



Selling and buying a dental practice

Whether you are buying or selling, you need to prepare for the transaction and enter into it with your eyes wide open. The best preparation is to have the support of knowledgeable advisors. A specialist lawyer is particularly recommended. NASDAL lawyers understand what is required and will guide you on what you need to have in place before you embark on either a sale or a purchase.

Selling

Before you select a specialist dental practice sales agent, you should start collecting together the information that the purchaser will request. This will be part of their due diligence exercise. In most cases, you will need to put together a ring binder full of information about the practice, the staff and its equipment and any insurance or other certificates. For instance: practice leases, staffing expenses, PAYE records, rateable value, energy performance certificates, asbestos audits, X-ray test certificates, building regulations, staff inoculations. The list is long.

A second key point that requires early preparation is to ensure that if your property is leasehold, you are offering a sufficient term to the purchaser. Banks will not assist the purchaser if the remaining leasehold term is less than ten years and ideally it should be considerably more. If only a few years remain, at the earliest stage, possibly well before going to a sales agent, you need to be talking to your landlord about agreeing an extension to the lease.

Buying

If you are thinking of buying, apart from arranging funding, there are probably two particular points which require attention and the first is a point that needs to be looked at at the earliest possible moment.

Since the 1 April 2011 a service provider of a regulated activity has to register before carrying out the activity with the Care Quality Commission. Undertaking a regulated activity without registration is a criminal offence that can attract a fine of up to £50,000. Fifteen activities are listed but those most relevant to dentists are:

1. The treatment of disease, disorder or injury;
2. Diagnostic and screening procedures;

3. Surgical procedures.

Registration has to be effected in respect of each activity. The difficulty is that registration can take a period of up to 120 days and when a purchaser has found a practice, albeit that there may still be sometime before an exchange of contracts, the purchaser should put in a registration application. Once this has happened, it is also crucial that the purchaser keeps in touch with the CQC assessor and seller so that the progress of the application can be followed. Tying in the end of the registration process with the completion of the purchase is a complicated area and one where your specialist dental lawyer will be advising you and your funders.

A second key area where your specialist lawyer will be looking to advise is ensuring that if the practice is NHS that the seller's GDS contract or PDS agreement is passed over to you, in its advertised form, at the time of completion. Different arrangements apply to the two types of contract but particularly with PDS agreements, PCTs often on a proposed transfer take the opportunity of trying to re-negotiate more advantageous terms.

One final point that requires some thought at an early stage is the extent to which you would wish the vendor to be precluded from practising in the area where you are purchasing. It may be that in some cases vendors remain on with the practice as a salaried associate for a short period of time but, generally speaking, purchasers will want to have them well off the scene and not trying to attract the goodwill of patients, thereby diminishing the expensive goodwill that you have paid for. Some lenders also require this as a term of their loan offer.

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