Most dental solicitors have seen the market for practice acquisitions remain reasonably buoyant this year despite the recession. Undoubtedly prices, driven higher by the interest of large corporates in recent years, have now peaked.

We have noticed continued acquisition activity involving the purchase of NHS practices by BDH, the owner of the Whitecross chain of surgeries. James Hull, the smaller, niche practice provider have reportedly raised funds and are now actively looking to purchase private practices. We also understand that ADP is expected to shortly re-enter the market.

Reasons for selling

We are seeing dental clients selling their practices for various reasons; not just retirement but also people who are still relatively youthful, in their late 50s or early 40s, who wish to realise their asset and either have a career break or simply work as an associate free from the day-to-day pressures of running a practice. Unfortunately, there are also a good number of clients selling for health reasons.

So what issues should practitioners be both aware of and thinking about if considering selling to one of the large corporate bodies? Here are a few pointers, although this is by no means intended to be a comprehensive list:

1. Liaise with your accountants and one of the specialist dental practice sales agents to establish how much your practice is worth. You should also seek advice on apportioning the value of the business between goodwill, equipment and the property. You should try and ensure that the value of stock is not lost in the goodwill price but paid for, at cost price, on completion.

2. Seek the advice of specialist “dentally aware” solicitors on the mechanics of getting the business transferred to the buyer – this is especially true if you have an NHS practice. Be aware that if you are behind with your UDA’s then the value of any shortfall on completion will be deducted from the purchase monies. You should also expect retention on completion in respect of patient charges that have been collected by you in advance – somewhere in the region of £5,000 per chair.

3. Be aware that the buyer’s solicitors will have extensive due diligence enquiries; all elements of the practice will be looked at with a fine toothcomb. For example it is a good idea to ensure that the practice’s clinical governance is up to date, i.e. equipment has been tested when it should have been and inspection certificates are available. Also ensure that Hepatitis B vaccinations are in date for those working at the practice. One of the factors that can cause a delay in the sale of a practice is where the client underestimates the importance of these enquiries to the buyer and does not deal with them thoroughly and quickly.

4. Consider what you want to do after the sale. Most corporate buyers are happy for the former principals to stay on as associates. If you want to move on then be aware that the buyer will want to bind you out of practicing in the locality for at least a two-year period; the extent of the area is open to negotiation. Sometimes there is very little time in between exchange of contracts and completion and if the self-employed persons do not know what is happening they run the risk of signing new paperwork that can come as something of a shock. There may also be concerns that self-employed persons may decide to leave on hearing of the sale – this could adversely affect the nature, running and value of the business.

5. If you own your premises then consider whether you want to sell the freehold or lease it to the buyer. Some dentists like to keep the premises as an income-producing asset and others prefer to make a clean break. If you want to lease the premises to the buyer then get an idea as to how much rent you can charge from a qualified chartered surveyor.

6. If you have a secured loan on the property and intend to keep the freehold then, unless you intend to repay the loan from the proceeds of sale, you will need to get your Bank on board at the relevant stage as the lender will need to consent to the transaction and approve the form of the lease.

What issues should practitioners be both aware of and thinking about if considering selling?
Consider whether local authority planning issues may be relevant. Are there any planning decisions affecting the premises? If so, it is a good idea to have the planning permissions available and to check that any conditions, which may be attached, are being complied with. If you consider the practice has scope for expansion by adding surgeries, thereby making it more marketable, it may be sensible to check that the local authority will permit this.

If you have a lease then be aware that the Buyer is likely to want a term of up to 15 years to satisfy its own Bank lending requirements. If you only have a short number of years left to run then it may be sensible to make tentative enquiries of the landlord about agreeing an extension.

Have you got a query?

Each month, Cohen Cramer will aim to answer your questions on any legal issues that are bothering you. Here's this month’s question.

Question: I have recently acquired a dental practice and discovered that a number of patients have received very poor treatment from my predecessor. I am receiving complaints from patients who are expecting me to put right work that was not done properly. They seem to think that this is at my expense and while my predecessor has offered to come in and treat disgruntled patients, I am not comfortable with him going down this route. What do you suggest I do?

Answer: Ask your solicitor to check the business sale agreement to establish whether this situation was considered and if so how it was covered. Generally speaking, you would not expect to be liable for the shortcomings of your predecessor and there may be an indemnity from the seller to you in the business sale contract, which will allow you to claim back the cost of any remedial works from the seller.

Contracts sometimes provide, particularly if there is a private patient base, for there to be a monetary retention from the sale proceeds. This money is held, for a fixed period, by one of the parties’ solicitors and released to the buyer if required to cover the cost of such works.

The contract should also be checked to establish whether provision was made for the seller to be able to examine any patients and/or treat them. Any contractual provision relating to treatment by the seller after completion is usually resisted by the purchaser’s solicitors, but it is of course only fair to allow the seller the opportunity of checking out any alleged problems – if practicalities permit.

A lot will depend on the relationship the former principal had with the patient as to whether the latter is happy for him to do any remedial works. The patient may not want this and of course you may not want the former principal associating with your patients.

‘If you consider the practice has scope for expansion by adding surgeries [...] it may be sensible to check that the local authority will permit this.’

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