A cautionary tale

Ray Goodman discusses incorporating dental practices

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and other specialist lawyers and accountants who are members of NASDAL, have over the last year or two published articles expressing concern that dentists were in some cases being advised to incorporate their practices without proper awareness of the possible downsides.

In many cases, the practices were not using specialist dental lawyers or accountants. This was leading to incorporations, which may or may not have been properly conceived, being improperly executed. The necessary documentation was not being put in place to enable challenges from HMRC to be defended robustly and to avoid problems on sale or retirement further down the line.

Inevitably, we are now beginning to see the problems caused by such incorporations raise their head increasingly more frequently. The following case, that we have just completed after 11 months of difficult legal wrangling, is a case in point.

We were instructed to act for a buyer on the purchase of an NHS practice. So far as our client knew she was buying the goodwill, fixtures and fittings in the normal way. It was only when we received information back from our due diligence enquiries that we realised the problems that flowed from the incorporation until we pointed them out.

The seller had two practices, one NHS and one private, and also a dental laboratory. All of these were transferred into the limited company on incorporation. The relevant PCT, having been persuaded to allow the principal to transfer his contract into the limited company on incorporation, was not inclined to allow any further transfer of the contract. As things stood the NHS practice both the seller and the buyer were subjected to a lengthy period of stress. The sellers were forced into a situation whereby they had to discharge all debt relating to their business, when they otherwise would not have wished to, and the legal and ancillary costs were increased significantly from what they would have been, had the practice not incorporated or been incorp- orated into a separate company from the other practice and laboratory.

As a direct result of the lack of foresight on incorporating the practice both the seller and the buyer were subjected to a lengthy period of stress. The sellers were transferred out of the company to a new company. This involved significant additional cost, time and stress. As a result of the continuing potential risks to the buyer, it was necessary for the sellers to discharge all debts of the business on completion, to have a significant proportion of the sale price held back by way of a retention against future claims, and to incur the further cost of preparing additional sets of accounts in order to ascertain the true balance sheet position on completion.

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A transfer utilising the partnership provisions often used to enable GDS Contracts to be transferred is not available where one party is a limited company, as the drafting of the GDS regulations precludes partnerships between companies and individuals.

The only strategy to enable this contract to be sold involved all of the assets in the limited company, other than the practice to be sold to our client, being

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