

## DENTAL PRACTICE OWNERSHIP STRUCTURES - ARE YOU CONFUSED?

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Until 2006, an article about dental practice ownership structures would have been very short, as it wasn't possible to operate using a "Corporate Body". Actually, that's not quite true as in the 1950's a very small number of limited companies (approximately 30) were allowed to operate dental practices. However, let's ignore this anomaly!

Before 2006, dental practices operated as:

- sole trader
- partnership
- expense sharing arrangement (which is in effect, several sole traders working alongside each other)

The change of the law in 2006 allowed dental businesses to operate using a "Dental Body Corporate" ("DBC").

What are DBCs? As this isn't an article for accountants and lawyers, we won't cover the full range of possibilities; virtually all DBC are either:

- limited company
- unlimited company
- limited liability partnership (LLP)

Most dentists who have moved to a DBC structure have done so for tax reasons. This is different to the wider world of commerce where the most common reason for using a body corporate is risk protection.

Historically, dental businesses have been very profitable, and not subject to significant risk, whereas other types of business typically aren't so profitable, and are subject to trading risk (of going bust!). Therefore, as LLPs have the same tax status as normal partnerships, they have not been widely adopted in the dental sector.

They are simply partnerships with limited liability for the owners.

Limited (and unlimited) companies have a different tax structure, which can lead to substantial tax savings, and therefore became increasingly popular following the 2006 change. So much so that HMRC introduced changes to the tax rules in 2014 and 2015 making incorporated businesses less and less attractive (not specifically targeted at dental businesses, but nonetheless impacting on them significantly).

The only difference between limited and unlimited companies is as implied by the name – limited companies limit the liability of the owners, unlimited companies do not. In return for owners of unlimited companies accepting full liability, the companies do not have to publish any financial information on public record at Companies House (unlike limited companies).

Experience has shown that the complications of limited companies are not well understood: this is a brief summary of the key roles:

**Directors** – every limited company must have at least one director, but can have more. In the case of dental limited companies, the composition of the board of directors is subject to GDC rules. At least 50% of the board must be GDC registrants (not just dentists). Equality of GDC registrants with lay people IS acceptable (it is a common misconception that GDC registrants must be a majority).

**Shareholders** – most dental limited companies are limited by shares (it is possible

for a company to be limited by guarantee, but this isn't common, so isn't discussed here). At least one share must be issued, but it is usual to have more. It usually doesn't make sense for dental limited companies (other than the large corporates) to have any more than a few shares issued (say, 100, or less, ordinary shares).

By way of contrast with the GDC rules about directors, anyone can own shares. It is possible for 100% of the share capital of a dental limited company to be owned by lay people.

Directors and shareholders are often the same people, but they do not need to be.

By spreading ownership of shares, for example between the dentist and his/her spouse, it is possible to also spread profits drawn from the company, hence reducing the tax charge when compared to a sole trader. This latter point is important by way of contrast with an unincorporated practice.

A dentist who operates, say, as a sole trader, might wish to split profits with his/her spouse in the same way as an incorporated dentist can. One way of doing this for non-dentists would be to create a partnership with the spouse – but, for dentists, this is illegal! The Dentists Act 1984 prohibits non GDC registrants from operating a dental business (even alongside a GDC registrant).

This last point perhaps needs emphasising - any GDC registrant can operate a dental business, not just dentists (although dental practices operated by non-dentists are still relatively uncommon).

Taking all of the above into account, many dental business owners would like to operate through a limited company, but there can be significant problems where NHS contracts are involved. NHS England has issued Policy Guidelines to Local Area Trusts (LATs) about NHS incorporations. As a consequence of the NHS England Guidelines, it can be impossible, or inadvisable for NHS contract holders to incorporate.

The main problem in the NHS England incorporation Policy is the requirement for the contract holder at the time of incorporation to guarantee the performance of the contract **forever(!)** Fair and logical during the period of time that the contract holding dentist remains involved with the limited company, but the guarantee is not transferrable to another GDC registrant on sale/retirement of the original contract holder. So, NHS England requires the original dentist to remain fully liable, even though there are new owners of the limited company - this is both unfair and unreasonable!

There are some other Policy stipulations, mainly with regard to transferring shares, but in practice these obstacles are irritating, but usually not enough to make incorporation inadvisable.

