



Londonwide LMCs

The professional voice of London general practice

Securing the Future of General Practice in London:

Practice mergers guidance

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Practice Mergers – Key Considerations

This guidance is to make GPs and their practices aware of what needs to be taken into account when considering a merger with another practice (or practices).

It is a summary of some basic issues that practices need to be aware of and address in their exploratory discussions with the other practice(s). This is not an exhaustive list:

Type of contract

Both practices need to be on the same type of contract, as they need to be contractually compatible. This means both practices need to be either GMS or PMS. If one practice is GMS and the other PMS, NHS England will only consider a merger if the PMS practice reverts to GMS and then the two GMS contracts merge. This is because there are fundamental differences in the contractual requirements and pricing structure between GMS and PMS contracts and it would not be possible to merge two contracts where one has key performance indicators (KPIs) and the other one doesn't; they are on a different price per patient; one has premium funding and the other one not, etc. The situation might be more complex with APMS practices. This is because APMS is a commercial contract and even though there is a standard APMS contract in London, different practices could have different KPIs or pricing, particularly if they have been in place for a few years. They also tend to be time limited so different contracts are likely to have different end dates. Procurement law applies when it comes to APMS contracts, which adds to the complexity of mergers between APMS contracts.

Geographical distance between two practices

If the practices proposing to merge are more than a mile apart, the business case will have to address that as NHS England will question the viability of the plan as the distance could impact adversely on patients who are elderly, vulnerable, or less mobile etc.

IT (clinical systems)

Practices must contact the CCG (Clinical Commissioning Group) IT Support Team as early as possible to discuss the merger of the two clinical systems. If both practices have the same clinical system it can take 2-3 months to merge the systems. If the practices have different clinical systems then a discussion needs to take place about which clinical system the practices will be using (some CCGs will have a preferred system and will encourage practices to migrate to this system). The time for migrating practices on different clinical systems can take 3-6 months.

Premises

Ideally NHS England would want to see the merged practice operate from suitable and CQC compliant premises on a single site, as this would enable them to save on one set of rent and rates reimbursement. If either of the two premises can comfortably accommodate both lists this would enhance the strength of the business case. However this may not be possible. If both sites need to be retained, a case will need to be made for this by highlighting patient benefits such as choice of location, extended access, flexibility in service delivery etc.

Financial implications of the merger, both one-off and recurrent for the practices and NHS England/CCG

NHS England/ CCG will be looking for the merger to be at least cost neutral, if not cost saving to the NHS. The business case must describe what – if any costs – the practice are seeking support for. The less, the better!

Practice performance and access

NHS England will look at how each practice is currently performing against national and local targets (including indicators on the primary care web-tool, QOF (Quality and Outcomes Framework), CCG targets etc) and how they have performed at their respective CQC (Care Quality Commission) inspection(s). Each practice will need to be aware of their respective performance status and be able to demonstrate how the merger will help improve on any areas of underperformance. This includes access, eg if either of the two practices closes for half a day or at lunchtime, NHS England are most likely to require both practices to commit to opening throughout core hours with full reception and telephone cover from 8:00am to 6:30pm as a prerequisite for the merger.

Service provision

The business case must explicitly state how patients will benefit from this merger, particularly in relation to expansion of services, more in-house skills, improved access, more appointments, better choice of GPs etc. This is very important as unless the practices are able to demonstrate how services will be improved, enhanced, or expanded, it will be difficult to get the merger approved.

Patient engagement

Any merger application must demonstrate that patients have been consulted; any objections or concerns have been addressed adequately; and there are mitigating plans in place. Consider having a meeting with your respective PPGs (Patient Participation Groups) (jointly if possible) to gauge initial feedback from patients. Think about the distance, transport links between the two sites, impact on the frail and elderly, continuity of care, availability of clinical staff, future service provision, state of the premises etc. In more complex cases where one site might close and services might relocate to another site for example, a wider patient consultation may be expected (such as a letter to patients explaining the proposed changes and asking for feedback, posting a patient briefing on the practice website and collecting online feedback etc). Active patient support is helpful, where possible, and it is important to engage with your PPG.

Mergers need to be approved by NHS England (and the CCG if it is a Level 2 (joint commissioner) or Level 3 (fully delegated) commissioner). The template used by NHS England for merger business cases can be accessed at the following link. It will give you a flavour of what they are looking for. [NHS England Merger Template](#).

