



Legal update – partnership and property issues

Oliver Pool - Partner



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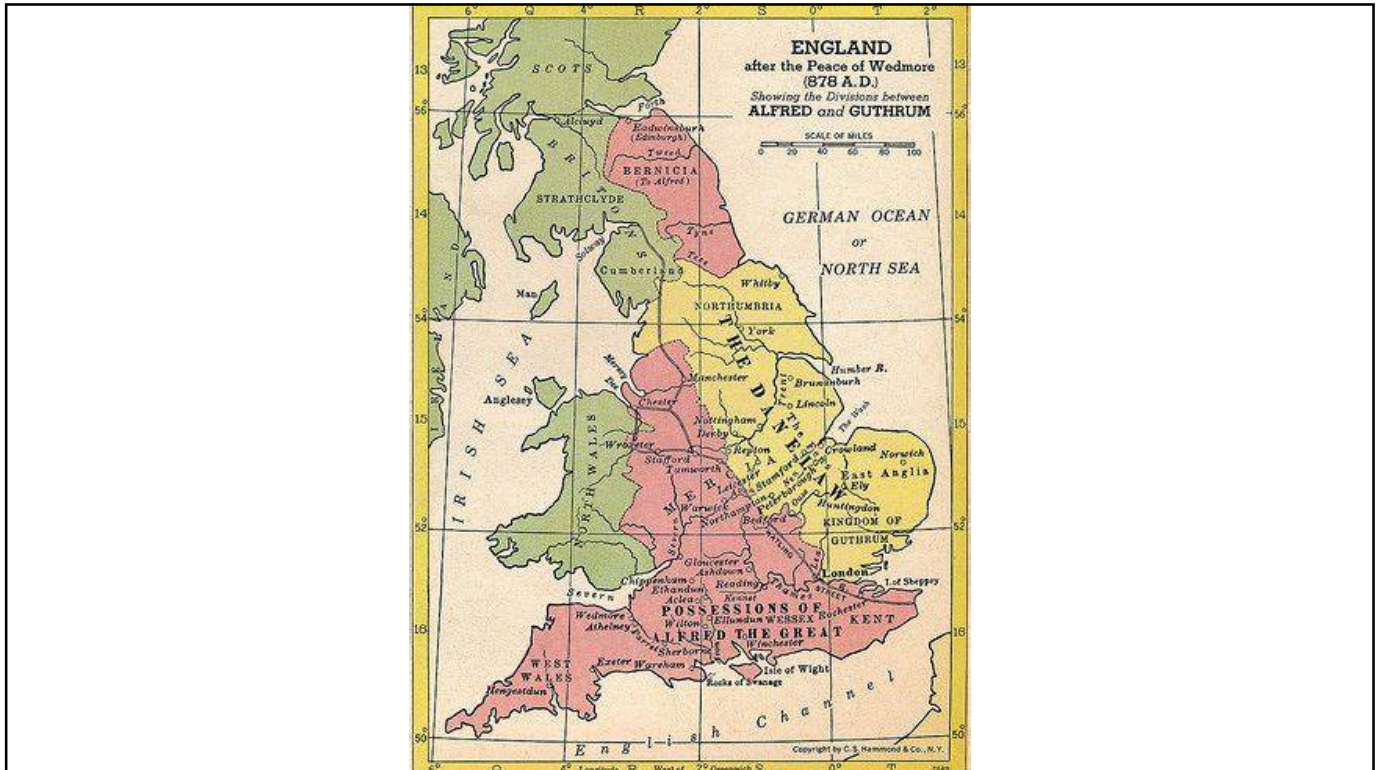
1



VWV

- Oliver Pool – partnerships specialist
- VWV – a full service law firm
- Specialists in property, employment, litigation etc
- Offices in Bristol, London, Birmingham and Watford
- Merger with Lockharts 2017
- Acted for around 2000 GP practices

2



3

Agenda

- New legal structures?
- Are you “too big to fail”?
- Last man standing clauses
- Non-GPs as partners
- Sale and lease-backs
- When do you need a lease?
- Arguments over property ownership on exit
- Probations
- Underperformance clauses



4

New legal structures

- LLPs - no
- Limited companies
- Employee owned trust
- Personal guarantees



5

Too big to fail?

- Costs on winding up – redundancies and premises
- Only a risk if there's a dispersal
- Could the LHB disperse your list?
- If not – shout about it!



6

Last man standing clauses

- Deed can say that when partner retires, others have choice of buying out as usual OR refusing to carry on alone, and winding up practice, sharing the costs.

BUT

- Reduces risk (a bit) for youngest partner, but spreads risk and uncertainty more widely.
- Could actually precipitate collapse – get out while the going's good
- Maybe the last partner could have turned it round?
- Is bearing a half of the cost, rather than all the cost, that much protection?



7

Non-GP partners

- At least one partner must be a GP
- No limit on how many non-GP partners you can have
- No reason a PM can't go into partnership and hold GMS contract
- Negotiation of profit share. Fixed shares?
- Voting?
- Tweaks to Partnership deed needed



8

Is it better to own or to lease?

New partners often prefer leasehold practices. Are they right?

- Lease = contract to pay rent for the term (whether or not rental reimbursement is paid)
- Worst case scenario – practice dissolves, no RR but still have to pay rent
- NHSE/the CCG have no duty to step in

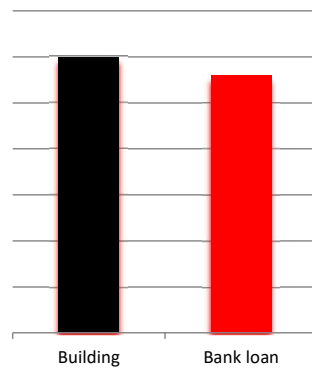
Put younger GPs right about this!



