

## LMC Briefing Last Man Standing Liabilities

### The issue

GPC Wales has been lobbying Welsh Government regarding last man standing liabilities and written formally to Vaughan Gething regarding this.

GPC Wales highlighted the following issues:

- ❖ When a partner(s) leaves the practice, business related liabilities such as lease responsibilities, mortgage loans and employers TUPE responsibilities transfer to the remaining partner(s). In some circumstances, we have seen a single partner sometimes of retirement age, sometimes much younger, being left holding full business liability.
- ❖ The fear of this outcome can lead to a succession of resignations driven by both workload pressures and fear of being left with sole responsibility for business liabilities of a size that would be individually crippling.
- ❖ A practice that was once stable can destabilise within a matter of months, or for a small or rural practice, a matter of weeks, with for example retirements following unexpected sickness and new recruitment to practices is frequently unsuccessful in the current climate.
- ❖ The repercussions and implications on both a personal and professional level for GPs are potentially catastrophic with some cases experiencing severe financial hardship.
- ❖ Our strong view that LHBs need to take more ownership of the strategic decisions they make.

When strategic premises decisions are made the HBs are in effect saying that a given set of infrastructure is needed to discharge the LHB's responsibility to provide universally available primary care in that area. These strategic decisions, allowing for minor local tweaking, would also lead one to conclude that a given level of clinical and administrative staff is needed to support that provision.

If this were accepted, we would argue that whilst nearly seventy years experience suggests that the independent contractor model is the most efficient way of providing that care, if the current financial, contractual and manpower environment makes that impossible it should not alter the need for the staff and buildings to provide it. In addition, we believe that the HB should also commit to covering TUPE for the practice staff.

- ❖ Need for a range of solutions to be put in place to support the recovery and stability of a practice following the loss of a partner(s) which will need to be flexible and appropriate to the context of the practice.

These solutions could include:

- 1) LHBs underwriting new premises leases (or increasingly rarely GP practices personal investment in premises) and

- 2) LHBs underwrite the staff employment within those premises
- 3) Consideration to exploring whether solutions in other nations would work in a Wales context e.g. the Republic of Ireland's Department of Health acts as head lease holder and sublets premises to general practices for a period of 5/10 years, mitigating risks for GPs. England is currently exploring Limited Liability Partnerships, a step which provides means of legally separating the person from the business liabilities.
- ❖ These issues are having a significant negative effect on the sustainability of General Practice in Wales and this will only worsen without effective solutions being urgently put in place.

### **The response from Welsh Government**

- ❖ They recognise the problem – that is a start.
- ❖ There is already in place the ability within Wales for Health Boards to seek consent to obtain a lease under the NHS Wales Act (2006) and this has already been used in Briton Ferry and Brynmawr.
- ❖ Their belief that the approach from Health Boards to premises lease issues, whether new or historic, can include:
  1. Working with practices and providing letter of comfort detailing the approach to sustainability in the event of “last man standing”
  2. Taking the head lease in the case of a managed practice
  3. Taking the head lease for a period whilst practice sustainability solutions are put in place and then the lease assigned over to the practice
  4. Taking the head lease and subletting this to the practice for a term of 5/10 years or such agreed between both parties.

These options need to be considered within the premises estates strategy including the need for robust infrastructure to deliver local primary care.

- ❖ The solution needs to be dependent on the individualised circumstances, business and GMS planning between the practices and the Health Boards - Welsh Government would recommend early discussions where a practice is concerned about “last man standing” liabilities.
- ❖ In addition, Welsh Government confirmed that they are committed to delivering care closer to the patients home and prioritising further investment in primary and community care infrastructure.

### **What this means**

- ❖ There is the ability for Health Boards to take on and provide solutions to the problems that are being experienced across Wales – we need to highlight these to the profession.  
GPC Wales will put this in a newsletter but it would be worth LMCs disseminating this to practices as it will bring some assurances

- ❖ More is needed – we will be pursuing this both within the contract negotiations (e.g. additional investment directly into practices, reducing workload pressures etc that may well help with recruitment challenges around partnership and GP practice employed salaried GPs) and also measures to address issues that fall outside of the parameter for contractual negotiations.

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