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THE LAW SOCIETY OF SCOTLAND



Solicitors Ceasing their Practices

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GIVING UP YOUR PRACTICE

INTRODUCTION

There are many reasons why a Solicitor will give up practise – retirement, illness, money pressures or simply that they have had enough. Whatever the cause, arrangements need to be made for the transfer of the business, disposal of all the client files and to deal with the completion of accounting procedures. Most Solicitors have not been through these processes before and these notes are intended as a guide as to how to transfer the business successfully, what needs to be done by way of reporting and some of the pitfalls to be avoided. In short, how to think ahead.

MARKETING AND SELLING YOUR PRACTICE

“It’s never too early to call your Solicitor” – how often do Solicitors take this advice? Giving up your practice is often done when under pressure. Solicitors should take legal advice. It may be advisable to consider instructing someone outwith the locality as a local Solicitor may be caught in a conflict of interest situation and or be precluded from tendering for the business as a result. [Sample letter to acquiring solicitor and leaflets for marketing the firm are included in the Appendix at No.1a - c.]

No matter how bad matters seem to be, the business will be of value to another firm. The Title Deeds and Wills are an asset. A Solicitor should guard against “cherry pickers”. It is important to ensure that the arrangements cover all the client files, both current and archived. Failure to do so may result in the Solicitor being left to meet storage costs for archived files for up to ten years. The value in the Wills and Title Deeds can be used as a bargaining tool to persuade others to take on the requirement to store archived files.

It should be borne in mind that many clients instruct a Solicitor as an individual and that this may affect the volume of business which will remain with the purchasing Solicitor.

Various Departments within the Society may deal with different aspects of the issues that may

arise, in particular Guarantee Fund, Interventions, Professional Practice and Records Departments. If you are uncertain who would deal with your enquiry, please contact the Guarantee Fund Department to discuss matters, in the first instance.

Contact information is provided below.

The Society can also provide lists of all Solicitors within a particular locality for the purpose of marketing the firm.

SELLING A SOLICITOR'S PRACTICE

There are a number of matters which require to be negotiated and agreed between the selling and purchasing Solicitors.

- a. Will all the files or only some of the files be taken by the purchasing solicitor?
- b. How will goodwill be treated?
- c. How will Work in Progress be treated?
- d. How will outlays expended be treated?
- e. How will liabilities be treated?
- f. How will book debts be treated?
- g. How will stationery and other stock be treated?
- h. How will office equipment be treated?
- i. Will the office premises be sold to the purchasing solicitor?
- j. Will indemnities be furnished to either of the parties?
- k. Will the existing name of the firm continue?

CIRCULARS TO CLIENTS

The Solicitors will require to notify clients of the transfer of their business timeously.

(A sample letter is included at Appendix at No.2a and b.)

WIND-UP OF PRACTICE

If a practice is not to be sold, it must be wound up. This can only be done over a period of time.

If the Solicitor commences the wind-up while still holding a Practising Certificate, he or she may decide to finalise every case until there are no current files remaining. – N.B: Legal work cannot be concluded when no valid practising certificate or current Master Policy insurance is in place. (Run off cover does not provide protection to cover any client work involved during the winding up process.)

DISTRIBUTION OF FILES

Alternatively, the Solicitor may opt to distribute the files to new Solicitors nominated by the clients. Accordingly, it will be necessary to write to the clients informing them of the wind-up of the practice and ask them to nominate new Solicitors. The files will then be distributed in accordance with these nominations.

COLLECTION OF FEES AND OUTLAYS

Accounts and fee notes can be drawn up in respect of all files and the amounts due collected as the files are distributed. This work does not necessarily require the solicitor to have Master Policy cover in force. If there are amounts outstanding when the solicitor ceases to practise details of the amounts due can be given to another solicitor for collection or the solicitor can continue to collect outstanding fees after ceasing to practise. This process is subject to your Accountant's advice on the procedures and dates for the finalisation of your business accounts.

REMAINING FILES

When the solicitor ceases to practise it may be that some files will remain comprising the following:

1. Current files where new Solicitors have not been nominated.
2. Completed files.

The solicitor should come to an arrangement with another solicitor to take the current files

and any Wills or Title Deeds for safe storage, pending instructions being received from clients.

The retiring solicitor should carry out a selective destruction exercise on the remaining files. Guidance on [destruction of files](#) is available on the Society's web site. (Accounting and financial documents and records are subject to the requirements of the Accounts Rules, which requires retention for 10 years in most cases.)

