

# Consultant Contracting – The Critical Issues

## Contracting – Legal restraints & the Competition Act

Michael Bonehill

Solicitor, H Montlake & Co



RCOG Conference  
presentation 10.03.04

# The only four legal entities that exist

- Sole Practitioners (even if practising via Chambers)
- Partnerships
- Limited Liability Partnerships
- Limited Liability Company

nb. Chambers is not a legal entity and cannot contract



# The Competition Act

“Chapter I Prohibition”. This prohibits

“agreements between undertakings, decisions by associations of undertakings or concerted practices which :

- (a) May affect trade within the UK, and
- (b) Have as their object or effect the prevention, restriction or distortion of competition within the United Kingdom”

Chapter I applies to both formal and informal arrangements

irrespective of whether they are oral or written.



# The Competition Act

## “Chapter II Prohibition”

Chapter II of the Competition Act 1998 prohibits and conduct in a market by one or more undertakings which amount to an abuse of a dominant position, and which may affect trade in the United Kingdom.



# Sole Practitioners (whether in Chambers or not)

## Advantages

- Independence
- Liable for self only both financially and professionally.

## Disadvantages

- Chapter I Competition Act
- Lack of ability to fix prices and exchange information with colleagues
- Lack of ability to contract or be contracted with collectively



# Partnership - Advantages

- Can contract collectively for its members and can be contracted with by Medical Service Providers
- Position easier pursuant to Chapter I of the Competition Act
- More sharing of work load
- Easier succession
- Retirement provisions
- Can choose even or progressive fee and workshare and level of expertise required



# Partnership - Disadvantages

- Liability for partners financially and professionally
- Less control over patient goodwill
- Loss of autonomy and decision making
- Shared liability financially and professionally

# Limited Liability Partnerships

Generally as with partnerships, especially with regard to Chapter I of the Competition Act, but liabilities limited to the extent of funds contributed.

Additional disadvantage is the publication of financial statements which are available to third parties.



# Limited Companies

Generally advantages and disadvantages as with Partnerships and LLPs but once again accounts must be published but need not show individual consultants reimbursements.

Possible taxation advantages in connection with the sale of the company.