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1. Incorporation, Incorporation, Incorporation

Undoubtedly one of the hot topics at the moment is incorporation and although it may not be true in every case, specialist dental accountants advise that over a 5 year period an average practice owner could well benefit by somewhere in the region of £15,000, or possibly more, in tax savings.

These are, of course, figures that need to be checked individually by practices and we certainly recommend that specialist advice is obtained from a member of National Association of Specialist Dental Accountants ("NASDA"). We are members of the NASDA legal section and can provide further information about accountancy members if required.

Quite apart from the potential savings, there are other benefits that can arise on incorporation, particularly with regard to the limitation of liability and the ability of companies to transfer their business by means of share transfers. Unfortunately, however, PCTs are increasingly declining to permit practice transfers on incorporation and very frequently specialist legal advice is appropriate when this happens.

We have considerable experience in dealing with the legal issues surrounding the incorporation and transfer process and in the first place practitioners should contact Andrew Lockhart-Miramis at alm@lockharts.co.uk or Mark Jarvis at mj@lockharts.co.uk or Puja Patel at prp@lockharts.co.uk.

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2. Dental Access Figures Released

The recently released dental access figures demonstrate that the number of patients visiting NHS dentists remain below the pre-2006 contract level.

In April 2006, 55.8% of the English population had seen an NHS dentist in the previous 24 months. In June 2008, this had dropped to 52.7% following the introduction of the new terms of service.

The figures for September 2009 show this has risen to 54.2% but, despite some recovery, the numbers are still below the pre-contract levels. This figure has also been adjusted downward by 0.3 million in anticipation of a reduction when further figures are released in February 2010.

Which? Head of Social Policy, Ashleyle Gunn, says, "The NHS is edging in the right direction in terms of providing access to a dentist for everyone who wants one but our research shows that 7.5 million people in England either cannot find an NHS dentist or have stopped trying. We think it's worth

people trying again and have created an online tool to help people find a local NHS dentist”.

Derek Watson, of the Dental Practitioners Association, said, “The Department of Health said that the very few dentists that resigned in April 2006 represented very little capacity. They are missing the point. The new contract was supposed to correct supply problems and it has had the opposite effect”.

“Fewer patients are now seeing NHS dentists as a result of the NHS contract, despite the fact the Department has been spraying the money hose around for two years in an attempt to disguise their bungling antics”.

However, Barry Cockcroft, Chief Dental Officer, was more upbeat about the data saying, “The tide is turning and access to NHS dentistry has been increasing steadily for over a year with over 930,000 more people seeing an NHS dentist in the last five quarters”.

“Dentists working in the NHS treat around 250,000 patients every working day and our aim is to ensure that everyone who wants to see an NHS dentist can by March 2011”.

The figures are available at:

<http://www.ic.nhs.uk/statistics-and-data-collections/primary-care/dentistry/nhs-dental-statistics-for-england:-2008-09>

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3. Investment to Increase Access

Significant investment in NHS dental care is set to increase access in two areas in England in the form of an extra £2.8 million in NHS Norfolk dental services and the opening of a new practice in Hampshire.

In Norfolk, six areas have been marked for an increase in dental provision by the primary care team which will result in a boost in the number of available NHS dental appointments for people around Acle, Cromer, Kings Lynn, Norwich, Thetford and Wells.

NHS Norfolk approved plans on how the increased budget should be spent to improve access and the primary care team has viewed bids from providers identifying how new services would be rolled out and who is best placed to provide them.

The new practice in Winchester, Hampshire, which could treat up to 9,500 people each year, is being funded by the Hampshire Primary Care Trust which is taking bids from dentists who wish to run the service. It could open as early as March 2010.

Natalie Jones, lead commissioning manager of primary care dental services for NHS Hampshire, said, “Since 2006, we have committed £15 million to do this and have prioritised areas across Hampshire on clinical need and current access. As part of this ongoing assessment, Winchester and the surrounding rural area has been identified as one of a number of priority areas”.

The exact location of the practice is yet to be identified but it will be the first time a new NHS dental practice has opened in the district since the Hampshire Primary Care Trust was established in 2006.

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4. Government Scheme Hits Dental Nurses’ Pockets

The British Association of Dental Nurses (BADN) is worried that the cost of the Government's vetting and barring scheme will push already stretched members too far.

