

SUPPORTING GENERAL PRACTICE | Practice mergers – the legal issues

General practice mergers: the legal issues

General practice mergers present GPs with the opportunity to achieve significant efficiencies. But the legal issues raised in the process to complete a merger can be complex. Here, Amanda Maskery, Partner, Sintons LLP introduces some of the key points that need to be considered.

GP mergers can provide significant benefits, which include:

- economies of scale,
- specific enhanced services,
- combined resources on staffing or premises,
- a boost to overall buying power, and
- more effective commissioning.

But the process GPs need to undertake to achieve a successful merger – and the legal issues arising – can require patience, and will almost certainly call for professional legal advice.

LEGAL STRUCTURE OF A MERGER

A GP practice merger requires a new partnership deed. That means at least one of the existing practices will need to be dissolved. Which one should be chosen? The answer will depend on the level of bank funding each practice has, and its legal structure. It will also depend on the local health board or NHS England, and whether or not they choose to put the GMS or PMS contract out to tender.

To achieve a successful merger, the parties will need to draw up a joint Partnership Agreement with the input of experienced commercial solicitors with specialist knowledge of GP practices. This process could also help achieve a common understanding on key issues, such as:

- working hours,
- outside commitments,
- decision-making,



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- holidays,
- sabbaticals,
- governance and decision making, and
- finance arrangements.

RELATED ISSUES

There are many related factors to consider when putting together an agreement and moving towards a full merger:



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- what are the potential overlaps of roles once the merger has been undertaken?
- what is the contractual position on PMS and GMS contracts – especially in the event of one of the contractors' death or retirement?
- how will employees be consulted on the merger according to TUPE guidelines?
- what are the assets and liabilities of each practice and how will they be transferred across?
- how will patients be consulted in line with RAT requirements?
- project management – who will manage the merger and what will be the key roles and responsibilities?

NEXT STEPS

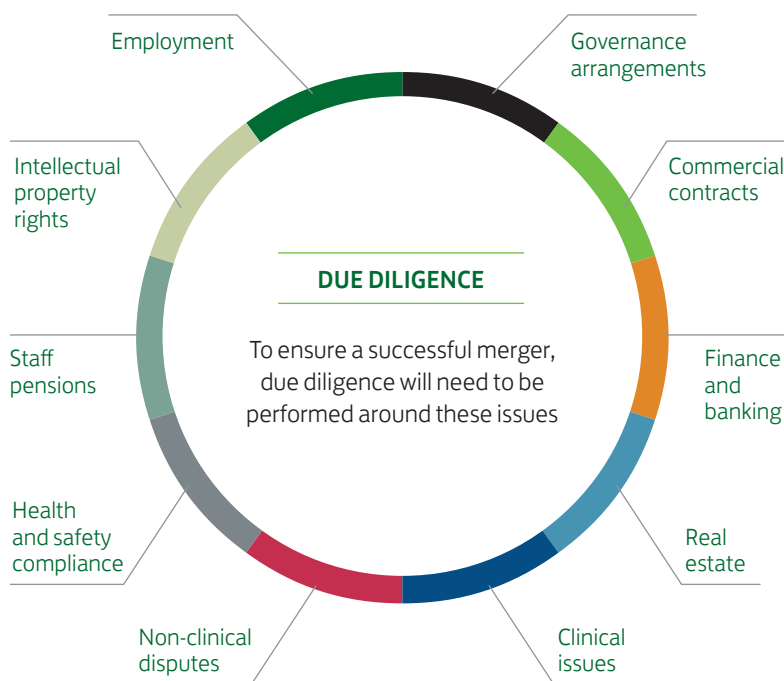
It's vital to consider the financial implications of a merger. Will the practice's commercial interests and therefore the future earnings of individual GPs genuinely be improved by a merger? Take time to consider the options. A successful practice merger is not something that can be done in a hurry. A risk analysis is vital to ensure the merger happens in the smoothest way possible.

DEALING WITH PROPERTY ISSUES

The need to rationalise the use of property is a common driver for mergers. GPs will need to take steps to make sure that premises are brought into the ownership of the merged partnership.

In the case of a lease or mortgage, GPs will need the consent of the landlord or mortgagee. If a loan is involved, the lender's requirements will also need to be addressed.

It is advisable to consult a specialist property lawyer to ensure that these requirements are met. NHS England's approval is needed for new developments, relocations and vacating of existing premises.



Amanda Maskery is a partner of Sintons LLP, a full-service law firm based in the North East with a specialist healthcare team.
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