

Incorporating, selling or buying a dental practice? Talk to us...

Introduction

At Hempsons, we have a dedicated national team which provides legal advice to dental practitioners on specialist corporate and commercial matters. Working closely with our regulatory team (which consists of dual qualified dentists / lawyers), we provide expert advice on:

- Incorporating a dental practice and setting up a dental body corporate
- The sale and purchase of dental practices.

Incorporation of a practice

This involves setting up a company, commonly referred to as a dental body corporate (DBC) and transferring the assets of your practice to the DBC.

A DBC forms a separate legal entity. Accordingly, it is the DBC (and not individuals) that enters into contracts and remains liable for them. Unlike traditional partnerships where the partners are jointly and severally liable on a personal basis, a DBC provides shelter from liabilities and this is its principal advantage.

Under the Dentists Act, a DBC has to be constituted in a certain way. We can advise you on that so that you don't fall foul of the legislation. Further, use of the word 'dental' in a company is restricted and requires consent from the General Dental Council. We can help you to obtain that consent.

We provide the following specialist services in this area:

- Setting up a company
- Drafting a Practice Incorporation Agreement to transfer the assets of your practice to the DBC
- Advice on TUPE (the Transfer of Undertakings (Protection of Employment) Regulations) to transfer staff to your DBC
- Transfer of NHS Contracts to your DBC
- Shareholders agreement
- Bespoke Articles of Association (your DBC's constitution)
- Company secretarial services



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Selling or purchasing a practice

Our expertise in the GDS and PDS Regulations, the Dentists Act and other relevant healthcare legislation, together with our corporate law expertise, will ensure that your sale or purchase is structured in a robust manner.

Regardless of whether you are selling or buying, we will work with you every step of the way, protecting your interests and completing the transaction in a cost effective and timely way.

We can help you to navigate the following key issues:

- **NHS contracts** – how will the NHS contract(s) be transferred from seller to buyer? This is a particularly difficult issue when it comes to PDS Contracts.
- **CQC** – as part of the sale process, both buyer and seller need to complete a number of CQC forms to change the CQC registration at the practice. It can often take up to 3 months for the registration process to be completed. You will need to factor that into the timing of your sale/purchase.
- **Deposit** – should the buyer be required to pay a deposit? When should this be paid and will it be refundable in certain circumstances, e.g. if the seller pulls out of the sale?
- **Purchase price structure** – will the seller be paid the purchase price in one lump sum on completion or will part of the purchase price be deferred and contingent on the practice achieving certain levels of profit in the future?
- **Employees** – how will employees transfer to the buyer? Will TUPE apply?
- **Associates** – will the buyer be taking on the associates at the practice? As a buyer, have you looked at the agreements entered into with the associates? Are they appropriate for your needs or will you require new associate agreements to be put in place? Further, will the seller be retained at the practice as an associate upon completion?
- **Premises** – does the seller own the freehold of the practice premises? If so, will the freehold be sold to the buyer or will the seller grant the buyer a lease of the premises? If the seller does not own the premises but has a lease, will that lease be assigned to the buyer? Has the landlord of the practice premises agreed to the assignment?
- **Security** – are the seller's practice premises or assets subject to any security arrangements with third parties (e.g. banks) which need to be discharged before completion of the sale? If so, how will they be discharged?

“Hempsons have recently dealt with my practice sale and I am pleased to recommend them. They have been thorough and friendly and reply to every question promptly and diligently.”

Dr John B Mayhew, Director,
Bruce Mayhew Dentistry
Limited
(Hempsons acted for
Dr Mayhew in the sale of his
dental practice)

“Chris Morris is head of the professional regulatory group, and is dual qualified in dentistry and the law. Interviewees note that ‘the quality of his work is excellent’ and he is ‘very knowledgeable.’ ‘He is one of the best in the country for this sort of work,’ said one.”

Chambers UK 2014

- **Restrictive covenants** – if you are a buyer, how will you prevent the seller from poaching staff and setting up another dental practice in the local area?
- **Bank funding** – as a buyer, if you are seeking funding from a bank, what are the bank's lending and security requirements?

How does the sale and purchase process work?

