

Autumn 2010

law bites.

Equity and excellence: Liberating the NHS

Just two months after the Coalition Government was formed, the DOH published a White Paper. It is unlikely that the thinking behind the White Paper was completed in just over eight weeks and it must have been in development for some time. It reflects current Government thinking for the future of the NHS



Having reviewed the Paper there appears to be three main emphases: the proposed creation of local consortia of GP medical practices, the proposal to abolish PCTs and more emphasis on outcomes, supported by quality standards, not just on activity. The first will be "in shadow form" during 2011/12 and the second will no longer exist from 2013. The new dental contract will also have "an additional focus on the oral health of schoolchildren". So the wheel goes round again!

But what else is there in the White Paper that will affect dentists? Very little mention is made of the profession, but one thing is clear: "following consultation and piloting"

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(para 3.22) a new dental contract will be introduced. Our main concern is therefore that in the future this will impact on the transfer of those practices currently holding a GDS contract.

We will need to await the various consultation papers in order to establish the detail of the proposals, but one thing is clear, change is here to stay.

Providing Guidance

We are all reluctant to spend money on professional services, but the right advice at the right time can actually save you money. We offer practical guidance, coupled with commercial and professional advice.

Individual Client Service

We provide a cost effective service which matches specialist solicitors and support staff to the needs of the client. We believe in using the right person for the right job. Each commercial client has a partner or consultant with personal responsibilities for the provision of legal services by the firm.

Our aim is ...

... to provide an efficient and responsive legal service meeting the needs of commerce and the individual in today's changing world.



Chris Pomfret
a dental team
partner



Care Quality Commission

Whether or not you are thinking of buying or selling a dental practice, the registration requirements of the Care Quality Commission should be very much in your thoughts as we come closer to 1st October when registration starts, and perhaps more importantly 31st March next year after which registration is compulsory.

We have found when acting for care homes, which have already gone through the registration process, that CQC are under-resourced and therefore are taking much longer than originally anticipated to deal with applications to register.

The Regulations, and to make it more confusing there are two separate Regulations covering the registration process for dentists, require evidence that your practice meets the stated outcomes required. There are two sections covered; one relating to the quality and safety of care, and the other routine day-to-day management.

The Regulations and the required outcomes are set out in detail on the CQC website, but to collate the information necessary to demonstrate that the outcome is being achieved will take time.

Acting for buyers; we will want to either see a registration certificate, or a copy of the application for registration. If registration has not been achieved, we will need to provide in the contract that the sale is conditional upon registration. In either event we will want confirmation that the evidence is available at the surgery for inspection.

The boot is on the other foot for sellers, who will need to ensure that the information is available for their buyer.

These requirements are not going to go away; the White Paper referred to earlier make it clear that they intend "to strengthen the role of the Care Quality Commission".

For more information please contact Martyn Whiteman.



Quality delivered as standard

We value you as a client and aim to deliver a first class service at all times. To help us achieve this we have compiled this list of service standards which we will endeavour to meet at all times.

- We will act with integrity, honesty and openness in everything we do for you and will respect absolutely the confidentiality of our working relationship.
- A specific member of our staff will be responsible for your work at all times and available to answer your queries whenever possible.
- A partner or consultant of this firm will have overall responsibility for your file and may be contacted should you have a query which cannot be satisfied by the member of staff handling your case.
- We will endeavour to deal with your communications promptly and courteously. We will strive to meet agreed deadlines, or advise you well in advance if there are reasons.
- We will seek to deal with your matter in the most cost effective way, whilst maintaining our commitment to quality.

Preparing your practice for exit

Part 1 - The Practice Premises



If you are contemplating selling your practice, and the premises you occupy are leasehold, you will need to consider in advance whether the remaining term of your lease is of sufficient length to meet your purchaser's requirements.

A Dentist buying your practice will want to know that he will be able to practice from those premises for a sufficient period of time to establish himself in that location. What is a sufficient period of time depends on the individual but usually a minimum of five years is recommended. However, if your purchaser is intending to borrow from his bank or other lending source in order to raise all or part of the purchase price, his bank will usually require that the lease has at least 10 years to run. If your existing lease has less than 10 years to run, you may need to negotiate with your landlord for an extension of your existing lease or for him to grant a new lease. Not being prepared for this could seriously delay the sale of your practice or even prevent it from taking place.