The files remaining after the destruction exercise should also be transferred to a solicitor for storage. Intimation of the results of this exercise should be given to the Records Department of the Society for future enquiries.

PROFESSIONAL INDEMNITY INSURANCE

The cessation of a practice is an event which potentially may have implications for the practice's cover under the Master Policy for Professional Indemnity Insurance. Marsh, the brokers to the Master Policy, should be contacted at an early stage if a practice is considering cessation. They need to be notified of the cessation of your practice and they will be happy to discuss the options available.

Cover under the Master Policy is on a "claims made" basis. This means that (for current practices) cover is provided under the Master Policy on the basis of the Certificate of Insurance in force *at the date of intimation* of the claim, potential claim or circumstance and not the Certificate of Insurance in force at the time when the error/omission or act of dishonesty etc. occurred or was alleged to have occurred.

The key question which requires to be addressed is whose Certificate of Insurance will provide indemnity in the event of a future claim arising out of the past work of a practice which has ceased?

RUN OFF COVER

If the professional liabilities of a dissolving practice are not assumed by any continuing practice, then, for the purposes of the Master Policy, the ceased practice is treated as going into "run-off".

Run-off cover means continuing cover under the Master Policy on terms and conditions stated in the Master Policy itself. This provides protection for the benefit of the former principals and employees of the former practice unit and their personal representatives. Run-off cover does not apply to client work conducted after the date of the firm's cessation. If there is a requirement for outstanding matters to be dealt with after the date of cessation, it will be necessary for that work to be handled by a current practice with a current Master Policy cover.

There may be a charge to a firm for run-off cover depending on the claims experience of the ceased practice and there is no entitlement to any rebate of any premium already paid for the current year.

The limit of indemnity in respect of run-off cover is currently £1,500,000 for any one claim. If there is any doubt as to whether the run-off limit of indemnity is adequate in respect of the ceased practice's potential liabilities, consideration may require to be given to effecting additional cover.

If a practice has any questions on the Master Policy implications for ceasing practice please do not hesitate to contact the Brokers to the Master Policy – Marsh UK Ltd, telephone number 0131 311 4200.

ACCOUNTING REGULATIONS

The most important first step for practitioners wishing to cease practise is advance planning. Organise and tidy up your own records and files in advance of cessation. Speak to the practice taking on your clients and files and speak to your bank and other financial institutions. Your aim is for an orderly hand over on the date of cessation.

Date of cessation

Although the partner(s) intend a practice to cease on a given date it should be noted that while the practice continues to hold or receive client funds the practice will not have ceased.

Accounts Certificate

Accounts Certificates require to be submitted on the normal six monthly basis with a final certificate being due for the period from the date of the last certificate up to the date of cessation, (being the date that no client funds are held), which may be less than 6 months. The final certificate must be submitted within one month of the date of cessation.

Distribution of client balances

In order to arrive at the position where you no longer hold client funds you should consider the following matters.

- Prepare a full listing of all client balances, including invested funds.
- Review debit balances to determine whether they represent:
 - outlays and fees as part of ongoing cases
 - outlays and fees which are recoverable
 - outlays and fees which are not recoverable
- Determine whether any ongoing matters are to be concluded prior to cessation or passed on to another practitioner.
- Where cases are passed to another/ other practitioner(s), the related funds must also be passed on together with full accounting information for each client.
- A list of the client balances immediately prior to passing them over should be prepared and retained. It should clearly state to whom the balances were passed and on what date.

- A copy of the list of client balances immediately prior to them being passed over should be given to the practitioner(s) who is/are receiving the balances.

Client credit balances

The actual funds held for clients should be passed over by way of a cheque or bank transfer together with the list of client credit balances and the full accounting information for each client. Guidance on how to deal with small or old [client credit balances](#) is available on the Society's website.

Invested funds balances

The invested funds balances require to be handed over together with the accounting information for each client.

This may be done by uplifting the funds immediately prior to passing over balances and thereby creating or increasing the client credit balance which is to be paid over. An alternative would be to contact the institution where the funds are invested prior to the hand over and determine whether they can arrange for an internal transfer of the funds into the name of the new practice on the date of cessation.

Client debit balances

If the balances represent unrecoverable outlays and/or fees then you should write them off, bringing the client ledgers to a nil balance.