In terms of timescales, and depending on when the business case is submitted, among other things the practices need to factor-in include the appropriate length of time required for the merger of the two clinical systems (as detailed on page 2), and approximately 10 weeks for the merged practice to get registered with CQC (this involves a number of different forms which will need to be submitted online). From start to finish the application and decision making process can take anything between three and six months, possibly longer, depending on the circumstances and logistics of each case.

Please note that if any of the practices looking to merge are in “special measures” (ie, they have received an inadequate rating from CQC), NHS England is unlikely to approve a merger application until they come out of “special measures”.

Stakeholder engagement

The CCG also needs to support the merger in areas where they are joint commissioners (Level 2) or fully delegated (Level 3). It may be helpful to have an off-the-record discussion with the CCG to see if they support the merger. If they do it would help to have a letter of support from them when submitting the business case. Under co-commissioning arrangements submissions of business cases are jointly considered and decided upon by NHS England and the CCG as part of their joint co-commissioning committee meetings.

Crucial for the following to be discussed between all partners privately before the involvement of NHS England or the CCG

We strongly recommend that all discussions should be documented for audit purposes and to show that you have followed due process.

Partnership arrangements

Agree who will be on the merged contract; is it going to be all current partners from both (all) practices or not?; are any of the existing partners retiring, and if so do they intend to be involved in a sessional capacity or not at all?

Drawings/profit sharing

We have seen mergers fall through because the partners are unable to agree on a profit sharing formula that acknowledges differences in their respective starting points, clinical and management commitment to the practice, ways of achieving equalisation or parity, how much capital investment each partner will make into the practice etc. This is a delicate subject but one that can make or break a merger so it is advisable to address it early on in the negotiations. This discussion will require mutual disclosure of the practices' finances and the partners' drawings to enable a full and fair comparison between the two (or more) practices. eg, does one look after nursing homes and the other one not, does one have much higher QOF achievement, is one a training practice and the other not, does one provide a lot more LES (Locally Enhanced Services)/LCSs (Locally Commissioned Services) than the other, does one use a lot more locums than the other, is one over or understaffed, does one operate more efficiently than the other etc? All these factors will affect a practice's income and partners' take home pay.

Responsibilities/duties/decision making

Agreement must be reached on who will do what in the merged practice, what will each partner's clinical commitment, management responsibilities and voting rights be.

Premises

All parties must be clear on existing commitments: do both practices own their premises or are they under a lease?; are both sites part of the merger plan?; will incoming partners be required to buy into the building?; are there outgoing partners who will need to be bought out of the building?; are there significant differences in service charges etc?

Partnership agreements (Deed of Partnership)

The issues mentioned above (and any other potential points of agreement) need to be incorporated into an effective formal 'partnership agreement' drawn up by a solicitor.

Practice Staff – TUPE (Transfer of Undertakings Protection of Employment)

Pre-merger

TUPE is a legal obligation for employers

Under TUPE legislation all staff will need to be transferred or 'TUPE'd' over to the merged practice under protected terms and conditions of employment. No staff should be disadvantaged as a result of the merger, lose their job, or have their contract terms unilaterally changed.

Hours of employment

As above. No change to contractual terms should be made prior to the merger, no hours or salary should be reduced and everyone should be transferred under their current employment terms. If any staff wish to resign of their own accord prior to the merger, then that is their own decision and they would generally not have the right to claim unfair dismissal or redundancy pay (as they would have been offered suitable alternative employment).

Employee terms and conditions

Employees who believe that their terms and conditions have been substantially changed to their detriment before or after a transfer have the right to terminate their employment and claim constructive unfair dismissal at a tribunal. TUPE classifies these types of resignations as dismissals.

Post-merger

If you decide to carry out a staff restructure post-merger, you must ensure a proper HR process has been followed. This will require a staff consultation on new, deleted and changed posts and a competitive interview process where there are more suitable/eligible people than posts. Any staff redundancies arising from a restructure following a merger will be the responsibility of the merged practice.

There are other issues such as merging patient lists on the clinical system, merging budgets, amalgamating practice policies, getting your partnership agreement drafted or updated, etc, which can be discussed in more detail at a later stage if necessary.

If you require any guidance or advice on practice mergers please contact our GP Support Team gpsupport@lmc.org.uk.

Change in employees' job description

TUPE applies.

Pay

TUPE applies.

Working at different sites

Staff need to be informed of the merger and consulted on the implications of this on themselves, which should include working at different sites. If any staff member objects to that, there needs to be a discussion about what the issues are and how they can be overcome or mitigated. Please see the point on the possible implications of staff considering working at a different site being disadvantageous.

TUPE can be quite complex. It is strongly recommended that you take specialist employment law/HR advice both before and after the merger to ensure due HR process has been followed.



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