance costs and
- Staffing and any added employment costs

LMC LAW - CONTACT DETAILS

Shanee Baker

Director/Lawyer

E: shaneebaker@lmclaw.co.uk

M: 07788 313582

Claire Pye

Client Manager

E: clairepye@lmclaw.co.uk

M: 07843 417985

Visit our new website:

www.lmclaw.co.uk

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