



Buying and Selling a Dental Practice – the legal process

Part 1: Introduction



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Buying a dental practice may be the most important financial decision and perhaps the largest financial commitment you will ever make. Selling the practice may be the culmination of many years of hard work and the proceeds may be the basis of a plan for a comfortable retirement.

Whether buying or selling, the process can be straightforward or complicated, lengthy or quick, stressful but rarely stress free. You will have to deal regularly or even daily (or from minute to minute as completion nears) during certain phases of the transaction with accountants, solicitors, agents and your seller or purchaser and their advisors.

A knowledge of the process, the reasons why certain activities are undertaken and why they are important, the benefits of carrying out the transaction correctly, obtaining good advice and an awareness of the potential consequences if certain matters are neglected or omitted, can really help make the transaction and, for a buyer, the ongoing financial success of the new practice a success.

From a lawyer's point of view, working with a client – a dentist who is keen to understand or has a basic knowledge of the process and necessary requirements, and who seeks advice and uses the advice in decision-making, makes the team-effort all the more successful.

Over the next few months, I will explore a number of the key legal issues and options to consider when selling or buying a practice – whether private, NHS or mixed – describe the main legal phases of a transaction and outline the pitfalls that must be avoided and the benefits that may be obtained.

Seeking your first practice purchase and considering the most advantageous structure, constitution and business model to be used (sole practitioner, partnership, limited liability partnership (LLP) or limited company) or valuing and marketing your practice to obtain your prospective purchaser right through to completion day and beyond may take months and I hope to explain the processes and decisions that a buyer or seller will have to undergo.

I will discuss the main phases of the legal process, what they include and why. For example:

- Practice Structure and business model – sole practitioner, partnership or corporate? What are these and what are the advantages and differences?
- The 'Heads of Terms' – obtaining agreement on the basics of the proposed transaction, ensuring confidentiality and obtaining costs protection.
- Due Diligence, financial and legal – answering the questions of the potential purchaser or investigating the target practice, assessing financial viability, prospects and the potential risks.
- Transfer of Goodwill – the clients, private, practice plan or NHS. Including the difficult and often controversial issues and options connected with the transfer of NHS contracts (GDS and PDS).
- Transfer of Assets and Property – the intellectual property, the brand, the equipment, stock and of course the freehold or leasehold premises.
- Employees and Associates – the effect and application of "TUPE", the actual or potential claims of former employees and the transfer or novation of Performer/ Associate agreements.

- Funding the Purchase – how? What will the bank's requirements be?
- Obtaining protection from liability in the future by negotiating the provisions of the Sale and Purchase Agreement. For example:

Warranties and Disclosures – why are they so important?

Retentions of the purchase price to meet the potential costs of rectifying defective dental work and agreeing an earn-out to compensate the buyer for the potential loss of goodwill.

Getting certain parts of the transaction wrong can lead to an abortive transaction, wasted costs, a delayed retirement, the reduction in the sale price obtained or potentially crippling future liabilities.

Getting it right can provide financial reassurance, a solid basis on which to start and continue your new business, getting a better deal by minimising the purchase price to increase the potential growth of your investment or maximising the sale price for your retirement.

Your point of view of course differs depending on whether you are selling or buying. But in each position, getting it right can make a huge financial difference.

I look forward to the next few months and hope you find this series of articles helpful. Please feel free to contact me if you have any questions.

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