There is no logic in the NHS England restrictive and onerous Policy Guidelines, the protection which NHS England rightly needs could be achieved in alternative ways. Unfortunately, despite pressure from NASDAL, it has not proved possible even to get into constructive discussions with NHS England about this important topic.

The above situation has led to the evolution of what might be termed "Hybrid" structures, with, for example, NHS contracts remaining in an unincorporated entity (sole trader or partnership) and Private fees

being incorporated, or the use of a limited company to carry out "Subcontracting" services for the NHS contract holder.

Hybrid structures are not without their problems as there is a risk of:

- 1) breaching the NHS contract
- 2) losing NHS Pension benefits for the dentists working in the practice
- 3) creating VAT problems (Yes, VAT! Even though dental businesses usually aren't subject to VAT)
- 4) making the hybrid practice more difficult to sell when the owners wish to retire

Here are some illustrations of problems NASDAL members have encountered when taking on new dentist clients:

- 1) **Unexpected VAT** - a dentist had set up a subcontract limited company to carry out dental services in relation to the NHS contract he held in his name. He didn't change the employee contracts; employees remained employed by him in a sole trader capacity, although they performed work for the limited company. The recharge from him to the limited company of the wages is subject to VAT.
- 2) **Dentists excluded from the NHS Superannuation scheme** - a dentist who was aware of the above employee VAT problem, transferred the employee contracts from his name into the limited company - a wise move. He then continued this theme by changing the associate contracts into the name of the limited company (in both instances with the agreement of the employees/associates). Excellent, he thought, the contractual arrangements were now correctly set, and no VAT problems would arise.

However, he had inadvertently excluded all of the dentists from the NHS Superannuation Scheme! The rule is that dentists can only be members of the NHS Pension Scheme if they are engaged by the legal entity which is the NHS contract holder. As the subcontract limited company was not the contract holder, the problem arose.

In summary – the whole area of dental practice ownership structures is a potential minefield. NASDAL accountants and lawyers frequently come across flawed structures. Unfortunately, dentally inexperienced advisers often create structures with the best of intentions (usually with the aim of saving dentists tax), but fall foul of dental rules.

Often, with the help of a dentally experienced adviser, it can be possible to create a tax efficient and dentally compliant structure, but sometimes, regrettably, it isn't.

Advice must be taken from advisers who not only are competent to advise on general tax and legal aspects, but also understand the weird and wonderful rules, regulations and policy guidelines of the Dentists Act, GDC, NHS (nationally and locally), NHS Pensions, and the CQC.

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## ILLEGAL WHITENING DOES NOT PAY!

### LONDON WOMAN ORDERED TO PAY £2,000

A woman from London has been ordered to pay more than £2,000 after pleading guilty to illegal tooth whitening, following a prosecution brought by the General Dental Council (GDC).

Jamie Farebrother appeared at Westminster Magistrates' Court on Wednesday 18th January to face a charge under the Dentists Act 1984. After pleading guilty, Ms Farebrother was fined £500 by the court, as well as being ordered to pay £1,031 in costs to the GDC and a further £500 in compensation to the victim – a total of £2,031.

The charge relates to an incident on 6 April 2016, where Ms Farebrother provided tooth whitening treatment to an individual at Split Endz in Surrey Quays, south east London, despite not being a trained dental professional. The individual immediately experienced discomfort and 'shooting pains' during the treatment and suffered with inflamed gums for a week afterwards.

### BROMLEY WOMAN RECEIVES CONDITIONAL DISCHARGE

Carly Maunsell from Penge, South London has been given a 2-year conditional discharge after pleading guilty to illegal tooth whitening after a prosecution by the General Dental Council (GDC).

She entered a guilty plea for a charge under the Dentists Act, during an appearance at Bromley Magistrates' Court on Friday 27 January 2017. She was sentenced to a two-year conditional discharge and ordered to pay a £20 victim surcharge as well as a contribution to the GDC costs of £1,200.

This relates to an offence recorded on 14 August 2016, where Ms Maunsell – despite not being a registered dental professional nor with any training – offered to provide tooth whitening at the So Be Beauty Salon on Central Parade in Penge. The GDC decided to investigate after three warning letters to the salon were ignored and services continued to be illegally provided.