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AISMA Doctor Newsline

At the heart of medical finance...

Don't let retirement be a ticking timebomb!

An unexpected retirement in the practice can be explosive. **Fiona Dalziel** presents some top tips to help you stay in control

It was the comedian Dave Allen who said: 'We spend our lives on the run: we get up by the clock, eat and sleep by the clock, get up again, go to work – and then we retire. And what do they give us? A clock.'

Clocks may no longer be a popular retirement gift but these clocks are ticking for practices who do no retirement planning.

There is no default retirement age for employees - and since 6 April 2023 the lifetime allowance (LTA) has been reduced to nil.

Both these measures mean that the landscape for retirement planning, particularly for GPs, has been changing. But practices' planning policies may not have been keeping up.

What are the top tips for avoiding a surprise retirement?

Review your partnership agreement

This should happen automatically alongside changes in partnership personnel, but it is an easily overlooked task of the very busy.

It is possible to have an objectively justified retirement age in a partnership agreement, but you need evidence of your reasoning and must take advice.

All practices want to be able to plan for succession. But what provision does your partnership agreement make, for instance, for the possibility of 24-hour retirement? The BMA provides an advisory service on partnership agreements.

Performance management

It would be hard for a GP practice to provide objective justification for having an employee retirement age, although you may choose to take advice on this.

Assuming you do not have a retirement age, you also cannot assume that the performance of older staff automatically worsens with time.

It might; but so can that of anyone, which is the reason that your disciplinary and performance management procedures need to be up-to-date and effectively implemented when required across the board, irrespective of age.

"All practices want to be able to plan for succession. But what provision does your partnership agreement make, for instance, for the possibility of 24-hour retirement?"

Historically, GPs themselves are discomfited by performance management and tend to be reluctant or ineffective in its application. Practice managers can take a strong lead here. If you are considering a dismissal for any reason, including performance, take advice.

Retirement may not be 'all or nothing'

Retention of experienced team members, GPs, nurses and management and administrative staff has become very important. It may be that a valuable team member exploring retirement can continue working under a new, flexible arrangement that suits both their personal

"Each individual team member, whether employed or a partner, should explicitly be advised to take personal financial advice"

circumstances and the practice's needs.

Practices discussing new working arrangements should both advise the team member to take financial advice and seek advice themselves. You may be able to explore less than full-time working, job sharing, remote working and options such as an annualised hours contract.

Be as nimble and imaginative as possible but make sure you do not create an unintended workload consequence somewhere else in the team because of an individualised retention arrangement.

Keep on talking and planning

All team members should have an annual conversation about their job, their performance, their personal goals and how these fit with the practice's workforce needs. This includes GP partners.

For GP workforce planning, it is useful to include a review of practice needs in the agenda of your annual planning meeting. This can include looking forward at, for instance, partnership roles such as trainer, executive partner or contract lead and should be used as an early opportunity for partners considering retirement to say they are doing so.

You may find you have an opportunity to look at skill mix across the team to aid recruitment. Think about reviewing your partnership agreement to cover the number of partners who can retire at once – take advice.

Consider and plan for financial impacts

The practice and a retiring partner will be impacted financially by a retirement. Both individuals and the partnership should take advice. I heard recently of a practice where the retiring GP was surprised his superannuation would be taxed as income.

Contact your AISMA accountants and look at the following:

- What size are the partners' capital accounts?
- What might the practice need to pay out to a retiring partner?
- Could a new partner coming in buy out the retiring one?
- Is there anything about this in the partnership agreement and what is its impact?
- What happens about shares in a practice-owned building? How do these relate to the partners' capital accounts? What does the partnership agreement say about continued ownership or leasing? What might be the intended (and unintended) consequences of this?

Encourage individuals to take independent financial advice

Each individual team member, whether employed or a partner, should explicitly be advised to take personal financial advice. The practice should take advice from its accountants and lawyers on finance and the partnership agreement.

What if your practice manager is considering retirement?

Long-serving practice managers accumulate a great deal of knowledge and experience and are often in a team of one – a team with knowledge and experience whose loss may have a long-term impact. GP partners: bear this in mind and plan for it!

Time for fun! Have a celebratory event.

Don't give them a clock.

Reference material

The importance of an up-to-date GP partnership agreement (bma.org.uk)

https://www.bma.org.uk/advice-and-support/gp-practices/gp-partners/the-importance-of-an-up-to-date-gp-partnership-agreement

NHS England » We are recognised and rewarded (article on flexible retirement)

https://www.england.nhs.uk/looking-after-our-people/the-programme-and-resources/pensions-and-flexible-working-in-your-later-career/

Fiona Dalziel is a practice management consultant

It is more essential than ever to stay on top of all claiming and recording

OPINION

Sue Beaton*
AISMA committee member

Profitability and cash flow have been of key importance to practices over the past year and will continue to be so in the months to come.

