

A spotlight on associates and hygienists

Luke Moore continues his series of considering potential pitfalls of practice sales and acquisitions.



As a major source of income for any dental practice, ensuring everything is in



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order with associates and dental hygienists in the business is crucial. Any complications or grey areas can be particularly problematic when it comes to selling or buying a practice, as these individuals can have a significant impact on current and future profits and capacity. While there are many possible obstacles to overcome, this article will focus on those most commonly faced in dentistry today.

Employed versus self-employed

There has recently been a lot of conversation over the potential

discrepancies in contracts relating to associates. The same contentions exist for dental hygienists as they meet some of the criteria for both employed and self-employed status. However, you should bear in mind that if the status was ever in question, then HMRC would more likely find them to be an employee if they didn't meet all the criteria for self-employment. By way of example, hygienists are often paid guaranteed hourly rates and remain in the practice for a prescribed number of hours ➔

Each week, so although they may work for different practices, they most likely wouldn't meet HMRC's criteria for self-employment.

If dental hygienists or the powers that be decide they are employed by the practice, then the principal at the time would owe national insurance contributions (NICs) and tax for that individual for up to seven years. Similarly, staff would be entitled to all the rights that an employed status brings, including paid holiday and pension contributions. The situation would be the same for an associate without a contract who claimed they were employed, even if the principal believed they were not. The importance of ensuring every single member of staff in the practice has an up-to-date contract cannot be stressed enough when preparing to sell or buy.

Restrictive covenants

Regarding contracts, it's vital that all members of staff are subjected to carefully written restrictive covenants. These protect the business from an individual leaving and setting up shop right next door, but they are only effective when drafted correctly. The clauses have to be reasonable for both parties in order to be enforceable; otherwise they can quite easily be argued and thrown out by a good legal team. This includes the physical distance from the existing

practice that a new business could be established or worked in, as well as the length of time after leaving that someone could work within this area. Collaborating with an expert in the field when drawing up staff contracts is therefore a good idea when completing due diligence in preparation for a practice sale or acquisition. Some principals mistakenly believe there is a 'fairness test' applied by the court whereby if the restriction is too wide – say 20 miles – then the court can re-write the contract to five miles. This is not the case. The clause either works in its entirety or doesn't work at all, meaning that a dentist could setup next door if their restrictive covenant is deemed too wide.

UDA underperformance

Where a practice is underperforming on its NHS contract, a buyer could seek to postpone completion until they know if a breach notice will be issued. If it is, a buyer may request a reduction in price. As such, it is beneficial for vendors to take on locum professionals or open longer hours in order to pick up the slack if there is any risk of not meeting NHS contract targets. The objective is to avoid underperformance wherever possible in the lead up to and during a practice sale. Working with a company, for example like Dental Elite, can provide the vendor with

access to sales support, as well as quick and efficient recruitment of locums.

Associates

Most principals will keep the sale of their practice private until the final stages of the transaction. However, an existing associate may sometimes reveal that they would have wished to buy the practice, though it will usually be too late by this point. Whether this is a serious offer or not, a disgruntled associate leaving at a late stage in the transaction could jeopardise the sale – especially in a small, private practice. It is advisable to seek the support of appropriate experts in such situations in order to mitigate the potential problems. Usually, if a new associate can be recruited fairly quickly, the sale will still go through. It is crucial to replace them quickly, though, and not believe that because completion is only a month or two away, that it can be left for the buyer to deal with. Even at the very latest stages, a buyer can still pull out – the sale is not done until it is done.

The small print

Many of the above potential pitfalls can be avoided by simply ensuring that contracts with associates and dental hygienists are present and correct. Any other issues need to be dealt with swiftly to facilitate a smooth sale process.

BDA says age discrimination remedy is needed for NHS pensions

The British Dental Association (BDA) has welcomed the Supreme Court ruling that the government has no basis to challenge earlier legal rulings that past pension reforms were age discriminatory. This ruling followed lengthy legal claims brought by firefighters and judges.

The defined benefit pension schemes for judges and firefighters closed in March 2015, and these people were transferred into a replacement scheme. Transitional provisions were put in place, which meant that older workers remained in their existing pension arrangements, whilst younger workers were forced into the new pension schemes, with higher retirement ages.

The Court of Appeal said in December that this

approach discriminated against members on the grounds of age in relation to changes to their pension.

The BDA has previously contacted the Department of Health and Social Care outlining our view that identical reforms in the NHS were discriminatory and in need of remedy.

Paul Blaylock, chair of the British Dental Association's Pensions Committee, said, "This is an important verdict for all public sector workers. We have been clear with Government that we expect a fair and consistent solution to be applied across all public service pensions. We look forward to working with them to achieve this."