



# Healthcare

## Buying a Dental Practice



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**FOR FURTHER ADVICE OR  
INFORMATION, PLEASE CALL  
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This is a short guide setting out the ten main steps or processes you are likely to follow on the purchase of a dental practice. It is not intended to be exhaustive and each purchase is dependent on the facts. This guide is based on a typical purchase involving buying a dental practice which is a mixed NHS practice with a small private base and some capitation scheme work with Denplan. It assumes that the practice is currently owned by a sole practitioner who holds a GDS Contract with NHS England but most of this would still apply if, say, a partnership was selling.

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## Step 1 - Heads of Terms



Most agents will, as part of their involvement, draw up a set of terms setting out the key terms which the parties agree to such as: the price, a rough timescale for the transaction, details of the solicitors acting for the seller and the buyer, what is included in the price and what, if anything, is excluded, any terms of a possible associate role for the seller post-completion and details of any holding deposit. If a holding deposit is provided by you this is usually in return for the seller agreeing to take the practice off the market. This is known as exclusivity. The heads of terms will then set out in what circumstances the holding deposit could be returned to you e.g. if NHS England refuse to allow the GDS Contract to move into partnership or if the replies to due diligence reveal something meaning that you can no longer raise finance. Once the heads of terms are signed by the parties and the deposit is paid, we will then send the due diligence questionnaire to the seller's solicitor.

## Step 2 - Due Diligence



Due diligence, often known as DD, is probably one of the worst parts of selling but for a buyer it is key as it provides the evidence and information about the practice and the property. It is important that the seller answers the due diligence accurately and fully, as he will later be asked as part of the Sale Contract to give a warranty to you that the replies are true and accurate. The replies also form the disclosure bundle (which we will come to later) in respect of any possible breach of warranty claim. It is likely that on reviewing the initial replies to due diligence about the Practice and the property that you will want to raise further enquiries. Sometimes, this can be further copies of documents or explanations of answers provided in the initial replies. The seller will be asked to complete a set of due diligence enquiries about the Practice and a separate set of enquiries (known as CPSEs) about the dental premises.

## Step 3 - CQC Registration



Simultaneously with step two, both the seller and the buyer should apply for a CQC countersigned DBS check. A DBS check can be applied for via the CQC website following the link on their website or directly at <https://cqc.disclosures.co.uk/>. These take 2-3 weeks (sometimes longer) to be processed, during which time the Seller can be working through and completing the due diligence questionnaire.

When both the buyer and the seller have received their DBS checks, they can apply to CQC as a new partnership with the buyer as the registered manager. At the same time the seller would need to apply to cancel his current registration.

## Step 4 - Sale Contract



When the replies to due diligence have been received, a Sale Contract will be drawn up setting out the following:

- 1. Purchase Price**
- 2. What is included**
- 3. What is excluded from the sale**
- 4. The transfer of the GDS Contract via the partnership route**
- 5. Any price adjustment for under-performance of UDAs**
- 6. Liabilities**
- 7. Apportionments**
- 8. The transfer of the employees**
- 9. The transfer of the contracts with suppliers**
- 10. Details of any equipment leases - whether they are to be transferred to you or paid off by the seller**
- 11. Defective work - who is responsible?**
- 12. Warranties**
- 13. Indemnities**
- 14. Limitations on claims under the sale contract**

## Step 4 - Sale Contract



It is also likely to include the draft Partnership Agreement, Deed of Retirement, and notices required to be provided to NHS England. It may also include the draft associate agreement for the seller.

As part of the sale process, the seller's solicitor will prepare a document known as the disclosure letter in which the seller sets out anything which is incorrect with the warranties.

The seller may be made aware during the sale process that since he/she completed the replies to due diligence there have been changes that affect the information supplied. For example, an employee has informed him that she is pregnant and due to commence maternity leave. This should be disclosed to the buyer in the disclosure letter. Another example might be that a patient has complained about a treatment carried out by an associate. The associate has notified his professional indemnity insurers who are handling the claim. The seller would also disclose that information.

## Step 5 - Capitation Scheme



If the seller offers treatments under any capitation scheme, he will need to contact the provider to make arrangements to transfer the patients to the buyer. For example, Denplan asks both the seller and the buyer to sign a Goodwill Transfer Agreement. This allows Denplan to contact the buyer, and notify the patients of the change in ownership. The buyer will also need to inform Denplan of their bank details and become a member of Denplan.

