

# Discussing and implementing variation of contract

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**M**ost relationships between practice owners and associates will adapt over time; usually, in response to the changing commercial needs of the practice.

Last year, the BDA dealt with many enquiries from its members, both practice owners and associates, concerning adaptations to associate agreements, as the profession sought to respond to the impact of the COVID-19 pandemic. Whilst it is possible for a practice owner to impose contractual variations on notice, as a rule, changes are best made with the agreement of both parties.

### Variation of terms

Practice owners may wish to make a variety of changes to the terms of an associate agreement during its lifetime to better suit the practice's business needs. Those changes may be to the financial terms of the agreement, for example, an adjustment to the fee apportionment or Licence Fee, or to the agreement's operational provisions, such as those relating to practice opening hours.

In some cases, the associate may feel able to agree to the proposed variation promptly, perhaps because it is relatively minor or represents a benefit for them. In such cases, changes can usually be affected quickly and easily. However, there will be cases where the associate considers that the proposed change is more significant or detrimental to their position, thereby requiring more detailed thought and consideration.

In circumstances where the practice owner's proposed change may, at first blush, be viewed by the associate as undesirable, effective communication between the parties will usually be key to reaching agreement.

Discussing and agreeing changes Practice owners with an eye on securing an associate's consent to a proposed variation of contractual terms, should give careful thought to the business reasons behind the change, especially if they are eager to preserve their relationship with the associate. They should arrange to meet with the associate to discuss the change, setting out the rationale behind it and providing justification where they can. Detail is important. If the variation is to be temporary, this should be confirmed. A party may be more willing to agree to a temporary adjustment to their terms as opposed to something more permanent. If the change is financial, the numbers and calculations underpinning the proposal should be clear, so that the associate can carefully consider their position.

Associates confronted with a proposal to vary their contractual terms should listen carefully to the reasons for it and take a pragmatic view where possible. This might involve assessing local market conditions and speaking to colleagues about the terms of their associate agreements to gauge the fairness or competitiveness of the variation being tabled.

Practice owners are likely to benefit from giving an associate a few days to consider the proposed change, ask questions and present an alternative view. Associateships are commercial arrangements between the individual parties to the contract, and it may be that an associate is able to negotiate an alternative or amended approach to the one proposed.

Most practice owners will be driven by the commercial and operational needs of their practice when seeking changes to the terms of any associate agreement. They will most likely be focused on the success of their business. These are important and understandable business imperatives that may persuade an associate to consent to the variation of contractual term if explained by the practice owner in an open and thorough

way. By engaging with associates carefully and sensitively on the issues, practice owners are more likely to secure the agreement they need to effect any proposed change lawfully.

### Imposing contractual changes on notice

Where practice owners are unable to obtain the consent of an associate to a variation of terms, there is an alternative way of achieving the change they wish to make. Practice owners may enforce contractual changes by serving notice to terminate the existing associate agreement and offering re-engagement on a new contract.

There are disadvantages to this approach. In associate agreements, the notice period is often three months, which can make it difficult to effect change quickly. Forcing changes through in this manner can also sour the parties' relationship, leading to other performance issues and potentially the relationship's breakdown altogether.

Where an associate does not accept re-engagement on the changed terms offered by the practice owner, their existing associate agreement will end. An associate should therefore be careful to consider whether they want to leave a practice before rejecting the new contract containing the altered terms altogether.

### Written confirmation

Whilst it is possible to vary contracts orally or through the conduct of the parties, it is usually safest to confirm any changes in writing. Indeed, most associate agreements will expressly require variation to be in writing for changes to be valid. It can be helpful in advance of discussing any proposed variation with an associate, for practice owners to prepare a written document in advance, setting out the changes they would like to agree, including a space for the associate to sign and confirm their consent to the proposed change. ♦

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