

Tales from the front line

Chris Davies gives cautionary advice regarding the purchasing process.

I am constantly being asked by dentists and others involved in the dental sector what they should look out for when buying or selling a practice, so here are a few real life scenarios that I have faced over the last few months.

What's in a name?

We were recently instructed by husband and wife dentists who wanted to acquire an NHS practice in their sole names from another dentist who practised in his sole name.

We were told at the outset that Mr X was registered at the GDC in his name but that Mrs X was registered as a dentist in her maiden name, Miss Y. This is not an uncommon situation



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as lots of dentists retain their maiden name for professional practice.

The seller, Mr X and Miss Y decided to deal with their CQC registration themselves but unfortunately (and unbeknown to us) Miss Y couldn't produce, to an acceptable level, identity in her maiden name to the CQC and therefore it was decided to make the new partnership application in the name of the Seller and Mr and Mrs X.

Maybe you can see what is coming – just before completion it was brought to our attention that the name of the CQC application was Mr and Mrs X and not Mr X and Miss Y. Anticipating a problem with NHS England on the variation of the GDS contract, we asked for a certified copy of their marriage certificate which clearly set out Miss Y's maiden name and married name. We duly submitted this with the variation for the NHS contract notice requesting the creation of a partnership in the names of the seller Mr X and Mrs X.

Despite the fact that a certified copy marriage certificate was supplied to them, NHS England would not issue a variation notice despite accepting (over the

telephone) that this was one and the same person! With only a very short time before we were due to complete something had to be resolved. Luckily, Mrs X found some comfort with the GDC and thankfully they agreed to change Miss Y's registration into the name of Mrs X which then satisfied NHS England and we completed.

You may think that this is a ridiculous situation and should not happen but unfortunately, in practice, these hiccups are often sent to try us and we do





seem to spend time dealing with issues which are really non-legal.

So, the moral of this tale is to make sure you make your CQC application and your variation notice in the correct names.

Sellers warranties

In any every dental transaction the seller will be asked to give the buyer warranties to ensure the practice is safe to buy.

The warranties in any agreement can go on for pages and pages and at the end you will see a 'de minimis' clause. This not only the limits the time within which the buyer can bring a claim for breach of warranty (usually 12-18 months) but will also say that each specific claim should be over a certain amount and that the claim(s) must be over a higher amount – for example, each claim must be over £750 and the cumulative total over the warranty period should be over £5,000, thus avoiding frivolous claims.

We have recently seen a situation where some six months after

completion, a buyer approached us to start a breach of warranty claim as several pieces of equipment had ceased to work at the practice and needed to be replaced. It satisfied the de minimis criteria but unfortunately we had to explain to him that as the equipment was working at the time of completion and that the seller had confirmed in his replies to enquiries that the equipment was “nearing the end of its natural life” then he wouldn't be able to bring a warranty claim or if he did then it was not likely to be successful. Obviously, this was not what our client wanted to hear and he recited the situation where he had bought a washing machine recently which was defective and had to be replaced by the shop that sold it to him.

We had to explain to the buyer this was a consumer warranty and no such protection exists for dentists when they acquire a dental practice's equipment and that they were fundamentally different things. The buyer reluctantly accepted the position. ➡

©Property leases from third party landlords

Those of you who have bought and sold a practice in the last few years will know that the procedure is getting more and more complex. In no particular order, any solicitor has to deal not only with his opposite number but also with the dentist's bank, accountant, an agent, CQC, and the NHS to name but a few.

A complicated picture then, but increasingly buyers (particularly first-time buyers) are no longer able to afford to buy a busy dental practice and the practice premises. We have seen situations where the practice and the premises are in separate ownership which results in us having to deal with another solicitor, who acts for the landlord, who is often remote from the practice sale and purchase. That landlord may also have a lender who will invariably need to consent to the surrender of the old lease and the grant of a new lease.

You often find that as the landlord and the buyer have no relationship, landlords often try to vary the new lease terms to suit themselves and also seek to increase the rent, in some instances substantially.

I would point out that all these issues can be resolved in time, but the addition of a separate landlord and their solicitor/lender can often delay a deal. Unfortunately, we had one case recently where the practice sale was ready to go in four months but it took us seven months to complete due to the prevarications of the landlord and his solicitor.

The following is a recent case regarding dilapidations of a dental practice.

We were acting for a buyer who was asked to take a new lease from a third-party landlord. The existing lease which was held by the seller had a full repairing obligation and the landlord insisted on the buyers having an identical new lease. I suggested to my client that he should get a building surveyor to look at the premises to make sure that it is in A1 condition, as at the end of the term of their new lease

the landlord could insist that the property being handed back the same way.

The building surveyor confirmed that the building was in good condition but not "A1 condition". Consequently, my client went back to the seller advising him of this and it was agreed that rather than the seller doing the works to bring the practice into repair before completion that the buyers would have a reduction in the price.

The figures in this particular case were relatively small (£2,500) but it acts as a cautionary tale for buyers where the practice has a full repairing lease.

How much?

You may be aware that the regulation of stamp duty has been devolved in Wales and is now referred to as Land Transaction Tax (LTT). Whether it is stamp duty in England or LTT in Wales, buyers will pay a certain amount of duty when buying a practice where the purchase price for the premises element is above a certain threshold.

What isn't really understood is that stamp duty/LTT is also payable when you take a lease of a premises. The calculation is roughly the length of term of the lease multiplied by the initial rent and if that figure takes you over the threshold then stamp duty is payable. Often in small practices there is little or no duty to pay but I have dealt with some transactions where the lease and the term are substantial and thousands of pounds worth of additional stamp duty is payable on completion. This is often not thought about by the dentist in their initial calculations when buying a practice.

This was indeed the case recently where I had to explain to a client that he had to fund an additional £2,000 in stamp duty/LTT for taking a new lease. Unfortunately, it didn't end there for this particular client as the seller was a company and the buyer was acquiring the shares in the company that owned the practice. The sale price was in excess of £1m so unfortunately for this client stamp duty/LTT was payable at 0.5 per cent, in other words, over £5,000!