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Policy on NHS incorporation still unfair and ambiguous despite important victory by Northampton dentists

NASDAL offers NHS England free drafting advice to help iron out postcode lottery on NHS practice incorporation guidance

Two Northampton dentists have successfully challenged NHS England's guidance relating to incorporation of their NHS contracts. Alan Suggett, a dental accountant and partner in UNW LLP and Ray Goodman, founder of Goodman Grant solicitors, both congratulate the dentists and their barrister on their success in achieving changes to their contracts.

However, they say that the guidance remains unfair and ambiguous and they are offering to help NHS England redraft the guidance to remove the postcode lottery on incorporation.

NHS England had granted the dentists' applications to incorporate but required them to sign and agree to terms which they felt were unreasonable. This included a commitment to guarantee the performance of the NHS contract in perpetuity.

After their barrister took steps to issue proceedings, NHS England agreed to vary the terms of its deed of novation and guarantee. If the dentists sell their dental practices, they will not be liable for the performance of the contract.

Alan Suggett pointed out: "Whilst it is great news that NHS England have set a precedent by agreeing not to insist on onerous guarantees in these cases, there are still other ambiguous and sometimes unfair aspects of the NHS England practice incorporation policy."

He continued: "Regrettably the Policy guidance notes issued in April 2014 by NHS England are unclear. In some areas, Local Area Teams (LATs) are agreeing to very favourable incorporation terms but other LATs are interpreting

the Policy guidelines much more onerously.”

The specific areas which require clarification and consistent interpretation are in relation to:

- who can be shareholders of the limited company
- “transfer of control” clauses (ie what happens when the practice owners wish to sell their shares).

Ray Goodman commented: “Draconian restrictions imposed by some LATS on transferring the shares after incorporation could render a practice un-saleable. It’s therefore essential that before incorporating dentists take appropriate advice from experienced dental lawyers and accountants.”

Alan and Ray feel so strongly about the issue, they are prepared to redraft the Policy guidelines for free. “We could make sure that the interests of commissioners are protected, whilst fair and technically unambiguous rules are set out.”

Ray’s last word was on getting the right advice from the right people: “Whilst many dentists are being advised to incorporate, the majority are not taking specialist legal advice and the incorporations are, in many cases, flawed which may lead to major problems in the future.”

Note to editors

Summary of the successful legal challenge against NHS England by two dentists:

<http://www.sunilabeyewickreme.com/#!NHS-England-settles-incorporation-Judicial-Review-/c72j/7475632E-3015-4ED2-9C38-A5557A8EA4B4>

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