We have been increasingly aware since 2022 that a high proportion of practices are reporting concerns about potentially falling income and rising expenditure.

This year's AISMA spring conference also covered this topic and there have been several articles in recent issues of *AISMA Doctor Newsline* providing tips and guidance to practices worried about a cashflow and profits squeeze. All this is against a background of increasing patient demand and high inflation.

The vast majority of my year-end accounts meetings with my clients have focused not only on the last year's accounts but also looking ahead at how GP practices can get the most from their systems and plan for what might be coming down the track.

Covid has proved to be a very mixed blessing for practices. Although the workload was gruelling, it nevertheless often brought increased profitability.

This came about in the shape of protection of multiple income streams, including many enhanced services, QOF, Covid resilience funding such as the Capacity and Expansion Fund and the much-publicised Covid vaccination programme.

A lot of practices earned significant income from taking part in the programme. However, incomes from the latter two sources have, in my experience, dropped back or ceased entirely and earnings from QOF and enhanced services have reverted to activity-based results.

Recent round-the-table discussions with practices have revealed it is more essential than ever to be on top of all claiming and recording. Many still seem to have inconsistencies within their partner groups when it comes to Read coding.

Accounts meetings often highlight the fact that some partners do not claim correctly, others claim using one code and others code differently. Sometimes there seems to be little, if any, regular review of the claiming processes or uniformity of coding or the income received. As a result, it is apparent that work could be going unrewarded.

Control over drugs ordering, claiming and management of stocks has also been a common area to have slipped over the past year.

Regular, in-house reviews of results should identify potentially decreasing margins to enable a practice to act promptly and keep the cash flow moving. This is especially important in the autumn's flu vaccination season.

Another area which might help with cash flow is tax. If it is known that a practice has suffered from a fall in profits this year then it is in everyone's interests to agree the annual accounts, send in the partners' personal expenses information to the accountants and finalise the tax returns as soon as possible.

If profits are down, it is likely that refunds will be due and next year's payments on account will be lower. That will certainly help with cash flow.

But it is important to remember that if a practice reserves for tax in the accounts, then HMRC refunds will be sent to the individual partners first. They should pay the refunds back to the practice. Prompt receipt of refunds now will help a practice's (or the partners') cashflow rather than waiting until January 2024.

If the practice has a non-March year end there is likely to be a tax catch-up period required in 2023-24, because of the change of basis period tax reforms (see page 10).

This could lead to additional tax payments being required during the transitional year and subsequent four years. But it is better to have your accountant prepare those calculations or forecasts now so that the tax outflows can be budgeted for, especially if cash is going to be tight.

There is no doubt that the past year has been economically challenging. Careful monitoring and budgeting will be key to keeping tight control over finances.

One final point for reflection when considering profitability and related cash flow. Our regular presentations to registrars and salaried GPs who are considering becoming partners conclude with a round-up of what makes a profitable practice.

Several fundamental aspects have not changed over the two decades we have been delivering the talk. There are some basic, perhaps even obvious, aspects affecting a practice's day-to day viability and profitability and they remain valid year on year.

These include stability (where partners work as a team, having similar goals and values, with no internal conflict), having top-rate databases, being pro-active rather than reactive, being well organised and good time managers, being good at delegating, having strong teams and being prepared to minimise the use of locums where possible.

These points, coupled with having close involvement with the PCN/ICB and having skilled, well trained practice managers (and specialist medical accountants) help to keep a practice steady, and hence more focused and efficient when others might be struggling.

It is important for a practice to ensure it has an effective controls, management and planning framework in place, with regular reviews of data, performance and cashflow.

You will be better equipped to tackle current and future financial challenges as a result.

10 things to know about the 'McCloud remedy'

Following our article about the NHS Pension Scheme and the 'McCloud remedy' back in 2021, **Laura Bowler** reports on where we are now, two years down the line

1 What was the ruling again?

The NHS Pension Scheme has three sections; the 1995, 2008 and 2015 sections. A member's date of joining the pension scheme determines which section they have benefits in.

The 2015 section was introduced on 1 April 2015. For some existing members it was mandatory to move into this section at that time.

This was determined based on the period the member had to serve up until their normal pension age, as at 1 April 2012. Therefore, the member's age influenced whether or not they were required to transition.

Two separate legal challenges were raised by members of other public sector schemes with similar transitional arrangements. One was in relation to the Judicial Pension Scheme and was raised by Judge McCloud.

The issue was that the transitional arrangements amounted to discrimination on the grounds of age which was/is unlawful.

Courts agreed with this and so a remedy has to be put in place to remove the age discrimination aspect, while ensuring individuals are not made any worse off because of the original oversight.