The scheme, which went live in October, is designed to ensure that anyone who presents a known risk to vulnerable groups is prevented from working with them in either an employed or voluntary capacity.

Anyone in regular contact with children or vulnerable adults in England, Wales and Northern Ireland must register and also have a Criminal Records Bureau check.

It requires anybody who works in those sectors to register with the Home Office sponsored body, the Independent

Safeguarding Authority (ISA). This entails a cost of £64, which, for dental nurses, presents an additional levy to professional regulation with the General Dental Council (GDC) introduced last year.

Anyone who fails to register and have their background checked may face a fine of up to £5,000 and a criminal record.

However, the BADN is echoing the Royal College of Nursing's concerns over the costs of the scheme and what they assert is both the duplication of regulation and potential unfairness in the barring and appeal procedures.

Angie McBain, President of the BADN, said, "Whilst BADN recognises the importance of protecting children and vulnerable adults, expecting dental nurses to pay yet another registration fee is unreasonable and unrealistic".

"Dental nurses, many of whom are working part time and on minimum wage, already have to pay £96 to the GDC, as well as for CPD and indemnity, and many are having to leave the profession as they can no longer afford to work as dental nurses. Having to pay an additional £64 will be the last straw for many dental nurses".

The BADN is currently campaigning against the cost of its annual retention fee and conducting a survey into dental nurse salaries with a view to presenting a case to the GDC.

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5. Calls for Dental Staff to Receive Child Protection Training

A new policy on dental neglect in children has called for all dental staff to have regular training in child protection.

The policy states that in the event that neglect is suspected, then a detailed assessment must be carried out. This should include dental and non-dental factors, as well as the clinical findings, highlighting the importance of further training for dental staff.

The document is the result of collaboration between the University of Warwick, University of Sheffield and Leeds Dental Institute, for the British Society of Paediatric Dentistry.

On the topic of training, it states, "For clinical staff this must include recognition of signs of abuse and neglect, and how to respond when concerned about a child. This should be a mandatory component at every level: undergraduate, foundation training, special interest, and specialist training."

According to the policy, dental neglect can be defined as the persistent failure to meet a child's basic oral health needs which is likely to result in serious impairment of the child's oral or general health or development.

Dr Peter Sidebotham from the University of Warwick, who co-authored the policy, said, "There is evidence which indicates that abused children have higher levels of untreated dental disease than their non-abused peers. Many dentists have taken part in child protection training, but still find it difficult to put into practice what they have learned when they suspect abuse".

Dr Sidebotham added, "I am impressed by how much dentists already do to educate and support parents. But when concerned that a child is suffering, perhaps as a result of missed appointments, I would always encourage them to seek advice from other health professionals experienced in child protection and, if necessary, to make a child protection referral".

The General Dental Council (GDC) has released a statement saying, "All General Dental Council registrants are expected to put the interests of their patients first. We expect dentists and other dental professionals to find out about local procedures for child protection. We ask all registrants to make sure they follow these procedures if they suspect a child might be at risk because of abuse or neglect".

"Professionals have a responsibility to know who to contact for further advice and how to refer to an appropriate authority (such as a local health trust or board)."

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6. Government Makes People Save For When They Are Long in the Tooth

Following increasing concern that people are failing to make sufficient provision for their retirement, the Government intends to introduce a package of measures to both private and state pensions in 2012 that will change the face of the pension industry and have an impact on all dental practices with employees.

From 2012, all employers will be required to enrol eligible employees (those between the age of 22 and retirement) into an approved workplace pension scheme, which means that if an employer does not operate a workplace pension scheme then one must be set up. In the alternative, a new trust-based occupational scheme will be available in addition to existing workplace pension provision.

The reforms will require an employer to make a minimum contribution to the pension funds of all enrolled employees. These proposals will apply to all employers even where there is only one eligible employee.

Where an employer is not already meeting or exceeding these levels, this could potentially represent a significant increase in payroll expenses and may have a serious impact on dental practices.

Where a dental practice is meeting or exceeding the new levels, it can apply for exemption through self-certification. This should be possible where benefits and contributions are broadly in accord with those required for the trust-based occupational scheme.

Whilst these proposals are at an early stage, it is clear that the reforms will affect all employers including dental practices which may see a dramatic impact on cash flow.

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7. Conservatives Plan Fines for Missed Appointments

Under new plans by the Conservative Party, dentists will be able to fine patients that fail to attend booked appointments.

