

Report on the provisions of the draft Shareholders' Agreement prepared for ELR GP Fed Limited (the Company)

We have been asked to prepare a shareholders' agreement which will govern the relationship between the shareholders of the Company. In doing so, we are acting for the Company itself and are not advising any of the individual practices on their personal rights and obligations under the agreement. If you are concerned about any of the matters contained in the agreement then you should seek independent legal advice. Each Practice should also take its own legal and financial advice upon any changes which will be required to its partnership agreement. Issues to be considered in particular are the treatment of income received from the Company by way of dividend or payments arising upon sale of the shares and also valuation of the Practice's shareholding when partners are leaving or joining the partnership.

The report is intended to provide you with a summary and brief explanation of the provisions within the agreement but is not intended to be a substitute for reading the agreement itself. The report picks out the main provisions of the agreement rather than considering every clause.

The shareholders' agreement will also be supplemented by a new version of the articles of association of the Company which will replicate the agreed provisions of the shareholders' agreement.

The draft shareholders' agreement has been prepared as a result of legal advice obtained by the Company and incorporates certain comments and observations made by the Working Group, the Steering Group and the current Directors of the Company where appropriate. The draft agreement is now being circulated to all of the Practices together with this report and if you have any queries on the agreement please raise them with the Directors in the first instance either in writing or at the meeting on 25th February.

Clause number	Description of clause	Summary of main points covered by clause
Parties	Background	The agreement is between the Practices in the East Leicestershire and Rutland area which have chosen to form the company (or federation as it is more commonly known). The Practices will each hold one ordinary share of £1.00 per 1000 patients. The shares will carry voting rights and the right to dividends if any are paid by the Company.
1	Interpretation	The key definition in here is "Majority" it is the Majority which controls a large number of

		important aspects of the Company's operation (other than day to day matters). The Majority means Practices holding 75% of more of the ordinary shares.
2	Business of the Company	The Company is being established to promote the member Practice's business of general practice and to improve quality and cost effectiveness and future security. The Company may also bid for contracts for healthcare services which the member practices can provide on behalf of the Company. Each Practice agrees to promote the success of the business. The business is about non-core services so is not intended to affect your GMS/PMS contracts.
3	The Board	The day to day running of the Company has been delegated to the Board which it is envisaged will comprise 6 directors - these will represent the localities so will comprise 3 representatives from Melton Rutland and Harborough, 2 representatives from Blaby and Lutterworth and 1 representative from Oadby and Wigston. The representatives shall be proposed and voted for by the respective localities. The composition of the Board will remain this way unless the Majority decides otherwise. The Board will delegate day to day operational decisions of the Company to an employed Executive Team which will remain fully accountable to the Board. It is proposed that the directors will be remunerated on a sessional basis for their time (to compensate their practices for time spent away from their practice). The first and interim directors of the



		<p>Company are Robert Whitehead and Ian Razzell.</p> <p>Individuals who are on the Board of a Clinical Commissioning Group or a GP provider company in or around the Localities will not be permitted to be a director of the Company.</p>
4	Shares	<p>Practices will pay nominal value for their shares ie £1.00 per share. Each Practice will nominate a GP partner to hold their shares in the Company on the Practice's behalf and will sign a deed of trust in the form previously provided. If a nominated GP subsequently leaves the Practice for whatever reason then he must transfer the shares to a continuing partner of his Practice and a new deed of trust will be required.</p> <p>The stated dividend policy of the Company is that any profits will be reinvested in the business of the Company and will not be distributed to the shareholders. The Company can only change this policy with the agreement of the Majority (see below).</p>
5	Matters requiring consent of the Shareholders	<p>The Majority retains control and responsibility for number of decisions and acts of the Company and these are set out in detail in clause 5. This list covers fundamental matters which, if carried out by the Company, could seriously impact the value of or the operation of the Company and/or would be outside of the agreed purpose of the Company. Matters not listed in this clause will be within the control of the Directors and in particular, the Executive Board.</p>
6	Transfer of shares	<p>Practices are expected to commit to the</p>