The final regulations should come into force on 1 October 2023 and it is from then that the pension scheme can start implementing the remedy.

2 What is the remedy?

The remedy is in two parts.

Part one

This relates to those members who joined the pension scheme before 2012 and had been moved into the 2015 section before 01 April 2022.

The period between 01 April 2015 and 31 March 2022 will be rolled back so that membership is deemed to have continued in the legacy section. This applies irrespective of whether the legacy section was the 1995 or 2008 section.

The second part

This affects everyone who was a scheme member as at 1 April 2012. Everyone in this category will join the 2015 section for all new pension going forward from 1 April 2022. At retirement, individuals will be offered two options.

Option A
Taking the benefits between 2015 and 2022 calculated on the basis of the legacy section.
Or
Option B
Taking the benefits between 2015 and 2022 calculated on the basis of the 2015 section.

3 When will I find out what it means for me?

The pension scheme's initial priority will be to rectify the position for those individuals who have already retired since April 2015. Once the regulations are passed in October 2023 it can get to work on this. There are around 290,000 cases to revisit.

Remedial benefit statements are then intended to be issued in April 2025 to reflect the amendment to service and both pension options.

4 What is the 'default' position?

The default position is that you will have service in your legacy section up to 31 March 2022 and will then join the 2015 section on 1 April 2022.

5 Can I opt out of the 2015 section?

You can but you will be opting out of the whole pension scheme which could mean losing valuable pension and ancillary benefits, such as dependant pensions, death in service cover and ill health cover. This is something you should therefore consider really carefully and take advice/guidance on.

6 When will the remedy be implemented?

The final regulations required to implement the remedy should be passed by 1 October 2023 and at this point the pension scheme can start working on the remedy. It may be some time after this date before you notice any changes to your pension record.

7 What action do I need to take?

Currently none. When the remedy is implemented, a new statement will be issued with the updated position. There are no decisions to make currently. You only need to make a choice when you take your benefits.

8 What about pensions tax issues?

If you have ever had an annual allowance pensions tax charge to manage you should be issued a remedial statement during 2024.

"The final regulations required to implement the remedy should be passed by 1 October 2023 and at this point the pension scheme can start working on the remedy"

This will recalculate all your annual allowance positions for tax years in the period 2015-16 to 2022-23.

You may then need to revisit any pensions tax that you have either paid directly or through scheme pays.

There will be processes in place to help with this and how to amend the self-assessment information.

Specialist medical accountants and companies like mine, Pen-gage, are providing support in this area.

9 What is a contingent decision?

This is a lifestyle decision that was made based on a specific set of circumstances in place which would not have been made now those circumstances have been retrospectively altered.

The 'McCloud remedy' means some pension scheme members may have made lifestyle decisions that would have been different had the 2015 scheme not been introduced until 2022.

In these circumstances, it may be possible to define such a decision as being a 'contingent decision' and this may trigger compensation.

NHS Pensions will issue more information about the contingent decision process and requirements once these have been finalised. There is no action to take on this yet.

10 Should I contact PCSE or the NHS Pensions Agency?

No. There is nothing to do at the moment and the relevant statements will be issued when the pension scheme is able to do so. If you contact the agency it will not be able to tell you anything specific now.

Laura Bowler is director of Pen-gage Limited

ASK AISMA!

GPs' important questions about a range of financial issues are tackled here by Abi Newbury**

You can ask a question by contacting your local AISMA accountant or messaging us through X (formerly Twitter) @AISMANewsline

SEE THE BIG PICTURE BEFORE YOU PUSH FOR CHANGES

Q **I joined a practice to make a difference - but the existing partners don't want to change anything. What do you suggest?**

A It can be really frustrating joining a practice with lots of ideas about how to improve it financially and clinically only to find no-one wants to change anything.

But don't get disheartened! Firstly, remember that you are in this for the long-term and you can't change everything overnight.

It's best to first settle into the practice and get used to dealing efficiently with your allocated patients before making demands about things that you think need changing, or worse still, unilaterally changing things without discussion.

Your partners may just be 'doing it like last year' or there may be very good reasons why things are done in a certain way. If they can see how effective you can be, they will be more open to your suggestions for improvements.

Try turning it around and asking them questions such as: Why do we do this? What is the benefit/risk of doing this? Can I look into a way of streamlining this particular system? In one of my training practices they did this, and it worked really well. Have you tried it?

Look at the practice's statistics compared to others and see where the biggest opportunities arise. Get to understand who does what in the practice, and who is capable of more.

Talk to the practice accountant about areas they feel could be improved – they will be able to compare your practice to national statistics and highlight areas to look at.

Practices will sometimes just keep doing what they've always done before because no-one has any time to reconsider anything new.