This is part of a planned revamp of the NHS dental service in general and forms part of the party's draft manifesto.

The Conservative Party has also promised that as part of its commitment to healthcare, the Party would ensure a dental check for every five year old in the country.

Launching the Conservatives' election campaign, leader David Cameron said that healthcare was his top priority and that he represented 'the party of the NHS'. The announcement marked the start of 2010's election campaigning.

David Cameron has also promised to direct more health spending to poorer areas in an effort to address the increasing disparity in life expectancy between the wealthier and less well off.

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8. Need Premises Advice? Think Lockharts!

Healthcare professionals need expert advice from specialist legal advisors, whether they are proposing to rent or own their surgery premises. Our specialist Property Team at Lockharts combines extensive commercial property expertise with specialist knowledge of the healthcare professions and NHS law and guidance.

Our Property Team can manage any size of project, liaising as required with other parties such as the PCT, the District Valuer, mortgage lender, developer and the Local Authority. The experts in our Property Team specialise in:

- **Health Centre Developments**
- Advice on development projects;

- Negotiating Heads of Terms for third party developments;
- Negotiating development agreements, leases and subleases;
- Liaising with District Valuers and the development team to ensure compliance with the NHS guidance; and
- Securing and acquiring sites for development.

• **Landlord and Tenant**

- Advising on all landlord and tenant law;
- Producing, negotiating and reviewing leases and licences appropriate for the NHS Sector; and
- Advising on the renewal of leases and security of tenure protection.

• **Commercial Conveyancing**

- Carrying out all commercial conveyancing for NHS healthcare and private providers;
- Carrying out searches and advising on the same;
- Drafting transfer documentation;
- Liaising with any lenders;
- Advising on any potential Stamp Duty Land Tax liability; and
- Dealing with post-completion formalities.

For further information please contact Varsha Pattni at vap@lockharts.co.uk or Stephen Carter at sac@lockharts.co.uk.

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9. Department of Health Refuse NICE Guidance

The British Dental Association (BDA) has expressed disappointment that, despite their request, the Department of Health will not seek guidance from the National

Institute for Health and Clinical Excellence (NICE) on circular HTM 01-05 decontamination guidelines for dental surgeries.

Susie Sanderson, chair of the BDA executive board, has written to Barry Cockcroft, Chief Dental Officer, looking for justification for his decision to reject a referral to NICE.

Barry Cockcroft has stated that due to hygiene regulations changing with new scientific evidence, the document is not best suited to NICE assessment but said, "I have made a commitment to review this guidance within the next two years to reflect emerging evidence".

The BDA maintain that NICE is the most appropriate body to provide guidance. Dr Sanderson said, "Given the impact of the standards demanded by HTM 01-05, it is not unreasonable for the BDA and individual dentists to seek reassurance that its scientific foundations are firm".

"The Department of Health's delay first in providing the scientific references, then in the gradation of those references and now its rejection of an objective external analysis, do nothing to offer that reassurance. I have written to Dr Cockcroft urging him to address this issue which is causing significant anxiety in dental practice".

The impact of the circular on practices could be enormous as aside from additional expenditure on items such as extra instruments, vacuum autoclaves and washer disinfectors, HTM 01-05 could lead to a need for increased staffing levels and more maintenance contracts meaning practice overheads may also increase.

Additionally, some dental practices may not have the necessary space required to accommodate such equipment and the connected protocols that go alongside them meaning some practices may have no option but to decommission a surgery room to create space or perhaps consider relocation of the practice.

A BDA spokesman has stated that the cost of HTM 01-05 compliance is currently being analysed by the BDA and said, "The requirements of HTM 01-05 increase the

administrative burden on dentists considerably”.

“The BDA does not assess compliance, but we have been contacted by significant numbers of dentists seeking advice on what the regulations will mean for their surgeries”.

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10. Mediation

Lockharts are delighted to announce that Ros Parkin is now a CEDR Accredited Mediator and is available to assist in the resolution of healthcare disputes. In the first instance contact us at csd@lockharts.co.uk

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“Headed by Andrew Lockhart-Mirams, Lockharts advises over 1,800 GP practices, plus numerous dental practitioners, healthcare professionals and professional bodies throughout the country. The practice also helps to establish companies and LLPs tailored for the delivery of healthcare services”