		<p>Company for 24 months and not seek to transfer their shares. After the second year, if a practice does wish to leave the Company then it must follow the procedure set out in this clause.</p> <p>Practices will only be permitted to sell their shares back to the company on one occasion in each year which will be the end of the financial year (31 March). Practices must notify the Company that it wishes to sell its Shares at least three months' prior to 31 March if they wish to sell. A Practice must sell all of its shares unless the Majority agrees otherwise. The shares to be sold will be sold to the Company. The price for the shares will be either agreed between the seller and the Company or, if the price cannot be agreed, will be determined either by the Company's accountants or an independent accountant. The Company is not under any obligation to buy back shares from more than two Shareholders in any financial year. If more than two Shareholders do serve a transfer notice on the Company in respect of their shares then they will be dealt with on a "first come first served" basis.</p> <p>If the Practice selling its shares also has a representative on the Board then that representative will be required to resign when the Practice sells its shares.</p>
7	Events of Default	I have included certain limited circumstances in which the Majority can resolve to remove a defaulting shareholder and allow the Company the right (but not the obligation) to buy-back



		<p>their shares. These circumstances include: breaches of the shareholders’ agreement or any service level agreement in place between the Practice and the company; insolvency of a Practice; a single handed or two-handed Practice ceasing to exist due to retirement or removal of partners and no succession plan in place; Practices losing their core contracts. Please note that the price payable for a Practice’s shares in these circumstances will also be £1.00 per share.</p> <p>If the Practice selling its shares also has a representative on the Board then that representative will be required to resign when the Practice sells its shares.</p>
8	Drag Along and Tag Along rights	<p>If the holders of 75% or more of the Shares wish to sell their shares to an independent third party then they have the right to “compel” the remaining Practices to also sell their shares provided that the same price is being paid for all of the shares. To protect the minority, if the holders of 75% or more of the Shares do wish to sell to a third party then the minority has the ability to stop them from doing so if they are not given the same rights to sell their Shares.</p>
9	Issue of Further Shares	<p>The Board will consider any applications for membership from Practices and providers which hold a GMS or PMS contract. If thought fit, the Board will recommend the application to the Majority for approval.</p> <p>As shares are allotted according to list size, the Board has the ability to offer more shares to a</p>



		<p>shareholder practice if its list size increases by more than 1000 (at the rate of 1 additional Ordinary Share per 1000). List sizes will be assessed at the end of each financial year of the Company by reference to the Exeter system. If a practice's list size falls by 1000 or more then the Company may convert a proportion of a shareholder's shares to deferred shares (having no rights to a dividend or a vote) again at the rate of 1 Ordinary Share per 1000 patients "lost". These deferred shares can then be converted back to ordinary shares if the list size rises by 1000 or more again.</p>
11	Disputes	<p>It is hoped that any disputes can be easily resolved by referring the matter to the Executive Team in the first instance and then the Board. If the Board cannot settle a dispute then it will be referred to a panel of three unaffected Practices which may seek assistance from the LMC if necessary. For disputes relating to financial matters, the matter may be referred to the Expert (an accountant) or for other matters to a relevant expert.</p>
12	Shareholders' obligations	<p>We have included here a list of requirements which are expected of member Practices. In order to ensure that the Company protects its reputation and builds a brand which will hopefully stand it in good stead when bidding for contracts and dealing with commissioners. It is important that standards are consistent and best practice is achieved amongst the member Practices. The Practices should consider the</p>



		<p>obligations in this clause 12 carefully.</p> <p>Practices providing services on behalf of the Company will also be required to enter into a service level agreement with the Company which will also set out what is expected of the Practice in relation to the delivery of the relevant service.</p> <p>Where services are being delivered by certain Practices on behalf of the Company, Practices which have not been selected or do not wish to provide the services themselves are expected to support those Practices which are delivering the services.</p>
13	Restrictions on shareholders	<p>Practices will not be prevented from pursuing any opportunities themselves whilst a shareholder in the Company although are expected to give the Company the right of first refusal over these opportunities. Practices will be restricted for a period of 12 months after ceasing to be a member from competing with the Company.</p> <p>Practices will be subject to some restrictions whilst a shareholder though which will include not poaching staff from the Company for the purposes of competing with the Company or seeking to divert patients away from the Company.</p>

talk to us...

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