As the new partner, if you have capacity because you don't have specific admin duties and you are particularly interested in an area, then suggest you look at it and report back to them.

Take it slowly and build trust, then you'll be in a position to make significant changes when you fully understand the big picture.

PARTNERS NEED TO AGREE HOW THEY TAKE DRAWINGS

Q **Our new partner wants to change the way we draw money out – taking more and paying his own tax. What are the benefits and the downsides of this?**

A Your tax liability remains your responsibility, whether the funds to settle that liability are saved within the practice and then paid on your behalf, or you choose to hold them personally and pay directly.

Paying tax out of the practice saves individuals having to worry about saving for their tax. This is a huge value to many because they can then 'spend' their monthly drawings as they wish without having to hold anything back. And it avoids the administrative burden of dealing with HM Revenue and Customs (HMRC) in their own time to part with their hard-earned cash.

Leaving money in the practice for tax may save some borrowing from banks at current higher rates when balances swing in and out of overdraft over the month, or where the practice might otherwise be overdrawn.

There is a degree of protection for the whole partnership from 'the one partner who hasn't saved' and begs the practice to lend it to them, which can cause resentment among the more frugal partners. There is no longer any worry about personal tax being a partnership liability; it is only an individual one.

But be careful if you are a small practice. If one partner in a two-partner firm were to become bankrupt, then they would have to leave the practice. Switching forcibly from a partnership to a single-handed practitioner could put the contract at risk.

There is a 'swings and roundabouts' effect on paying from the practice – individual estimates may not be perfect – but they tend to average out.

However, some partners could benefit from a different approach. Taking drawings gross means the extra funds can be used against offset mortgages, rather than leaving money in the practice earning next to nothing.

Some may use the money to fund family expenses in the short term until tax falls due, or meet other liabilities, although care needs to be here.

It requires clear tax estimates so that individuals know how much to save. Remember that drawings do not equal profit – so you cannot use the drawings figure to estimate your tax liability. It can be difficult, particularly where there are undrawn PCN profits you may be unaware of but which give rise to a personal tax liability.

It is a partnership decision how drawings are calculated. But to ensure fairness, either everyone should work on the same basis, or those who save for tax within the practice should be recompensed for leaving their money in.

Make sure that your partnership agreement clearly sets out how drawings are calculated and whether tax is saved within or outside the practice, with clarification required on how tax outside income should be treated.

A QUICK GUIDE TO YOUR FIRST ACCOUNTS MEETING

Q **I'm about to attend my first financial accounts meeting with all the partners and the accountant – what terms do I need to understand? I know nothing about accounts.**

A The top five things we find new partners' question are:

1 Capital accounts
2 Current accounts
3 Drawings
4 Accruals and prepayments
5 Provisions.

Understanding what is 'income' and what is an 'expense' is generally pretty clear – it is these balance sheet terms that puzzle new joiners usually.

Capital accounts: normally these are long term investments in the practice and often represent the practice property less the mortgage. If that is the case and you haven't bought into the practice from day one, that would probably show as zero for you.

In some cases, particularly where the property is leased, the capital accounts represent an agreed sum that you will not withdraw on a day-to-day basis.

Current accounts: these generally represent undrawn profits. So, for your first year, they will be made up of:

- Your share of profit per the accounts
- Less the amounts you have taken out during the year - the superannuation (pension – employees' and employer's elements) paid (and to be paid) on your behalf, and
- Possibly, an estimate of the tax due to be paid (if tax is paid in the practice).

This balance remaining will represent your share of the 'working capital' – that is the amounts that the business needs day-to-day to cover bank account balances, stock of drugs held, money earned but not yet received, less costs incurred but not yet paid for, and overdrafts.

You need to work towards everyone's current account balance being in profit sharing ratios, so usually at the end of the year there is some sort of balancing up.

This may be by restricting drawings for those, particularly newcomers, whose balance is too low, or asking for a cash contribution if drawings have been too high. Or it could be by paying a bonus to those who have too high a balance, or adjusting their next year's drawings.

Drawings: these are amounts drawn out of the practice 'on account of profit share' or personal amounts paid by the practice such as superannuation or tax.

Accruals and prepayments: these are accounting adjustments to represent costs incurred when no bill has yet been received – like light and heat – or payments in advance where a payment represents, say, a whole year part of which will relate to next year's accounts.

The idea of this is to correct timing so that in any accounting period it contains the 'real' costs and income, not things that relate to other periods. This ensures fairness when there are partner changes, as well as keeping HMRC happy.

Provisions: are usually amounts to allow for expected costs that haven't yet happened.

