Part 2: Business Structures

Which business structure should I choose?

Buying and Selling a Dental Practice

1. Practicing as a Sole Practitioner
   - This well established and tested business structure is particularly popular for partially or wholly NHS based practices (with practitioners holding either GDS or PDS contracts). This popularity is potentially more to do with the reluctance of PCT’s to issue NHS contracts to Companies and LLP’s (and to deal with them generally) than to the desire of the practitioner. Therefore it is rare that an NHS practice is sold to anything other than a sole practitioner or a partnership.
   - Running a practice as a sole practitioner does have its advantages. A sole practitioner has total personal control over the practice including the recruitment and employment of staff, the sourcing of dental supplies, potential property decisions and of course the registration and treatment of patients. This control affords the practitioner a certain amount of flexibility in their dealings.
   - This total control however comes at a price. A sole practitioner has to take personal economic responsibility for any liabilities incurred in the running of the practice including patient complaints, supply contracts and any rental payments. It must be understood that this means that personal assets are therefore at stake when practicing as a sole practitioner. As such, anyone who uses this business structure will find that adequate insurance is essential for peace of mind and for responsible dental practicing.
   - One of the key factors that any purchaser will have to consider is how their method of running the practice impacts their tax burden. This business structure is taxed as the personal income of the sole practitioner. Certain tax advantages are not therefore available compared to those afforded to a Limited Company. Any tax advice should be obtained from your own accountant.

2. Expense-sharing arrangement
   - This business structure is essentially an extension of the sole practitioner model to two or more sole practitioners. The idea behind this is that two separate sole practitioners effectively band together to share key expenses whilst maintaining their individual status in both legal and patient matters.
   - The most common instances of expense-sharing arrangements occur where two or more dental practitioners both hold an NHS contract, thereby earning their own income, but spreading the cost of renting premises or employing staff.
   - In order for an expense-sharing arrangement to work effectively and without dispute it is essential that an agreement is made between the practitioners. An agreement would need to address any possible issues or disputes that could arise in the future; for example what expenses are they actually contributing to or what should occur upon the retirement of one of the practitioners. A successful expense-sharing practice ultimately maintains a sole practitioner’s individual status whilst helping to spread the considerable expenses of running a dental practice.
   - Caution must be taken in an expense-sharing arrangement to ensure that agreement between the practitioners does not constitute a partnership. This may occur if it is seen as though the practitioners are working together with a view to making a profit. As discussed further below, this would result in the practitioners potentially being responsible for each other’s liabilities not just their own or shared liabilities.

3. Partnership
   - In order for a partnership to exist there must be two or more people working together with a view to making a profit. This is achieved in a dental context by two or more dental practitioners working together in a practice whereby profits, expenses and assets are shared, although not necessary in equal amounts.
   - From a tax perspective each partner is taxed on their personal income from his share of the partnership. As such the tax position is very similar to that of a sole practitioner.
   - The most significant characteristic and disadvantage of a partnership is that the partners in the practice are “joint and severally liable”. This means that each individual partner is potentially responsible for the actions and liabilities of the other partners. Each partner can potentially enter into contracts with third parties which bind the partnership without the other partner’s knowledge. A particularly drastic example of this responsibility would be where one partner absconds after incurring heavy debts for the practice resulting in the remaining practitioner being liable to pay these debts alone.
   - In order to try and minimise the potential risks of practicing as a partnership it is essential that a formal written partnership agreement is created. This agreement acts to give structure and rules to the partnership on a wide range of potential issues ranging from entering into contracts with third parties to an agreement to indemnify each other for losses incurred by one partner acting without the authority of the other partner(s).
   - Although there are statutory regulations that govern partnerships they do not often meet the requirements of individual partnerships and can often act contrary to the intention of the partners. For example statutory provisions state that, in the absence of any agreement, the partnership will end when a partner retires which could cause major issues for the continuing partner(s) who have worked together to establish the partnership’s goodwill. Therefore entering into a written partnership is...
the only advisable method of minimising risk and ensuring that individual requirements are met and are binding on all parties.

The partnership structure plays an essential role in any transaction involving a GDS contract as it is the only method of effectively transferring a GDS contract from a seller to a purchaser. Therefore even a sole practitioner purchasing a practice with a GDS contract will, albeit for a very short period, act in partnership with the seller and as such a partnership agreement should be entered into to meet the needs of both parties to a transaction.

A Limited Company is owned by shareholders and run by directors and in the case of dental practices they are often one and the same. A Limited Company is a very different business structure from those above for one specific reason: a Limited Company has a separate legal identity to that of its directors or shareholders.

This separate legal identity serves to, as the name suggests, limit the liability of the shareholders and directors. Therefore instead of the dental practitioner’s personal assets being at risk it is the Company’s assets that are at risk thereby affording greater comfort to dental practice owner(s). More specifically a shareholder’s personal liability for the debts of the Company, upon liquidation, is limited to the amount paid or unpaid on the shares they own in the Company. In the context of a dental practice shares are usually issued for only £1 with each shareholder having 1 share thereby limiting their liability to £1.

In the majority of transactions a purchaser will require a bank loan. The bank will, especially with newly incorporated companies, require a personal guarantee from the purchaser that they will meet the payments if not met by the Company. A personal guarantee will effectively neutralise the key benefit of the Limited Company business structure.

The purchase of a dental practice by a Limited Company is a relatively recent phenomenon created by ‘dental bodies corporate’ becoming eligible to hold GDS at a lower rate compared to that of a sole practitioner’s personal liability structures such as Companies and LLP’s may prevent, or heavily deter, a purchaser from using these structures.

For example a PCT’s reluctance to engage with limited liability structures such as Companies and LLP’s may prevent, or heavily deter, a purchaser from using these structures, relying instead on more trusted routes such as a sole practitioner. Either way the purchaser’s decision will potentially have dramatic repercussions on the transaction as well as the future of their practice and as such advice should be sought on a case by case basis.

Limited Liability Partnership (LLP)

An LLP is in essence a hybrid of the Company and Partnership structures and shares characteristics with both. Like a Company, an LLP has a separate legal identity, however it consists of members rather than directors and shareholders. As it has a separate legal identity the members’ liability is limited to their investment in the LLP. It is the members who both own and run the LLP.

In the past it has been incredibly difficult for purchasers of practices with a GDS contract to use the LLP structure.

This is often due to the PCT’s reluctance to deal with business structures that limit the purchaser’s personal liability thereby limiting the PCT’s ability to effectively enforce any breaches by the dental practitioner.

However the Health and Social Care Act 2012 will, when it comes into force, widen the potential for the LLP structure to be used by prospective purchasers.

An LLP will be eligible to enter into a GDS contract as long as at least one member is a dental practitioner and that the practitioner has the power (either individually or in conjunction with another member) to ensure that the LLP’s affairs are conducted in accordance with their wishes. The LLP business structure could therefore become both more available and more fashionable in the future especially with the increase in popularity of the LLP format. The LLP may also allow a dental practitioner to enter into an LLP with a number of different health professionals (e.g. GPs or opticians).

It is interesting to note that the Health and Social Care Act 2012 specifically differentiates between Companies and LLP’s. The precedent set in the Pressed case should prevent a PCT from arguing that they are unable to transfer a GDS contract to a Company or LLP as long as certain control conditions are met. Therefore there is a hope that the Health and Social Care Act 2012 and the Pressed case may help to persuade PCT’s that there is no reasonable way of refusing any longer to deal with these business structures.