Dental Buyer’s Guide
What you need to know

Without the right expertise and experience to support you, buying a dental practice can be both complicated and stressful. We offer an all-round service that brings practical solutions to problems and aims to make transactions simple, effective and stress-free as well as catering for your specific needs.

Buying Practices
The purchase of a dental practice will not only have the usual legal issues relating to a purchase of any business but will also have its own unique issues including:

- Confirmation of the entity you wish to hold and run the practice
- If the practice has a NHS contract the practicality of having the contract transferred
- Dealing with Associate Agreements and transferring associates
- Dealing with employment issues
- If the practice is held under a lease, dealing with the issues of consent from the landlord or if it is a squat, dealing with any planning issues.
- Whether the practice is Care Quality Commission (“CQC”) compliant and if there are any conditions that need to be met.

Who will own and run the practice?
Whether you are buying as a sole practitioner or with someone else, a number of issues will be raised from the outset and each type of buyer will have its own particular features which need to be carefully considered.

When purchasing the first question that should be considered is how the practice will be owned and run. The options include:

- Sole practitioner
- As partners (where liability, profit and expenses can be shared equally)
- On an expense sharing agreement (where liability, profit and expenses are dealt with by a percentage ratio)
- A corporate body – a limited company or limited liability partnership (LLP)

There are important implications for each model. We will advise you on the options that are available and on the advantages and disadvantages of each, so you can make an informed decision as to the best way forward for your practice.

Sole practitioner
If there is a NHS contract and you are purchasing the practice as a sole practitioner you must seriously consider the implications of the Paragraph 63 and 65 of the Third Schedule of the Personal Dental Services/General Dental Services contract and the 28 day rule. This will affect your goodwill. We can advise you on the implications of the rule and how problems can be circumvented.
Partnership and Expense sharing

If you are thinking of purchasing with another dentist, you may wish to think about how you will be holding the practice and what each of your responsibilities would be.

In the event that incorporation is not something either of you wanted there are two options in going forward: a Partnership Deed or a Shared Expense Agreement.

**Partnership Deed** – this is where both parties agree that the liability, profit, expenses and goodwill are shared equally between the parties (or in agreed proportions). Each partner is jointly liable for all partnership debts and liabilities. Several considerations will need to be considered from the outset. These include what happens if a breach occurs, or if one of the partners decides to leave. We can advise and put in place an agreement between the partners, incorporating suitable clauses such as a right of first refusal, should one of the partners decide to leave, or termination clauses where there has been a significant breach of the partnership terms.

**Shared Expense Agreement (“SEA”)** – this is usually entered into where there are two distinct practices running from shared premises. Each party will retain their goodwill, profits and loss from their practice but will contribute, through the percentage of the SEA, towards the joint expenses i.e. shared premises, joint staff, shared equipment etc. The SEA should have provisions for indemnity between the parties and provisions for breach as well as covenants to ensure that if either party sells their practice in future the incoming buyer will also enter into a similar arrangement. Provisions for a joint accountant to be appointed should be incorporated into the agreement. The unique problems faced by the practices sharing the same premises for CQC purposes will need to be resolved and we can help you decide which options work for you and your practice.

Getting the right advice from the outset could solve problems which may arise in the future in respect of responsibilities and duties of each party to the other.

**Corporate bodies**

A company or LLP will need consent from the NHS Area Team (“AT”) if a NHS contract is involved at the practice. This is to ensure that the AT grants a new contract to the company or LLP and the goodwill attached to the NHS contract is not lost.

The purchasing dentist is strongly recommended to seek specialist dental solicitors. Any specialist dental lawyer should be one who is familiar with the way a dental practice works and has had dealings with the AT, as getting the wrong advice could cost your practice more than just monetary problems in the long run.

**The NHS Contract**

The decision as to how the practice is held and run by the buyers may also be influenced by whether the practice holds a NHS Contract. If the practice holds a GDS (General Dental Services) Contract we normally recommend transferring goodwill to you through a partnership.

If the practice holds a PDS (Personal Dental Services) Contract then the process is slightly more complicated and may even involve direct negotiations with the AT on the terms of any new NHS Contract.
The new NHS policy regarding authorised signatory could be suitable and we have transferred successfully transferred a number of PDS Contract through this route.

Dentists should be aware that new contract negotiations could lead to some ATs taking the opportunity to try to renegotiate the value or number of the UDA’s/UOA’s in the seller’s NHS Contract. Having an experienced dental solicitor involved in the active negotiations of the NHS contract from the outset can assist in any negotiations and help secure more favourable terms for the buyer.

We can also offer practical advice on how to best approach the AT to achieve the most effective outcome for your practice.

**Associate Agreements**
Associate contracts do not automatically transfer on the purchase of a practice. We can help you avoid losing valuable associates and protect the practice’s goodwill by negotiating and inserting conditions in the sale contract. This will ensure that any vital and profitable associate enters into a new associate contract with you on the purchase of the practice.

**Other employment issues**
We ensure that all due diligence checks are carried out prior to exchange of contracts to make sure that the TUPE regulations are followed and that all staff have written contracts and are registered with the relevant bodies. For example, all dental nurses must be registered with the General Dental Council (GDC) or enrolled on an accredited training course.

We will advise you on the terms and conditions of the employment contracts of all staff currently within the practice and give advice on your duties with the relevant transferring staff.

**Warranties and Indemnities**
Warranties and indemnities are a complex and important factor when buying a practice, but can lead to extensive negotiations in the sale contract. Having the right specialist dental solicitor from the beginning will mean that you can be confident that your needs have been identified and protected. We negotiate and ensure that the sale contract includes warranties catered specifically for your practice on all matters including accounts, employees, property, equipment and intellectual property.

The seller will have been required to maintain registration with the Care Quality Commission. We can draft the necessary clauses to ensure that your position is protected from the consequences of any past breaches CQC registration requirements.

**Property and Finance Issues**
Any practice purchase will involve property. If you are buying a squat (i.e. an empty property) we can advise you on the terms of the freehold or, if it is a new lease, we can negotiate the terms of the new lease directly with the landlord as well as help with any planning application.
If you are taking on an existing lease we will advise you on the terms of the lease including: the rent review provisions, whether the lease has the right to renew at the end of term as well as the obligations for repair, redecoration and insurance. We will also deal and negotiate terms with the landlord to transfer the existing lease to you.

If required, we can also put you in touch with specialist lenders dealing with healthcare transactions. If you are borrowing to finance your practice purchase we can act for the lender and deal with the lender’s security requirements to ensure that they are met and that the purchase is completed smoothly and without delay.

**Care Quality Commission (“CQC”)**
Since 1st April 2011 all dental practices must all be registered with the CQC. We can advise you on registration requirements and guide you through the process.

If you are buying an existing practice, we will also ensure that the sale contract incorporates clauses to protect you against any past breaches or registration requirements by the seller, and ensure that the sale is conditional upon your new practice (and you) being registered with the CQC.

**Due Diligence**
A purchase of a dental practice requires due diligence to make sure that you buy what you were expecting, with no nasty surprises. It means carrying out checks and asking the right questions. We can provide you with the reassurance that due diligence and searches will be carried out against both the property side of the transaction and also the business side including the dental practice itself.

**Conclusion**
Buying a dental practice is complicated. Not only does it involve acquiring the business and the premises, but you also need to be reassured that regulatory requirements have been met. By providing specialist dental advice from the outset, we can give that reassurance and offer you a service to make the process as smooth and stress-free as possible, and tailored to your specific business needs.
Contact
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