For example: a 'property or dilapidations provision' would look at the cost of getting the premises back to the standards required if the lease came to an end, so that the costs fall each year on the partners using the premises in that year. Otherwise, they would hit whoever happens to be a partner at the time the cost is crystallised.

The practice accountant will be able to go through the accounts and explain all this to you. Don't be afraid to ask questions. We'd much prefer you understood rather than just nod and wondering what on earth we are talking about!

You'd be surprised how many partners don't understand and don't feel they can say anything. Your own partners may well need to know what you are puzzled about too.

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AISMA Doctor Newsline is published by the Association of Independent Specialist Medical Accountants, a national network of specialist accountancy firms providing expert advice to medical practices throughout the UK.
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Make sure you understand the basis period tax changes

The profits chargeable to tax for those with a year-end other than 31 March are changing. So if your practice accounts are prepared to a date other than 31 March then you will need to understand how these changes may affect you. **James Gransby**[***] points the way

I have a 31 March year end – do I need to read this article?

No.

You will not be affected by the changes and so need not read this, although it will give a greater awareness of the impact the changes may have on your accountant when many of their clients will be switching to the same year end as yours.

What is changing?

Tax for sole traders and partnerships is moving to the 'tax year basis' of reporting meaning that businesses will be subject to tax on their profits arising in the tax year, regardless of their accounting period end.

Aren't profits taxed this way already?

No, a different method currently applies.

Profits are currently taxed on what is known as the 'current year basis' which means your 12 months accounting year end falling within a tax year is used as the basis for reporting your taxable profits for that tax year.

There are specific rules around the first tax year that you are in partnership (called opening year rules) which create 'overlap profits' which will be relevant as part of these changes.

Can you give examples to help illustrate?

Let's use 30 April as an example, it also happens to be the year end for which these changes have the most profound effect.

Using last tax year as an example: The 2022-23 tax year ran from 6 April 2022 to 5 April 2023. Because the year-end date of 30 April 2022 fell in this period then it is the profits from that twelve-month period which were taxed in the 2022-23 tax year.

The deadline for completing and submitting the tax return for the 2022-23 tax year is 31 January 2024. The tax payment being made on 31 January 2024 is therefore any residual tax payable (or refund) on those profits which was not paid as part of the 31 January 2023 and 31 July 2023 payments on account, plus a half payment on account towards the 2023-24 tax liability.

Contrast that to a 31 March year end where the relevant year end for reporting purposes was 31 March 2023 and you can see that the partnership with the 30 April year end is 11 months behind in terms of reporting its taxable profits.

How do the new rules work in this scenario?

Under the new 'tax year basis', if staying with a 30 April year end then the reported profits would be time apportioned, taking one month from one set of accounts and eleven months from the next.

For example, for the 2024-25 tax year when the rules are fully embedded, if keeping a 30 April year end the 2024-25 tax year would consist of 1/12th of the year ended 30 April 2024 accounts plus 11/12ths of the year ended 30 April 2025 accounts.

Consider this for a 31 December year end and you would need to complete the accounts within one month to know the accurate figure to include on your tax return to be submitted by 31 January following the end of the tax year. This is not sufficient time to perform this work.

It is possible to submit an estimated tax return, to be updated later when the actual profits are known. But because these profits will also be used for preparing Type 1 Superannuation Certificates then this would also mean updating these forms and sending amended figures to PCSE which could cause administrative headaches.

Are most GP surgeries likely to prepare accounts to 31 March in that case then?

Most probably, yes.

The extra profits will be crystallised under the change in rules anyway, despite whether you change the year end or not.

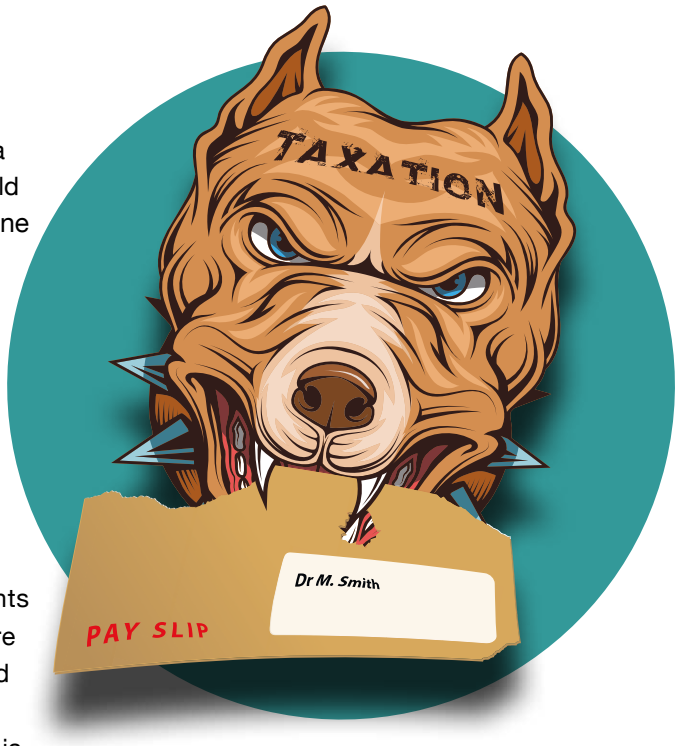
If changing the year end to 31 March as part of the 2023-24 transitional tax year then you can take advantage of 'transitional relief' which spreads any additional tax burden for up to five years.