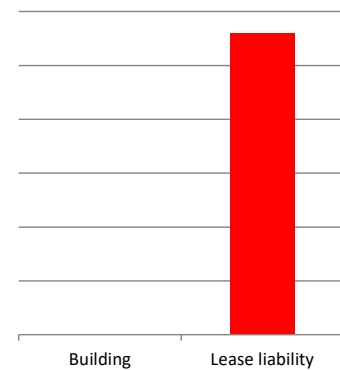
9

A reimbursed lease is still a liability

Freehold



Leasehold



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10

Sale and leasebacks

What if the partners don't want to own the building any more?

IMPORTANT: why a lease creates extra value

- Who gets that added value? Who takes the extra risk?
- If all the partners are property owners – no problem
- What about non-property owners? Will they sign lease?
- What about retired partners? Will they can uplift in value?
- Lots to argue about! Particularly on merger.



11



Sale and leaseback case study

- 2 partners do S&L (at height of market)
- Advice not taken
- 25 year lease
- 2 years later – partners come to retire, look to be taken over
- Incoming practice doesn't want to take on 23-lease – risk without incentive.
- Becomes ICB's problem (this is in England)
- ICB has to take sublease.
- Example of "too big to fail"? If ICB had dispersed list, ex-partners would have been in big trouble.
- 2 partners saved – but did they deserve to be..?

12



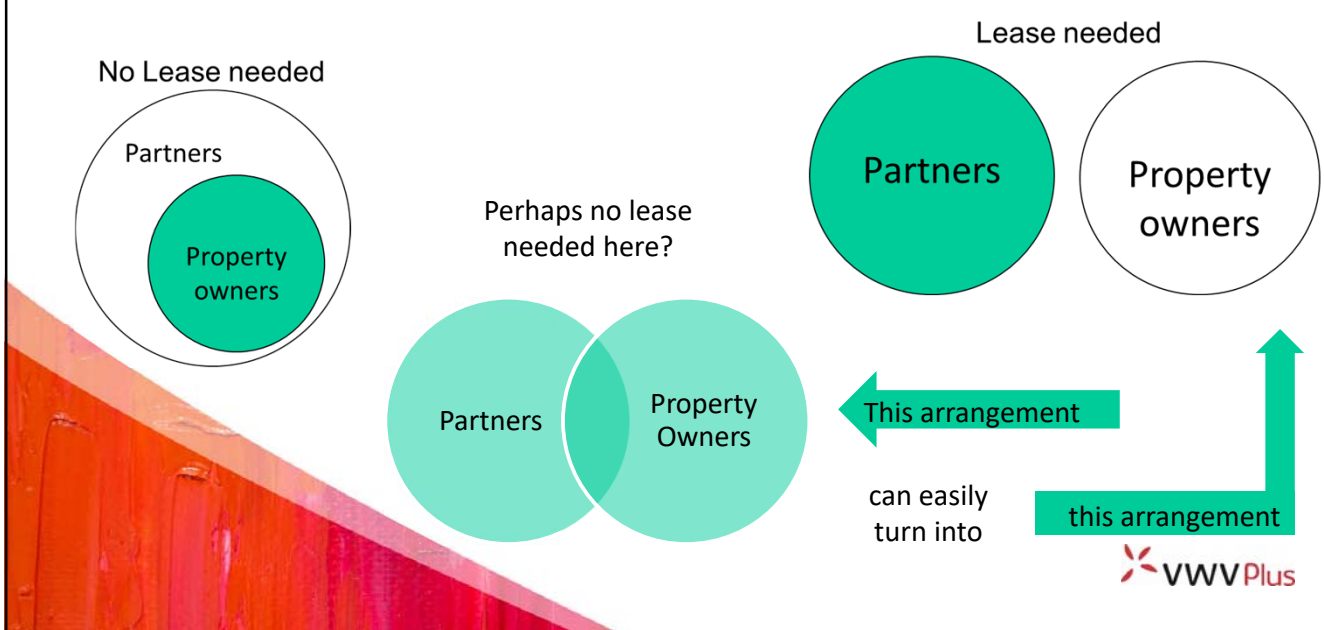
Retired property owners

Some problems of retired partners retaining ownership can include:

- Disagreements about how costs are borne
- Less tax efficient when time comes to sell
- Retired partners may veto new developments (merger etc)
- Need to get partner's signatures on things
- Land Transaction Tax on transfer out of partnership asset outside the partnership
- Breach of bank's terms
- Need a separate property ownership deed
- And a lease?

13

When do the Partners need a lease?



14

Retired owners hanging on

- Most common current dispute
- Does partnership deed oblige retired P to sell?
- Quite possibly not if you have:
 - No partnership deed
 - No binding partnership deed
 - An old deed with cross options
- If they don't have to sell, you can't impose a price
- (BUT you may be able to withhold their NR!)
- Different now that values are dropping!



15

Problems with RPOs

Problems of retired partner's retaining ownership can include:

- Resentment at "feathering retired partners next" (less common now)
- Disagreements about how costs are borne
- Less tax efficient when time comes to sell
- Retired partners may veto new developments (merger etc)
- Need to get partners signatures on things
- LTT on transfer out of partnership asset outside the partnership
- Breach of bank's terms.
- Need a separate property ownership deed – and lease?
- TRS



16

Underperformance

- Green socks clause
- Can it be challenged?
- Discrimination.
- Other clauses:
 - Ability to impose reduced sessions or stop doing outside work
- NEW underperformance clause
- All underlines importance of the partnership deed



17



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18