

Goodwill: the most valuable asset

Did the winter Olympics inspire you, asks **Louisa Slimm**

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Corporate healthcare executive at FTA Law



I thoroughly enjoyed watching the recent winter Olympics; it inspired me to get myself to the top of a ski slope and attempt my first ski jump. Having said that, once I thought about this it was clear that if I was to avoid catastrophe, I first of all needed to actually plan my ski jump and a good start would be to actually learn how to ski.

Likewise, anyone who owns a business or who has family responsibilities needs to plan carefully to ensure their business and loved ones are adequately protected in the event that something should go wrong. The most valuable asset in a dental practice is invariably the goodwill. If you are an NHS practitioner and you hold your NHS contract in your sole name, in the event that you passed away there is a risk that your NHS contract would be put out to tender and the goodwill value associated with it would be lost.

Unfortunately this is a situation we have encountered on a number of occasions over the years.

Preserve your NHS contract

One of the options to preserve your NHS contract is to add another dentist to your NHS contract. The advantage of this

is that should something happen to you, then the contract continues in the name of the surviving dentist on the contract.

You would of course need to put in place robust paperwork to govern this arrangement, including a properly drafted partnership agreement setting out the relationship between you and that effectively the added dentist has only a nominal entitlement to profits and management responsibilities. That document would also need to ensure that person cooperates with the wishes of the deceased dentist's personal representatives in procuring the sale of the practice assets, and thus realising the goodwill value for their estate.

As part of the process of adding a 'nominal partner' to your NHS contract it is necessary to submit a joint CQC application in the names of both parties and following approval of this, to serve the requisite notice on NHS England. At the point the nominal partner is added to the contract, the partnership agreement will need to be entered into.

While an arrangement of this type is attractive under certain circumstances, it is not without its difficulties. Some dentists are uncomfortable with adding a third party to their NHS contract, even if such an arrangement is accompanied by the necessary legally drafted partnership agreement. The reason for this is that even with robust agreements in place,

in the event of non-compliance with that agreement by the nominal partner, it would be incumbent on the dentist to seek to enforce the terms of that agreement through the courts.

For that reason we tend to see only very close family members who happen to be dentists being added as nominal partners or reciprocal arrangements between different practices in order to provide some level of comfort to the practice owner.

One other option to consider is the position regarding NHS contracts in the name of limited companies. If you procure the transfer of your NHS contract into the name of a limited company controlled by you, then in the event of your death the continuity of the NHS contract should be unaffected as your shareholding in that company will simply pass according to your will, and the key here of course is that a shareholding in the company that holds the contract can still be held by a non-dentist.

The only requirement is that there are a majority of dentist directors in the company. The appointment of an associate as a director of such a company is relatively risk free as their appointment can always be terminated by the holders of the shares in the company and holding a directorship does not give an equity ownership stake.

Power of attorney

Do also keep in mind that your business can be seriously affected in the event not only

of death but also serious incapacity. For this reason you should also consider putting in place properly drafted lasting powers of attorney to ensure the business can continue to function in the event of your absence.

A power of attorney would allow your attorneys to manage the practice bank account, deal with suppliers and the NHS, and perform other functions necessary for the continued operation of the practice. All arrangements of this type should also be accompanied by a full review of your wills.

If you happen to have business partners then care should be taken to also ensure that partnership agreements (in the event you trade as such) or shareholders agreements (where you trade as a limited company) dovetail with any other measures you intend to put in place.

Summary

If you have any queries or are thinking of adding a nominal partner to your NHS contract, putting in place powers of attorney or new wills or if you simply would like a review of your existing arrangements then please do not hesitate to contact FTA Law. **D**

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