Accounts cannot exceed 18 months in total for tax purposes and so for 30 September year ends onwards there is the ability to prepare a long set of accounts to 31 March 2024.

This is particularly useful for 31 December year ends although many September year ends may wish to prepare a 12-month set to 30 September 2023 and a short six month set to 31 March 2024.

When do the new rules come into effect?

The new rules are fully embedded in the 2024-25 tax year with the 2023-24 tax year being a 'transitional year' when the new alignment takes place and the 'transition profits' are calculated.



What are 'transitional profits' and are they any different to just being taxed on extra profit?

This is the term given to the extra profit assessable to tax. So, in the 30 April example it will be the 11 months profits from 1 May 2023 to 31 March 2024 which now need to be assessed in the 2023-24 tax year.

They are not the same as normal profits in one important aspect. They do not form part of your profits used to see if your pensions annual allowance should be tapered.

This is a technical point but a very useful one in the case of those in the NHS Pension Scheme as it could have increased tax.

The default position on the transitional profits is that they will be spread equally over five tax years with the possibility to elect for them to be taxed sooner if you wish to. You will be able to deduct any brought forward 'overlap profits' which would have arisen when you first became partner or on a previous change of year end.

So overlap profits will benefit me, will I have these and how can I find out?

Absolutely they will help.

If your profits in the transitional year are similar to those that you earned in your first year of partnership then you could find that your overlap profits fully wipe out the extra profits being taxed now. If profits are lower now than in your first year then it could potentially lead to a tax advantage as your overlap profits may be greater than the transitional profits. This is more likely for newer partners, but also those who have dropped sessions since they first became a partner.

Your accountant will likely know your overlap profit figure which can also be found on your personal tax return in most cases.

As these may have been created over 20 years ago for some people then a record of them may have been lost but HMRC has put measures in place to be able to retrieve the figure if it is not readily known.

This extra transitional profit and five year spreading seems very relevant here. Won't everyone just simply allow this to be spread over the five years by default in order to spread the cash flow effect?

No, not necessarily.

For example, if you know you will be paying tax in a higher band if you spread the profits then you may choose to accelerate it into an earlier tax year. If a future Budget increases the tax rate this would also have the same effect.

This can be illustrated with an example as to the importance of individualised calculations to check whether to spread or not:

Let's take two partners who each have an additional £70,000 of transitional profits arising because of these changes. We know that spreading these over five years would give rise to an extra £14,000 of taxable profits to arise in each tax year.

Partner one earns £86,000 consistently each year and partner two earns £111,000 consistently prior to this adjustment being added.

There is an effective 60% tax rate payable between £100,000 and £125,140 which is very relevant here where the personal allowance is lost at a rate of £1 for every £2 earned over £100,000.

Partner one – They would benefit from spreading the extra profits over five years because the extra £14,000 would be taxed in the 40% tax band each year.

In fact this partner would save just over £6,500 of tax by using the default spreading option compared to paying it all in year one.

Partner two – If this partner was to use the five year spreading then each year the extra profits would fall within the effective 60% tax band.

This partner would therefore benefit from not spreading and would save over £8,000 by electing to tax all the extra profits immediately.

Prediction of future profits are never going to be an exact science but an educated assessment can often be made to ensure an appropriate option is chosen given the information available at the time. Tax bandings can also change over the period and so vigilance is required.

How does this interact with pensionable profits?

We are currently unsure exactly, but the logical move would be for superannuated profits to follow the tax treatment and so this is what is anticipated.

With this in mind, if pension is to be accessed within that five-year spreading timeframe then acceleration of the transitional profits may be necessary to ensure they are included in calculations for pension purposes.

Would I have had to pay tax on these profits at some point anyway?

Yes, you would have had to pay tax on these extra months' of profits when you leave partnership and so, to put a positive spin on the changes, it allows you to take the extra profits and spread them over a longer period than would otherwise be the default.

But they may be being taxed in a higher tax band, particularly if you are planning to reduce sessional commitments in the run up to retirement which may have dropped you into a lower tax band for your final tax year.

What actions do I need to take now?

Your AISMA accountant will discuss the options with you and hopefully this article gives useful background knowledge.