## Step 6 - Property



Whilst the Sale Contract and additional due diligence enquiries are dealt with, we will be investigating title to the property. This means that the seller will need to provide copies of the property's title deeds, planning permissions, building regulation certificates, the EPC, and a copy of the utility bills and business rates rebate (if applicable). If the freehold property is to be sold, then any mortgage currently over the property will need to be repaid as part of the sale and the seller's mortgage company advised. If the freehold property is to be retained by the seller, and the seller is to grant you a new lease of the property the seller's mortgage company's consent will be needed and basic terms for the lease will need to be agreed, such as:

- 1. Amount of rent payable**
- 2. Will there be a rent review, if so, when - every 5 years?**
- 3. When will the rent be payable - monthly or quarterly?**
- 4. Who will be responsible for insuring the premises?**
- 5. Do you need to agree a schedule of condition?**
- 6. What is the term of the lease - 15 years?**
- 7. Can the seller terminate the lease early?**
- 8. Do you want to be able to terminate the lease early?**
- 9. Who is responsible for any repairs?**

In addition, the buyer and seller should consider what the possible plans are for the freehold property. The buyer might want to ask the seller to grant you a right of first refusal (known as a right of pre-emption) or the seller may be prepared to grant a fixed option to buy it in the next five years? It will be for the seller's solicitor (as landlord) to draft the lease. If the property is already leased from a landlord, it is likely that unless there is about 10 years left on the term of the lease, a new lease will be required. If not, then the buyer may be able to take an assignment of the lease. Either way, the seller will need to contact the landlord to find out what their requirements will be and for details of their solicitor. The seller will need to pass this information on to the buyer. It is likely that the landlord will ask for his legal costs to be paid for by the buyer and the seller, such costs to be paid whether or not the sale completes.

## Step 7 - CQC Interview



Once the CQC application has been submitted and accepted by CQC, a local assessor will be in touch with the buyer to arrange an interview. The interview usually takes place at the Practice (with the seller's consent) and may require the seller's attendance.

Following the interview, and on the basis that the CQC local assessor approves the application, they will issue a comfort letter (or a letter sometimes known as a sales and purchases position letter). A copy of that comfort letter will need to be sent by the buyer's solicitor to his/her bank, and a copy will need to be sent to NHS England after exchange of contracts (see below).

## Step 8 - Exchange



Once the parties are agreed, and all documentation is agreed and signed the transaction should be ready to exchange. If the buyer is borrowing money from the bank to make the purchase, he/she will require the bank's consent before exchanging contracts.

Exchange normally happens via a telephone call between the buyer's solicitor and the seller's solicitor. If there is a deposit to be paid on exchange, this will normally be sent to the seller's solicitor to hold and both solicitors send their client's signed documents to the other in the post.

Immediately after exchange of contracts, either the buyer's solicitor or the seller's solicitor will submit the notice and inform NHS England of the proposed partnership, together with a copy of the CQC comfort letter.

## Step 9 - NHS England



On receipt of the notice from the solicitors, NHS England should issue a contract variation setting out the change of contractors from the seller, to the buyer and the seller in partnership. They will issue that contract variation to the seller at the Practice, so it is important that once received it is signed by both seller and buyer and returned back to NHS England.

NHS England will issue a new number for the contract, and a new stamp, which should be used by you from completion onwards. The buyer will also need to notify the BSA of his/her bank details to ensure that from completion, payments are paid to his/her account and not the seller's.

There will be a 28 day period (normally a month) between exchange and completion.

## Step 10 - Completion



Once NHS England has approved the date for commencement of the change to the GDS Contract, this will provide for the date for completion which is normally the 1st day of a calendar month or the last working day of the calendar month.

Completion normally happens via a telephone call between the buyer's solicitor and the seller's solicitor, with the sale proceeds being sent from the buyer's solicitor to the seller's solicitor.

After completion, it is normal practice for the buyer's solicitor to inform NHS England two or three months later of the seller's retirement from the GDS Contract. You will also be required to notify CQC.

**If you have any questions about the process, or would like any further information, please do not hesitate to contact us on [0114 249 59 69](tel:01142495969).**