

Keeping out of danger

Nick Hancock and **Damien Charlton** advise on legal pitfalls in dental partnerships.

If you own your own dental practice, or are looking to join others in ownership, the structure you choose is very important, not only from a liability point of view, but also for taxation purposes. Nowadays there are many different structures:

- sole trader

- a partnership, where two or more individuals trade together and share profits
- joint expense arrangement
- limited liability partnerships (LLPs)
- limited companies.

This article concentrates on a potential problem with partnerships.

LLPs and limited companies are subject to different rules and this article does not apply to them.

Many dentists think it is acceptable to go into business with their spouse as their partner. Unfortunately, if the spouse is not a General Dental Council (GDC) registrant, this may be illegal.

The Dentists Act 1984 is the governing legislation, and under that act it states "an individual who is not a registered dentist or a registered medical practitioner shall not carry on the business of dentistry unless he was engaged in carrying on the business of dentistry on July 21, 1955, and any individual who contravenes this section shall be liable on summary conviction to a fine not exceeding the fifth level on the standard scale". The Dentists Act defines 'carrying on the business of dentistry' as receiving



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Payment for services rendered in the course of the practice of dentistry, either directly or through an employee or a partnership of which the relevant individual is a member.

For example, you might have a situation where one of the spouses is a registered dentist, and the other works within the practice, perhaps as the practice manager. It would seem quite legitimate from a tax point of view for a non-registered spouse performing a practice manager role, and indeed assisting running the business, to be in a formal partnership for HMRC purposes. But if this is the case, and the practice manager is not on a GDC register, the two of them could not, in many cases, legally join in partnership together.

The only exception is when the practice holds a general dental services (GDS) contract. The National Health Service Act 2006 permits certain non-GDC registrants (including a GDS practice employee) to enter a GDS contract. The Dentists Act specifically states that receiving income under a GDS contract is not deemed, for the purposes of that act, to be carrying on the business of dentistry. So, it is possible for a GDC registrant holding a GDS contract to form a partnership with a non-registered spouse provided the spouse is employed by the practice immediately before the partnership is formed or they otherwise satisfy the criteria for entering a GDS contract.

It is essential that the partnership formed for the purposes of the GDS contract is kept separate from any

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private work carried out by the practice because it is only receipt of income under a GDS contract that falls within the exception to the definition of 'the business of dentistry'. This means (amongst other things) keeping separate sets of accounts and ensuring that the non-GDC registrant does not receive any income from the non-GDS parts of the practice. It is worth noting that recent amendments to the Dentists' Act (which, at the time of writing, are not yet in force) will include personal dental services (PDS) agreements within the exception so that partnerships can also be formed for the purposes of work carried out under a PDS agreement provided that the spouse satisfies the relevant criteria for holding a PDS agreement.

So what should you do if you think you may be in one of these 'illegal partnerships'? You should take legal advice and also speak to your accountant, but we would, generally speaking, suggest that you immediately cease conducting your business as a partnership. Assuming the partnership has otherwise been constituted in an appropriate and normal way, and has been held out as such, for example, by having joint bank accounts, invoices in the name of the partnership, and so on, HMRC may take the view that taxes have been appropriately paid, but it is not guaranteed that this will be

the case. You should check with your accountant that this is the case.

You will also need to notify patients, employees, suppliers and other people with whom the partnership has had dealings that the practice is no longer a partnership and remove the spouse's name from all signs, stationery and the practice website. You should ensure that all registrations (for example with the information commissioner and the Care Quality Commission) are amended to reflect that the practice is no longer a partnership. We would also advise that you inform the GDC. It is possible that the GDC may take action, although we are not aware of this having been done in previous situations.

If a partnership which holds an NHS contract ceases, or if the partners change, you must ensure that the PCT is notified and in the case of a PDS agreement that their consent is obtained to the changes. Failure to do this could result in the contract being terminated.

The registered dentist should continue to trade in a different format. This could be as a sole trader, a limited liability partnership or as a limited company, which is quite popular nowadays. It is important you seek expert financial and legal advice to ensure that the structure you choose complies with the complex rules and regulations which govern the practice of dentistry.