But there is no substitute for personalised advice and so this is something that will be very much front of mind when discussing your tax affairs.

What you need to know about PCN sub-contracting

Practices wishing to sub-contract their services to PCN companies or other groups of providers since October 2022 have had to use an NHS standard template. But many PCNs have yet to adopt this contract or adjust it to their local needs.

This became increasingly important earlier this year when eligibility for NHS pensions and Clinical Negligence Scheme for General Practice access required evidence of these contracts.

Robert McCartney looks at the main clauses, obligations and key areas of this template to help you get a better understanding of how to use it

Since April 2023 the *Subcontract for the provision of services related to the Network Contract Directed Enhanced Service* ('DES Subcontract') has been required to obtain NHS pension access for PCN workers employed by a PCN company or a third-party service provider.

The consequence has been the use of the DES Subcontract to create a formal contractual relationship between the PCN practices and the entities who employ the staff.

This is a great improvement from the previous position of ad hoc contracting without a consistent NHS standard being applied. But it has resulted in the use of a detailed contract which many people and organisations have yet to fully understand.

This article will examine the content of the DES Subcontract, review the extent to which it can be varied and highlight areas that GPs need to be aware of when entering into it.

Background

Since PCNs' formation the legal relationship between core member practices has been an area of significant debate and contention. The original concept of an informal grouping of GP practices collectively working together was rapidly challenged by the practicalities of

structuring employment models and delivering shared objectives in accordance with the DES specification.

Many PCNs relied on the network agreement, which was a contract but did not fully account for the complexity of the employment relationships and service delivery obligations on member practices. As a result, significant liabilities and risks arose within and among practices.

Prior to the commencement of enhanced access requirements in October 2022, PCNs raised concerns with commissioners that delivery would often rely on practices contracting with other providers, including federations and with each other, to meet the requirements. This created a complex relationship with increased levels of risk and liability.

In the summer of 2022 NHS England responded by releasing the DES Subcontract for 2022-23. It was rapidly implemented across the country to ensure enhanced access could be provided within an NHS approved contractual framework.

This gave the DES Subcontract a relatively narrow purpose, although it was structured to allow for a wide range of PCN DES services to be sub-contracted, which some PCNs and practices took advantage of.

However, a small but significant change by the NHS Business Service Authority (NHSBSA) in April 2023 in relation to pension eligibility for PCNs has resulted in the DES Subcontract being a mandatory requirement to ensure all eligible PCN workers can access the NHS Pension.

Before then, PCNs could access the NHS Pension through a time-limited option designed solely for them. Consultation documentation at the time identified a need for this to be made permanent.

But on publication of the application forms, NHSBSA added the requirement that each application had to include evidence that the DES Subcontract had been entered into by the parties.

This was not an issue for those PCNs who had implemented this for enhanced access, but it became a concern for those PCNs that used a GP federation or their own incorporated vehicle to employ staff without the DES Subcontract.

Consequently, many PCNs who previously had pension access were no longer eligible.

PCNs are now implementing the DES Subcontract in a rush to secure NHS pension access. However, this often results in a risk that the contract and its requirements are not fully understood.

What can the DES Subcontract be used for?

The DES Subcontract is specifically designed for use in conjunction with the network contract DES. As an enhanced service, the DES requires GMS, PMS or APMS providers to deliver certain requirements once they form a PCN.

As identified above, enhanced access was the initial priority, but any DES service can be sub-contracted to another provider.

In practice this is often focused on hosting Additional Roles Reimbursement Scheme (ARRS) employees and other key roles.

Structure of the DES Subcontract

The DES Subcontract consists of three parts:

1 Summary (including signatures)
2 Conditions
3 Schedules

Understanding all elements of the DES Subcontract is important but here is a selection of the most important clauses to consider in each section.

Summary

Parties: The DES Subcontract is between the core network practices and the sub-contractor.

The agreement does not cover other 'members' as they do not hold the primary care contract responsible for delivering the DES services.

Services commencement date: This will need to align with the actual delivery of services or hosting of services. It may result in triggering the transfer of staff if TUPE applies (which it will in most cases) and is likely to require the sub-contractor to be CQC registered. This date will also be the start of the entitlement to NHS pension eligibility.

Expiry Date and Termination Notice Period: The sub-contract should not extend beyond the period of the then current DES Specifications (currently 2023/2024) so ensure these dates align and provide sufficient time to respond to any national changes to the DES.

Conditions

NHS England has confirmed these cannot be changed. Any variation may place entitlement to NHS Pension access at risk. Unfortunately, some clauses may not be optimal in primary care settings but understanding this will help PCNs adjust their contract management to mitigate the risk.

Commencement and Duration: Clause 3.1.3 gives the ICB the power to remove the sub-contractor or to terminate the sub-contract, or any service within it.

