Bespoke solutions

One size does not fit all when it comes to working out which business structure is best for a particular practice, as Clive Lawrence explains.

There are now several business structures under which dentists can practice. The first point to make, very clearly, is that no one solution is best for every practice. All an advisor can or should do is work with their clients and their other relevant advisors to find the solution that best delivers the requirements of that practice.

The considerations are frequently complicated and involve weighing the pros and cons. The purpose of this article is to give an outline of some of the principal considerations that arise in coming to the right decision. These are guidelines only and specific advice on the individual circumstances is necessary in each case. But what are the options?

Sole tradership - Here a dentist will simply trade on his or her own account in a familiar manner. He or she is liable for all the debts and liabilities of the practice, including any uninsured loss, without limit. There is therefore no protection for the individual dentist from commercial or liability risks. For the individual dentist from himself or herself, therefore giving some protection against commercial and uninsured claims.

This does not mean that it will eliminate every liability arising against the individual. Exceptions to the ‘shield’ it provides may arise if, for instance, a dentist does not fulfil their statutory duties as a director. In addition, where banks or other creditors take security from the dentist for the liabilities of the company, it avoids limited liability working in relation to the debt.

The disadvantages of this can arise from the extent of disclosure, which is required by the regulations governing the filing of accounts and other information relating to the business, including earnings levels, with which some professionals are uncomfortable.

A limited company is taxed at Corporation Tax rates on its profits and the dentist’s earnings from it are taxed again, either under PAYE for salary or as dividends where applicable. Depending on both the dentist’s individual circumstances and their levels of earnings, this can be used to create tax advantages or can cause tax disadvantages. Tax advice therefore is a necessary component of any decision to incorporate as a limited company.

Dentists working together

Expense sharing - This is the ‘standard’ business structure that is put in place to organise the practice of dentists who work together in the physical sense of the partnership. It differs conceptually from a formal partnership, allowing less flexibility and the ability of the same nature as that which exists in an expense-sharing arrangement.

Advantages of an expense-sharing agreement include the flexibility that is available to a group of dentists to differentiate between their respective contributions and earnings. Essentially, each dentist remains independent and in control of his or her own practice.

Exit routes for practitioner’s however, are difficult, in that most expense-sharing arrangements will restrict its participants from freely leaving and taking their practice with them, and so will give an option to the other participants to purchase the practice from the departing partner. That can lead to a difficult exercise in balancing the rights and expectations of both the leaving and the remaining partners.

Partnership - An orthodox ‘unlimited’ partnership operates largely like an expense-sharing arrangement in practice, but proceeds on the clear understanding that all participants are involved in the same business. In that way, it differs conceptually from an expense-sharing arrangement. There is more sharing of information, responsibility and accountability between partners.

In a partnership which is not a Limited Liability Partnership, the partners have unlimited liability of the same nature as that which exists in an expense-sharing arrangement.

A formal partnership format allows less flexibility and outright self-determination to the practitioners in it than an expense-sharing arrangement; however, procedures on exit can be greatly simplified as a
Limited company - Dentists can choose to practice together in a limited company. The benefits, and downsides, are similar to those discussed above in the context of the sole practitioner. When more than one dentist is involved in a company, they would usually enter into a Shareholders Agreement taking effect between all the dentists involved, each of whom would usually be both a shareholder and a director of the company. This would deal with largely the same issues and concerns as those which would be covered in a Partnership or LLP Agreement and avoid the simple majority rule which otherwise obtains within a company from compromising the interests of individuals. That also permits the limited company to provide comparatively straightforward routes to entrance and exit for participants through the sale and purchase of shares.

A limited company can also be the best business structure where there is any mixture in ownership or business participation terms between dental professionals and people who are not dental professionals. A body corporate can conduct a dental practice so long as the majority of its directors are dental professionals, and a limited company therefore can provide a medium for diverse forms of dental business.

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About the author

Clive Lawrence joined Cohen Cramer in 2009 as a Consultant and is a key member of the firm’s dental team. He advises dentists on a broad range of options in relation to business structures, dealing with partnership arrangements, limited liability partnership (LLP) arrangements, corporate structures and the numerous connected issues that can arise. To contact Cohen Cramer solicitors, call 0113 2440597, email dental.team@cohencramer.co.uk or visit www.cohencramer.co.uk.