

Guide to Buying a Dental Practice in Scotland

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Buying a Dental Practice

Buying a dental practice is perhaps one of the most important decisions that you will ever reach in your career. It's only natural that you will want everything to be absolutely perfect, and for the deal to go through like clockwork, leaving you able to plan for your future success.

Unfortunately, only in some cases does everything go absolutely according to plan. Buying a practice is a complex affair, and as a result issues arise which as a minimum require consideration, and in some cases can either delay the deal going through or prevent it.

Whilst you can't anticipate all of the issues that might arise, being well advised and well prepared can prevent costly consequences. The purpose of this guide is to begin to highlight some of the key areas which you will need to address at some stage during the acquisition, and to encourage you to seek advice very early in your plans.

There are a number of issues which are worthwhile considering before you commence your search for the ideal practice.

“Kim and the team at Thorntons have been excellent throughout the process of buying my practice. They were thorough, kept me well informed and made the whole process as stress free as possible. I would definitely recommend!”

- Ruby A

If you are an Associate in an existing practice, then you should consider what notice you require to give to your current Principal. You should also bear in mind that the conclusion of a deal to acquire your practice could take some time, and so you need to be comfortable that the deal will proceed before providing your notice, otherwise you could find yourself without a practice and out of a job.

If you currently own your practice, obviously you will consider whether you require to sell your existing practice first before moving to the new practice. If you don't intend to sell your existing practice, or won't do so immediately, you need to consider how you will manage two practices at the same time.

You should also consider what period of notice you require to give to the Health Board.

One final, and rather obvious, point is finance. If you require bank or other funding to acquire your new practice, then you should have the arrangements progressed as much as possible before you go in search of a practice. Whilst a bank won't commit to funding until they have seen details of your new practice (including financial and other information), they will be able to give you an in principle indication of the availability of funding for you.

It is also important to determine at an early stage what the bank's requirements will be regarding funding. For example, if they require security over a property, this will require to be factored into the legal arrangements for acquiring your practice.

At Thorntons, we have contacts within the Healthcare Units of each of the major banks, and can assist you with an introduction to them if required.

You've found the right practice

Once you have identified the ideal practice for you, at that stage you should contact your Solicitor and Accountant. They will each look at the legal/financial aspects of the practice – a process known as due diligence. For your own and your bank's purposes, you would also require to have a valuation of the practice premises carried out, and also a valuation of the equipment in the practice.

Before looking at legal and accountancy due diligence, it is important to note that the Health Board in Scotland have different procedures from England/Wales regarding the acquisition of a dental practice. Different Boards have varying procedures to follow, and it is important that you

familiarise yourself with these processes. As a firm with a lot of experience in this sector, Thorntons has contacts within a number of the Health Boards, and can seek clarification on various issues.

With regard to the Health Board, you will need to address the following points -

- ▶ You will require a list number before you can operate as a Principal in the new practice.
- ▶ The seller will require to give notice to the relevant Health Board – ordinarily this is a three month notice period although some Boards will in practice allow a sale to go through with a shorter period of notice.
- ▶ Some Boards require an inspection of a practice which is being sold, and this can delay progress.

As you will see from the above, it is important that the requirements of the relevant Health Board are identified at an early stage. Through the course of an acquisition, we maintain close contact with the relevant Board, and our experience is that most of them will do whatever they can to assist a buyer, particularly where they are not familiar with the procedures involved in the acquisition of a Scottish practice.

Turning back to the question of diligence, this process will look at virtually all aspects of the practice, and next we highlight some of the main areas which will be addressed.

Accountancy Due Diligence

Your accountants will check the accounts of the practice to ensure that it is in the shape that you would expect, that there are no warning signs which you should be aware of, basically speaking they will carry out a financial health check of the practice. Your bank will require full accounts to be provided to them at an early stage before they can confirm funding.

In looking at the accounts, your Accountants will also confirm whether there are any assets which are on HP, lease agreement or similar. If they are, then you may need to take on the existing contracts, and there will be an ongoing cost which you should factor into your financial calculations. Alternatively you can require the seller to repay the finance.

