



A BRIEF GUIDE TO THE USE OF LIMITED COMPANIES IN GENERAL PRACTICE

WRITTEN BY:

Dr Parul Karia

Michael Harrison

Michael Sissens

DECEMBER 2021

Introduction

Following numerous questions from GPs about the growing number of Limited Companies in General Practice, we have produced this document to help practices identify the key points they need to think about when considering if a limited company structure might be right for them. We have gathered the information below from a number of publicly available sources and individual conversations with accountants and lawyers.

This is a complicated subject, and we are neither lawyers nor accountants so this document should be used as a starting point for conversations rather than a definitive guide. We would strongly encourage anyone considering moving their contract to a limited company to seek professional financial and legal advice, both on behalf of the practice and as an individual.

In this document we will cover:

WHAT IS A LIMITED COMPANY?	PAGE 2
FINANCIAL CONSIDERATION 1. TAX 2. PENSIONS	PAGE 3
ONGOING RESPONSIBILITIES OF A LIMITED COMPANY	PAGE 4
TRANSFER OF GMS AND PMS CONTRACTS TO A LIMITED COMPANY	PAGE 4
FREQUENTLY ASKED QUESTIONS	PAGE 5
PUBLICLY AVAILABLE SOURCES	PAGE 7

What is a Limited Company?

A limited company is a form of business entity which is legally separate from its owners and managers. In the UK, it must be incorporated at Companies House. This confers the status of being a separate 'legal person' from the people who run it, with a unique company registration number.

A limited company is governed by the requirements of the Companies Act and has its own articles of association. It must make returns of financial information to Companies House and that information is held on the public register, available for anyone to view.

Even if a limited company has one person involved, who is the sole shareholder and lone director, it is still a distinct legal entity, legally separate from that person.

As a limited company is separate from its owners in law, it:

- Can enter into contracts in its own name, including employing staff
- Is responsible for its own actions, and can sue and be sued
- Has the legal right to money it makes from sales and can keep its profits
- Is responsible for paying its own debts and liabilities

The owners of the company are protected by 'limited liability', so the amount they have to lose if the company fails is strictly limited (unless fraud or other serious wrongdoing has taken place). If the company cannot meet its debts or liabilities, the owners usually risk losing:

- For companies limited by shares, the nominal value of the shares they hold;
- For companies limited by guarantee, the amount of any guarantee;
- Any amounts they've already invested into the limited company; and
- The amount of any personal guarantee they've made to the company.

This is different from a sole trader or general partnership, which are both unincorporated businesses, where there is no legal distinction between the owner and the business. Therefore, if the business fails or cannot meet its liabilities, the owners will be personally responsible. They potentially face having to sell or surrender their personal assets in order to meet the debts of the business.

Financial Considerations

Taxation of a Limited Company

As a separate legal entity, a limited company is subject to taxation in its own right.

- After the company is incorporated, it will need to be registered for corporation tax with HMRC. On a regular basis, a corporation tax return must be filed and any corporation tax due paid to HMRC.

The company may be subject to other taxes:

- VAT – if relevant turnover exceeds the VAT registration threshold or you opt to register voluntarily
- Pay as You Earn via a payroll scheme (and National Insurance Contributions) – if the company employs staff
- Capital gains tax – when certain business assets are sold
- Other taxes, depending on the nature of the business and the trade it undertakes

In each case, the company will need to register for the tax with the appropriate section of HMRC. The company will then be required to file regular (quarterly or annual) returns of information and pay any tax due. There are penalties and sanctions for a company and its directors if returns are not submitted or tax due not paid by the appropriate deadlines.

Operating a business as a limited company rather than as a sole trader or partnership used to bring significant tax advantages. Shareholder directors could pay themselves a tax-efficient mix of salary and dividends, minimising both National Insurance Contributions and the level of income tax payable.

Recent tax changes have reduced the opportunities for using dividends to minimise tax and future tax rises in corporation tax announced by the government (at time of writing) may make forming a limited company less attractive.

If you're unsure about your tax responsibilities as a limited company, we strongly recommend you consult an accountant, who can provide advice that takes account of your personal circumstances.

Pensions

Above we mentioned that any tax advantages that come from forming a limited company will be realised by the directors taking their earning as a mixture of payment in salary and dividends and paying corporation tax through the company. Pension contributions can also be made by the Limited Company pre corporation tax to its employees. However, we strongly recommend getting specialist pension advice to determine if this is beneficial, depending upon personal circumstances and the financial reserves of the Limited Company. This may be attractive to GPs who have retired and returned or are breaching the annual or lifetime pensions allowance but could be detrimental in other cases.

Ongoing Responsibilities of a Limited Company

Limited companies are subject to stricter compliance requirements than sole traders or partnerships.

- A limited company must file accounts with HMRC and Companies House each year, in most cases within 9 months of the year end of the business. To enable you to file accounts, it is essential to maintain appropriate records of all financial transactions.
- Every company must maintain a range of statutory registers, which shareholders and others can ask to inspect. The registers include details about those who own the company (a Register of Members), manage it (the Register of Directors) and have the ability to control or otherwise strongly influence it (the Register of People with Significant Control).
- Regular meetings of the directors and shareholders must be arranged and recorded.
- Each year, every limited company must file a confirmation statement with Companies House. Depending on circumstances, other event-based filings may be required, for example if a new director is appointed or further shares are issued.
- The company will need a series of insurance policies to cover their activities e.g., directors insurance, liability insurance.