The ownership structure of the practice to be sold is likely to dictate the exact process and the documents required. If the practice has been incorporated as a DBC, there are two options:

Option 1: Business sale – a sale of the key assets of the practice and transfer of staff (under TUPE) to the Buyer; or

Option 2: Share sale – a sale of the shares in the DBC to the Buyer.

With Option 1, a change in the ownership of the assets of the dental practice occurs. With Option 2, the dental practice continues to be owned by the DBC. However, it is ownership of the DBC which transfers to the buyer.

If the practice has not been incorporated as a DBC, the sale will be structured under Option 1 – as a business sale.

You will need tax and accountancy advice to ensure that you choose the most tax efficient and financially sound option for you. If need be, we can recommend specialist dental accountants and tax advisors.

Regardless of the type of sale, the following is a guide to the key stages in the sale and purchase of a dental/orthodontic practice:

Stage 1: Heads of Terms

This document summarises the main terms that the parties have agreed during initial negotiations. Buyers often insist on an exclusivity clause (to restrict the seller from dealing with other potential purchasers for a certain period of time) and a costs contribution clause (to compensate the buyer if the seller pulls out of the sale). The inclusion of such provisions is usually down to the bargaining power of the parties. The seller also needs a confidentiality clause to ensure that confidential information disclosed to the buyer during the sale process is kept confidential. The confidentiality exclusivity and cost contribution provisions are legally binding but the remainder of the Heads of Terms are not.

“Hempsons not only has a comprehensive team of experts in every field of dentistry but I really did feel that I was kept fully and quickly informed at all stages of the legal processes involved. I felt very well supported at all times and that they were really battling strongly on my side. I really cannot recommend them highly enough. Worth every single penny and more!”

Dr David Sackwild, London

“They're really good at meeting our preferences, they keep us informed and they're brilliant at getting back to you. Their client relations are outstanding.”

Chambers UK

Stage 2: CQC Forms

As soon as the Heads of Terms have been signed, both seller and buyer need to complete their CQC forms and submit them to the CQC. Both parties may also require DBS checks before the forms can be submitted. The forms required will depend on the nature of the transaction.

Stage 3: Due diligence

This is the information gathering process carried out by the buyer to find out as much as possible about the practice. This process helps the buyer to identify any potential problems early in the sale process.

Stage 4: Transferring the practice's NHS contract(s)

An important part of the transaction is transferring the seller's dental contract(s) with the Area Team/LHB to the buyer. There are various options for transferring the dental contract(s) and these will need to be discussed between the parties and the Area Team/LHB and reflected in the Sale and Purchase Agreement ('SPA').

Stage 5: Negotiation of the sale and purchase agreement

The SPA is the key document recording the terms agreed for the sale and purchase of the practice and it will need to be negotiated by the solicitors acting for the seller and the buyer.

In addition to the SPA, other ancillary agreements will be required, for example, to sell or lease the practice premises and to transfer the NHS contract(s) to the buyer.

Stage 6: Exchange of the SPA

Once the parties have agreed the terms of the SPA, they will sign and date the SPA and exchange it. At this point, the parties become bound to complete the sale on the terms of the SPA once any conditions have been satisfied. The conditions are normally the transfer of the NHS dental contract(s) and the change in CQC registration.

Stage 7: Completion of the sale

Once the conditions in the SPA have been satisfied, completion will take place and it is at this stage that legal title will pass to the buyer and the purchase price will be paid to the seller.

Contact us

If you would like to talk to us about any of the above matters, or arrange an initial meeting / telephone discussion at no cost in order to discuss your requirements please contact:

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“ Hempsons assisted me in the sale of my dental practice to my associate so that I could retire. They structured the sale agreement to tie in with CQC registration changes and the transfer of my GDS contract to my associate. They made sure my interests were protected throughout and they provided very useful advice.”

Dr H Malik, London
(Hempsons acted for Dr Malik in the sale of his dental practice to his associate).

“ The Hempsons corporate dental team have a very in-depth knowledge and experience of the dental profession, both general dental and specialist dental services in the UK. This makes them ideal for providing specialist legal dental services.”

Dr H Patel, Ortho 2008 Limited
(Hempsons acted for Dr Patel in the sale of his DBC for a multi-million pound consideration)

