

Purchasing problems

You're bound to encounter problems when buying a dental practice, but there are ways of dealing with them. Solicitor Chris Pomfret explains..

The urge to buy a dental practice, particularly a good one, continues unabated, and if you have been looking around for some time, you will know that you are competing against a large number of other like-minded dentists. In your quest to find the practice of your dreams, you will no doubt have a clear idea about the type of practice you want, how much you can afford and your ideal location. When you have agreed to buy the practice which is right for you, it can come as a surprise when problems, which you had not thought about come to light, and at best delay, at worst frustrate your intentions.

As Solicitors who specialise in the sale and purchase of dental practices, we know only too well that there are problems to be overcome in a high percentage of cases. You should first prepare yourself therefore for the possibility that the transaction may take longer than expected. If you are an associate working in another practice, you should not give notice to bring your associate contract to an end until you have exchanged contracts, otherwise you could find yourself without an income, and still waiting for the purchase to happen.

If you have chosen to buy an NHS practice, or a mixed practice with an NHS element, you will be aware that the contract with the PCT, whether it is a GDS Contract or a PDS Contract, will need to be transferred into your name. The PCT may not be agreeable to this, and if they are either unco-operative or non-committal about their decision, an alternative method of ownership transfer will be necessary to be used to circumvent this difficulty. It has come to be known as the "partnership method", but this is only available to individual practitioners, and cannot be used where a company is either the seller or the buyer. Having to use this method can extend the period for buying a practice by several weeks.

Buying a leasehold property can be more complicated than a freehold. The length of the lease will need to be considered, and whether it can be renewed. It may be that the remaining number of years is unacceptable to your bank and the lease will need to be extended. Landlords consent to assign the lease will be required and they may require you to pay a rent deposit or provide a guarantor. The title may be defective, or there may be a

breach of a restrictive covenant. In either case, it would be necessary to take out an insurance policy to cover the defect or the breach to protect you against a possible claim.

It is not unusual to discover that the surgery premises do not have the necessary planning permission. A dental practice may have been started in a ground floor room of a residential property for which planning consent was obtained at the time. Over the years the practice has grown and extended into other parts of the building, but the need to obtain permission for this has been forgotten. It may not be possible to rectify this. It would be unwise to notify the local authority by requesting retrospective consent in case the council were to refuse, and seek to enforce closure of the parts, which do not have consent. The only option is again to take out an insurance policy to provide compensation in the event of closure.

There may be staffing issues, which need to be resolved. It is now incumbent upon the seller to provide full and detailed information on all members of staff before the practice is handed over. An employee may have a claim against the practice for unfair dismissal. The seller must inform the staff and consult with them over the implications of the sale and give them sufficient time to raise any concerns they may have. Failure to do this could give rise to a substantial fine.

It is important to check that the practice has complied with all the regulations concerning health and safety. The dental equipment must have current maintenance certificates. These can often be overlooked but the Seller will need to renew them if they have expired. You will not be advised to buy the practice until everything has been checked and is in order.

Problems are an everyday occurrence and we all have to deal with them. You should not be surprised then to find there are problems with your practice of choice. Having a solicitor acting for you who knows how to deal with them, and how best to protect you against any problems arising in the future, is therefore all important. Call us if you would like to discuss your proposed purchase in more detail.

About the author

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