We have recently been involved in two

transactions where the sale has fallen through due to the remaining term of the lease having insufficient years to run and it has not been possible to negotiate satisfactory terms with the landlord for a new lease.

At the end of the term, if the lease is protected by The Landlord and Tenant Act 1954, the tenant can request a new lease on similar terms (except for rent). The landlord is required by law to offer the tenant a new lease unless he can show one of the permitted grounds which entitle him to re possession. If a lease has not reached the end of its term, there is no obligation on the landlord to grant a new one. Even if he is prepared to offer a new lease, he can propose different terms, which may or may not be acceptable. In this way you could find that you are unable to sell your practice because your lease is too short and your landlord will not renew on acceptable terms.

We recommend that before you advertise your dental practice for sale you should speak to us.

This is one of the issues upon which we will be able to assist you.

Do contact either Chris Pomfret or Martyn Whiteman for further advice.

A specialised legal service - your introduction to our dental law team



Chris Pomfret handles the sales and purchases of dental practices. He also has wide experience in dealing with commercial property transactions, in particular those involving dental premises.



Martyn Whitemann advises on acquisitions and disposals as well as practice arrangements. Martyn is a founder member of the Association of Specialist Providers to Dentists (ASPD).



John Britten, a senior and experienced lawyer in dispute resolution advises dentists when practices need assistance and support in resolving disputes.



Richard Brown is an experienced employment lawyer drafting and advising on associate and employment contracts.



Nick Richardson is a company commercial specialist and has become involved in an increasing number of dental corporate sales or acquisitions as well as the regulatory needs of those practices.

Contact our specialists. We are here to help.

Are you discriminating against disabled persons?

The Disability Discrimination Act 1995 imposes on anyone who is providing goods, facilities or services to the public a legal duty not to discriminate on the basis of disability. This has been a cause of concern to dentists because in many cases the premises occupied by a dentist are not ideal for treating disabled persons. Many dentists have altered their premises by providing wheelchair ramps and widening doorways, and some have arranged an alternative method of providing the service. The question is whether this is enough to comply with the Act.

The obligation under the Act is to take reasonable steps to remove or alter a physical barrier which makes it unreasonably difficult for disabled persons to make use of the facilities or to obtain the benefit of the service provided.

In a recent case, the Court ruled that where other non-disabled members of the public have physical access to the service in question, in that case it was banking facilities, it is not sufficient to claim that disabled persons can be provided with alternative methods of making those banking services available, for example at other branches.



Could this ruling be extended to apply to dentists?

This case may have a major bearing in future as to what sort of premises are suitable for providing dental services, and more importantly which are not.

For further advice contact the rhw Dental Team on 01483 302000

Help your Solicitor - and save your costs

As your solicitors, we are there to help you, but we also need your help.

Your input is an essential element for dealing with your matter quickly and efficiently. We are aware that you are busy practitioners and your time is therefore limited, but we will need to contact you regularly for all sorts of reasons.

These are some of the things you can do to help:-

- Let us have a secure telephone number, perhaps your mobile, your personal email address, and tell us when is the best time of day to contact you.
- Prepare all relevant information in

advance. Put together in a file or ring binder copies of all your staff contracts, agreements and equipment certificates.

- Prepare an inventory of the equipment you are selling.
- Make sure that you have a set of up to date accounts.

A meeting with us can be very beneficial and will often save time in the long run.

If you wish to discuss the sale of your practice, please contact Martyn Whiteman on 01483 540540 or Chris Pomfret on 01483 540546.

14-16 October - We will be attending **Dental Showcase**. Do call if you would like to meet up to discuss anything.



In particular we can help you with:

- Practice purchase
- Practice disposals
- Property matters
- Employment disputes
- Employment contracts
- Associate contracts
- Expense sharing agreements
- Retirement
- Dispute resolution
- Debt recovery
- Professional matters
- Mediation

If you have a colleague who would like a copy of the rhw law bites newsletter please let us know. Email us on: dental.advice@rhw.co.uk