Due diligence is a vital stage of the transaction that can effectively dictate how the transaction will proceed and on what terms the sale and purchase agreement (SPA) is drafted, negotiated and agreed. The importance of due diligence stems from its objectives which are:

1. **For the buyer (and their advisors) to fully assess the practice from a legal and financial perspective to verify the value of the practice. This includes investigating the financial viability of the business through investigation of accounts and an assessment of any potential legal liabilities that the buyer may incur purchasing the practice.**

Due diligence will look very different depending on which side of the transaction you are on and as such the following is a breakdown for both parties on what they should be aware of at this stage.

2. **To use the information obtained from the initial phase of the due diligence process to negotiate the terms of the sale. This may include using the information disclosed to renegotiate the sale price, agree a retention or to draft warranties/indemnities to protect the buyer. Due diligence will also form part of the disclosure process at exchange of contracts where the parties agree what documents the seller has disclosed to the buyer for the purpose of possible warranty breaches after completion.**

3. **Your main objective for the due diligence process is to explore every last possible avenue of enquiry to determine whether there are issues with the practice that affect its value, or whether the purchase will result in you incurring any legal or financial liabilities.**

Your solicitor will send out a questionnaire, which will often be in a standard format but adapted to any relevant individual circumstances. The answers provided will allow you and your solicitor to ask further supplementary enquiries to probe gaps in the seller’s answers or to clarify vague or confusing responses.

Through this process you will be able to gain a much clearer picture of the practice. Below are a few examples of areas that require enquiry:

- **Equipment**
  - It is important that you get confirmation of what is included and excluded from the sale. Although an inventory of included and excluded items may well already have been provided at the heads of terms stage.
  - Is the equipment in good condition? You do not want to be having to replace expensive machinery after a few months in the practice.
  - Is any of the equipment leased or subject to a hire-purchase arrangement? If they are it is important to look at the conditions and length of the lease as it may not be advantageous for the contract to be assigned to you. You may need to request that the seller redeems the hire purchase asset as it is part of the value of the practice.

- **The Practice**
  - Is the practice compliant with all necessary statutory requirements (CQC, HTM01/05 etc)? You do not want to be held responsible for any breaches of compliance regulations and therefore will want to ensure that any issues are remedied prior to completion and/or receive a full indemnity.

- **Goodwill**
  - What are the seller’s plans once you have completed? If the seller intends on setting up a new practice in the vicinity then the goodwill you purchased could be affected.

- **Financial Information**
  - What are the terms of the GDS contract? Have there been any written variations? You need to make sure that any variations are in writing, as under clause 287 of a GDS contract, no variation is binding unless made in writing and signed by both the PCT and the contractor.

- **Employees**
  - On what terms are any employees employed? For example rates of pay, holiday allowance and sick pay entitlement. These terms can obviously effect the day to day operating of the practice and its profitability.

- **Other issues include**
  - How many patients does the practice currently have?
  - Is the practice subject to any complaints or legal proceedings? You will want to see any associate agreements to check terms such as notice periods etc.

- **Compliance**
  - Are there any associates or self employed persons working at the practice? You will want to see any associate agreements to check terms such as notice periods etc.

- **Other issues include**
  - Are there any charges affecting the practice? For example you will want to ensure that the seller discharges any mortgage over the property after completion.

- **Financial Information**
  - Does the practice make as much profit as advertised? You may well need the advice of an accountant to ensure that the practice is trading as expected.

- **Financial Information**
  - Are there any charges affecting the practice? For example you will want to ensure that the seller discharges any mortgage over the property after completion.
The property
Your solicitor should also issue Commercial Property Standard Enquiries (CPSE) which may include the following:

- What are the boundaries of the practice property? What areas would you be responsible for maintaining e.g. fences? You will want to ensure that the practice includes all areas that you expected and are informed of all maintenance obligations.

- Does the seller enjoy exclusive occupation of the practice and/or the building? There may be a separate residential element that could be subject to third party rights such as a lease.

- Does anyone else have rights over the practice property? For example does a neighbouring property have an easement to park in the practice car park?

- Does the property benefit from having rights over other properties? For example has the practice been granted an easement allowing you and/or your patients to park in their car park?

- Is conducting a dental practice a permitted use of the property (i.e. Class D1)? You do not want to find that the Local Planning Authority issue you with an enforcement notice after completion preventing you from using the practice as intended.

- If purchasing the practice on a leasehold basis there are even more enquiries that will need to be made. For example who is responsible for insurance, how much is the rent, are there any rent review clauses, what is the term of the lease and does the lease benefit from security of tenure?

Depending on the answers and documentation provided your solicitor may need to negotiate warranties or indemnities to protect your position.

SELLER

As a seller you can do a lot to help reduce delays in the transaction by being prepared for due diligence questions. It is recommended that anyone who is putting their practice on the market immediately begins compiling the documents and information that will certainly be requested by the buyer. Even the most organised person may find that this takes a great deal of time and effort.

The format of the enquiries will depend on the buyer’s solicitor but most dental specialists will have a pre-designed questionnaire. You should ensure that you tell the truth in your answers however be aware that you do not have to ‘volunteer’ information that is not specifically asked of you.

Although the buyer will request other documents and ask a number of other questions, here are some of the key areas and documents that will most likely be requested:

1. Equipment
- An inventory of all fixtures, fittings, equipment etc included in the sale as well as a list of all items specifically excluded from the sale.
- A list of any equipment that is subject to a hire-purchase or lease agreement. Documentation for any equipment that this applies to will also be requested including possible redemption statements.
- Copies of any maintenance contracts and inspection certificates especially for compressors, autoclaves and x-ray equipment.

2. The Practice
- Evidence of Data Protection registration.
- Evidence of CQC registration including all correspondance, certificates and the original application made.
- A copy of the Practice’s Health and Safety policy.

3. Suppliers
- Details of all contracts including those relating to clinical waste disposal and advertising.
- Details of all commercial contracts that you anticipate will be taken over by the buyer on completion.

4. Goodwill
- Where will you be practicing as a dental practitioner after completion?
- Provide a copy of any GDS or PDS contract relating to the practice.
- Provide copies of BSA schedules, vital signs reports, mid-year reviews, any breach/remedial notices, variations and any correspondence.

5. Financial Information
- Provide signed accounts for the Practice for the last 3 years.
- Copies of all mortgages and charges that affect the practice.

6. Employees
- Provide copies of contracts of employment for all employees.
- Details of holiday allowance remaining, sick leave taken, disciplinary record etc.
- Details of any unlawful or unfair dismissal claims.
- Details of PAYE and NI contributions paid.
- Provide copies of vaccination records.
- Provide copies of GDC registration certificates.

7. Other issues include
- Provide a list of all current patients (redacted to comply with data protection regulations).
- Confirm details of any complaints or any matters that might lead to a complaint/investigation.
- Approximate value of stock.

8. The property
As well as these enquiries you will also probably be asked to complete property related enquiries which may include:

- Providing a plan of the extent of the property.
- Confirming who is in actual occupation of the property.
- Do any other properties enjoy rights over the practice property e.g. any easements or covenants?
- Does the property enjoy rights over other neighbouring land?
- Confirmation that the permitted use of the property includes that of a dental surgery.

You should always remember that your solicitor will be able to assist you if you are either unsure of what the enquiry relates to or how to answer it.

You should also be aware that the buyer will almost certainly need to follow up the answers you have given with supplementary enquiries.