All of these elements will have a cost attached to them, and this will need to be considered when contemplating forming a limited company.

Transfer of GMS and PMS Contracts to a Limited Company

In essence, when considering incorporation, you are weighing up having your partnership as a business asset versus an investment asset for tax purposes.

- PMS or GMS contracts can be held by a Limited Company but they need to be constituted and owned in the “right way”.
- PMS and GMS contracts are non-assignable, i.e. they cannot be transferred to a third party without the consent of the commissioner (even if the Limited Company is solely owned by the partners).
- “Novation” is the term used when one contract holder is substituted wholesale for another. It involves the termination of an existing contract and award of a new one. It has to be requested of the commissioners and is at their discretion. NHSE has [guidance for commissioners](#) regarding requests to incorporate and a [template for practices](#). In the decision-making process a Practice must demonstrate patient benefits to the Practice incorporating.

Frequently asked questions

This does not replace getting specialist accountancy, legal and independent financial advice.

1. *What is the ballpark cost of going through the incorporation process and all of the things that a practice needs to consider (e.g. directors insurance, accountants, legal fees etc.)?*

Approximate figures compiled through conversations with lawyers and accountants are:

- Legal ~ £6,000
- Accounting ~ £4,000
- Governance and shareholding contracts ~ £2,000 - £2,500
- Declaration of trust documentation ~ £500 - £700
- It will be necessary to revisit the PCN contract and update the agreement – the cost will depend on the existing terms of the PCN schedules
- It is also necessary to factor in application for NHS status for employment and indemnity costs – this is likely to be a cost in terms of GP/practice manager time.

2. *Is there any value/cost if certain services are provided by a limited company outside of GMS contract e.g. travel vaccines?*

It depends on what the service is providing. If the company is providing 'people' then this brings about the VAT issue, if it is providing a service then there is some flexibility and value. For example, a limited pharmacy company that provides clinical pharmacists or an incorporated GP performing partnership sessions – VAT will come into play.

It is understood there may be no tax benefit, due to certain rules such as the "General Anti-Abuse Rule" and Sub-contracting rules for essential services.

3. *Is there any benefit of being a director of a limited company vs a partner in a partnership?*

The main issue is limited liability, and this is attractive – however directors still have significant responsibilities, and this is not always appreciated, hence why the setup of a limited company requires appropriate governance, documentation, insurance etc. Personal Guarantees of the directors may be sought especially if a premises with lending attached is being brought into the company, or if a lease is signed. A CCG may require a personal guarantee over 5 to 10 years – which might be difficult for GPs looking to retire.

We advise you seek specialist tax advice, to understand if there would be any tax benefits or pension/property implications.

4. *Are there any disadvantages of being a director of a limited company vs a partner in a partnership?*

- It will possibly cost more due to the tax – depending on the tax rate, pension implication etc.
- Other GPs may not want to join as a director of a company – as it is still a relatively new idea. Limitations on who can be a director of a company (generally) and one that holds a GMS contract may also put people off.
- There are potential additional ongoing running costs beyond the costs of a partnership.
- Transparency of having to publicise your accounts on Companies House for all to see.
- While commissioner permission is required in the novation of contracts to limited companies, there is a risk of private providers being able to take over limited companies in a way they are not able to do with partnerships.

5. *If the premises is brought into the Ltd Company, does it still qualify for notional rent?*

- If the building is brought into the limited company and there is an NHS contract attached to that building, then notional rent applies. A self-build or new property might work well within a Limited Company.
- Interestingly if a PCN buys a building for its staff then that would not qualify for notional rent as that building is not attached to an NHS contract.
- Extending an existing building to encompass PCN staff might qualify, this is a grey area, and you would need to speak with a specialist in property.

6. *What needs to happen next?*

- Initial discussion with the CCG (verbal approval) would be required before starting any formal process. Subsequently, a formal application to novate a contract to a limited company would be required. This would need to be approved by the commissioner.
- A practice would need to inform CQC, consider TUPE of staff, Contracts, notifications - including to PCSE/performers list, business transfer agreement, governance, articles of incorporation, directors' agreement, landlords, PCN, Federation Membership (may preclude membership of incorporated companies).
- Consider risk to dispensing rights – these may be lost and would need to seek assurance from commissioner.

Publicly Available Sources

Source	Weblink
Hempsons:	https://www.hempsons.co.uk/news-articles/why-do-we-have-companies-when-we-can-have-partnerships/
DR Solicitors: “Can a GP practice have limited liability”	Can a GP practice have limited liability? DR Solicitors
NHSE:	https://www.england.nhs.uk/publication/primary-medical-care-policy-and-guidance-manual-pgm/
Macintyre Hudson:	10 tips for GPs seeking a limited company status for their practice (macintyreHUDSON.co.uk)
VWV & RSM:	https://www.youtube.com/watch?v=TkmBTed-JTc
James Gransby Pulse blog:	https://www.linkedin.com/pulse/gp-practice-incorporation-too-good-true-james-gransby

For more information, please contact us:

Beds & Herts LMC Ltd, Tel: 01438 880010

Email: lmadmin@bhlmc.co.uk

Website: www.bedshertslmcs.org.uk/contact_us