If you are acquiring an NHS practice, it is also useful to have sight of the NHS payment schedules to show the income of the practice since the last accounts.

Legal Due Diligence

Once again there is a wide range of legal issues which will come to the fore when acquiring a practice, but some of these include -

Employees

You may be aware that when you acquire a practice, you will “inherit” its employees, with their service history and terms and conditions of employment intact. Your lawyer will therefore obtain full information regarding the employees (including obtaining copy Employment Contracts) and should identify any areas of concern. This will ensure that you are fully aware of the employee obligations which you will be taking on, and will be aware of any issues which may need to be addressed.

Existing associates

Currently, the associates will have an agreement with the seller of the practice, and we can assist you to take on new agreements with the Associates. You will also need to deal with the necessary NHS paperwork so that the NHS income which relates to the patients who are treated by the Associates comes directly to yourself as the new Principal, leaving the appointment of those funds in your hands.

Property

Your solicitor will need to check the title deeds to confirm the commercial and other property obligations which you will take on.

An important point to note is that leases with a lengthy period are less common in Scotland than in England. It may therefore be that the lease will require to be extended, and this is very likely to be the case if you are borrowing from a bank.

An extension of the lease, and also the assignation of the lease into your name, will require the consent of the Landlord, and the seller’s Solicitor (via your own Solicitor) should be encouraged to take the matter up with the Landlord’s Solicitors at as early a stage as possible. To assist with this process, you should have bank and Landlord references prepared and available for use at the appropriate time.

Equipment

Having suitable equipment will be an essential part of your new business. You should have it inspected so that you can be satisfied that it is in a working order, or alternatively identify any defects so that they don’t come as a surprise. In addition, it is important to have sight of the

maintenance certificates for the dental equipment so that you can ensure that it has been regularly maintained in line with the manufacturer's and Health Board requirements.

Patient issues

Your solicitor will ascertain whether there is a history of patient complaints. The last thing you want to do is to find that your new practice has a proportion of patients who are not happy with their treatment.

The last NHS inspection of the practice will be checked to ensure that there are no issues of concern, or at least none which are still outstanding.

This gives a flavour of some of the main issues which will be addressed through the due diligence process, and will then be covered by the Sale and Purchase Agreement which you enter into with the seller.

Preparing to sign

Your solicitor will produce an Agreement which covers all legal aspects of the practice acquisition. This will include appropriate restrictions against the seller setting up a practice in competition with your own, taking away key staff, etc. It is very important that these restrictions are carefully worded, and in particular are not over-the-top, otherwise you will run the risk of them being unenforceable.

Get covered

One final, but important point. Before completing your purchase, you will need to organise all necessary insurances for the practice. Again, we can put you in contact with experienced insurance brokers who can assist with insurance arrangements. It may also be wise to consider your own financial arrangements at the same time, to ensure that they reflect your new position as a business owner. Thorntons can introduce you to independent financial advisers who can advise you on your financial needs at this crucial stage in your career.

Having both a Solicitor and an Accountant who are familiar with the particular issues which arise in the acquisition of a dental practice is extremely important - ensuring that you instruct a Solicitor and an Accountant who have the relevant experience is extremely important, and you should be careful to entrust one of your most important purchases to professionals who are familiar with the process.



Providing expert guidance

We at Thorntons have a great number of years of experience in the issues which arise in dental practices, both in connection with their acquisition, disposal and ongoing operation, and would be delighted to assist you.



Michael Royden
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Head of Thorntons Dental Team, Michael has years of experience in advising dentists on all aspects of their practices, including in the sale and acquisition of practices, partnership and expense sharing agreements, associate agreements and regulatory matters. Michael is the only Scottish solicitor who is a member of both the Association of Specialist Providers to Dentists and the National Association of Specialist Dental Accountants and Lawyers.



Kim Campbell
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Kim is a key member of our dental team, regularly advising dental practitioners on the sale and acquisitions of practices, the implications of incorporation and on the entry and exit of partners to the practice, as well as drafting and negotiating associate contracts and advising on issues such as grant funding and regulatory/compliance issues.

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