If a PCN obtains approval to sub-contract from its commissioner, the risk of this is relatively low but any threat to changes in services which could result in the commissioner taking this action must be acted upon immediately.

The consequence of a termination could have major financial, service, and staffing issues if it arises. This is highly unlikely, but the risk exists.

Representatives: Clause 4.2 gives the named representative to act for the practices. This person has the ability to bind all the practices, despite not necessarily being a partner.

This power is significant and should be balanced by having a clear appointment and management process for the representative. It is recommended that this is clearly set out within the PCN Network Agreement, which should be amended to work in conjunction with the DES Subcontract.

Sub-contractor obligations: Clause 7 outlines these and confirms the quality standards and performance requirements expected of the practices are applicable to the sub-contractor. Ensure a system is established to monitor this and consider using Schedule 9 to add clarification on this requirement.

Insurance: Clause 10.5 confirms the CNSGP may be applicable to the services but there is an obligation on the sub-contractor under clause 10.1 to ensure it has suitable coverage for other claims, such as employers' and public liability insurance. Practices should have a method of recording compliance with this.

Indemnities: Clause 12 includes reciprocal indemnities between the practices and the sub-contractor against any damages, costs, or liabilities arising from personal injury, damage to property and breach under the sub-contract.

This applies to an action by the staff, agents or sub-contractors of the relevant party. So this could have significant financial implications and the parties need to understand the risks.

Complaints: Clause 23 places an obligation on the sub-contractor to inform practices of any complaint and not act on a complaint without the practices' express permission. This may be an unsuitable arrangement when you are working with an established provider, such as a local federation, but the obligation cannot be varied.

Parties should be aware of this and the risk there could be conflicting complaints policies. Sharing and developing joint procedures and policies to manage matters like this will benefit all the parties.

Dispute Resolution: Clause 24 allows parties to agree a dispute resolution method of their choice, by adding the detail to schedule 7. They should ensure they are happy with the final method and that it can work effectively when multiple parties may be pulled into a dispute.

Schedules

The schedules, unlike the conditions, can be amended and rewritten to meet parties' preferences. This should be utilised to ensure the DES Subcontract works in accordance with how the parties want. It can allow for local variation and specific nuisance which may only be applicable for the PCN and its practices.

Key issues

Here is a selection of key issues – but ensure all of them are understood by the parties.

Schedule 1 – Subcontract Services:
This schedule allows parties to define the service specification. It is essential to get this right to avoid service gaps, confusion and to assist with accountability. It is not uncommon for it to include a simple reference to all DES services being sub-contracted but consider if any parts should be retained by the practices.

Some PCNs go to the other extreme of creating detailed specifications for each DES element. This allows them to carefully control what is delivered. It is particularly useful for the more complex elements, such as enhanced access or enhanced health in care homes. But there is a risk that elements can be missed.

Drafting a suitable Schedule 1 will highly benefit all parties.

Schedule 2 – Payments:
Within the conditions clause 11 provides basic payment mechanisms. These may be too simplistic and fail to confirm what the value of the contract is. The value is important if the sub-contract is to be used to support an application for Independent Provider Employing Authority status with the NHS pension.

It is recommended parties consider issues such as cashflow, reconciliation and reporting against activity requirements such as ARRS data to ensure that the practices and sub-contractor work closely to reduce the risk of NHS payment delays.

Schedule 3 – Premises:
This section allows the PCN to define the premises relationships and it is useful to obtain advice about suitable tenancy agreements, licences and leases which may need to be referenced here.

Schedule 8 – TUPE Provisions:
This section will manage the consequences if staff transfers are required at the start and end of the contract. These must be followed if they are applicable and further advice should be sought to reduce the risk of these procedures.

Schedule 9 – Patient Records:
Information and Other Matters: This schedule provides parties with a place to include any other clauses and procedures they would like. Some have used this to clarify the data reporting requirements, quality management obligations and localised referral parties.

If parties wish to include any other information that does not fit easily into the other sections, this schedule is perfect for that use.

By understanding these key sections, parties will be better positioned to confirm they have entered into it from an informed position. They can then enforce and act in accordance with the sub-contract with a reduced risk of problems occurring.

Specialist advice is needed to help ensure the DES Subcontract is appropriately tailored to the practices' and sub-contractor's needs. This is particularly important with the schedules.

Don't underestimate the DES Subcontract's importance. It is the building block for the next stage of formalising the relationship between the practices and the provider organisation of choice within the PCN.

As PCNs become responsible for more services and additional contracts are awarded at neighbourhood level these contracts will become the core building blocks of the legal relationship between all parties.

Ensuring this is understood and well drafted at this stage will make the future development of PCNs an easier process.

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