If the balances represent recoverable fees and/or outlays, where the transaction has concluded, you may wish to retain this balance. It is acceptable for you to recover fees, which have been rendered prior to cessation, and outlays, which have been met by your practice prior to cessation, after cessation.

Alternatively, you may wish to pass these balances to the practice taking over your credit balances. These balances however will represent sums due to you and you should keep records

and reach an agreement with the practice as to how and when such sums are to be refunded to you. Again the recovery of these balances from the other practice after cessation is acceptable.

If the balance represents outlays and/or fees relating to an ongoing transaction you should pass these to the practice taking over the file. Again these balances represent sums due to you and you should reach agreement as to how they will be repaid to you once they have been recovered.

Client bank account

After paying over all client credit balances to another practitioner, or disbursing all funds to the clients, the only funds remaining in the client bank account should represent the surplus. The surplus represents firm monies held in the client bank account. Once this stage has been reached you are in a position to submit an Accounts Certificate to cessation. It would be appropriate to close the client bank account at this point, provided there are no cheques issued but not presented for payment.

Work in progress

At the date that balances are handed over there may be work in progress. Where possible you should raise an interim fee prior to cessation. If that is not a suitable course of action then you should agree the work in progress with the practice taking over the file to ensure you have agreement as to how much is due to you once the fee is eventually rendered to and paid by the client.

Accounting records

Accounting records should be retained, generally speaking, for ten years from the date of the last entry. Guidance on the retention of records can be found on the Society's website. You should retain a record of where and by whom the records are retained.

Files

There may be current files for which there are no ledger balances.

A full review of all files should be undertaken.

Any current files should be passed to another practitioner to deal with. Clients should be advised

of where you intend to transfer their files and be given the option to mandate their files to a practitioner of their choice.

All completed files should be reviewed to determine what requires to be retained. The requirements are dealt with above.

The files remaining after the destruction exercise should also be transferred to a solicitor for storage.

A full listing of all files should be prepared showing where and by whom the files are held.

Intimation of the results of this exercise should be given to the Records Department of the Society for future enquiries.

Investment Business Files

If you handle any investment business, either under FSA authorisation and regulation or under the Society Licence to conduct incidental financial business, you must ensure files relating to such business are passed to someone who is authorised or licensed to carry out that type of business or can deal with it by referral to a third party who is.

Correspondence

You must make suitable arrangements to ensure all correspondence addressed to you is received and dealt with timeously. It is recommended that you redirect your mail to the practice which is dealing with your ongoing cases. If there is more than one practice you should decide where your mail should be redirected and make suitable arrangements to distribute mails to other practices.

If at all possible you should make yourself available to the person taking over your records and files to ensure your former clients receive continuity and the best possible level of service.

LETTERS OF OBLIGATION

PERSONAL LIABILITY

When a solicitor gives an undertaking in a Letter of Obligation he or she undertakes a personal liability for which the solicitor continues to be responsible, even if the practice is sold or wound up.

IMPLEMENT OF LETTERS OF OBLIGATION

A Letter of Obligation is an undertaking which can be enforced at law. It cannot be enforced by the Law Society although the recipient of the Letter of Obligation may make a formal complaint, particularly if correspondence seeking implement is ignored. That, however, would be considered a matter of conduct by the solicitor concerned. If a retired solicitor is required to implement the Letter of Obligation this may result in a personal financial cost to the solicitor.

INSURANCE

A classic Letter of Obligation as defined in the Master Policy is covered by that Policy without a financial penalty provided it has been given after proper enquiry. An excerpt from the Master Policy Certificate of Insurance is Appended.

SALE OF PRACTICE

If a practice is sold, each Letter of Obligation should be noted. The purchasing solicitor should write to the solicitor on the other side in each case notifying them of the sale of the practice and thereafter the purchasing solicitor should make every effort to ensure that the other solicitor is left in a position as near as possible to that in which they would have been, had the retired solicitor still been in practice.

WIND-UP OF PRACTICE

Where a solicitor retires without selling the practice, clients should be advised to instruct a new solicitor and the file should be forwarded to the new solicitor on receipt of a mandate. The retiring solicitor will have the benefit of continuing run-off cover under the Master Policy which will deal with any claim in respect of any standard Letter of Obligation previously granted.

COMPLAINTS

A Solicitor continues to be subject to the regulatory machinery of the Society as set out in the Solicitors' (Scotland) Act 1980 (as long as that Solicitor remains on the Roll of Solicitors even if he or she does not hold a Practising Certificate.). The Law Society of Scotland has a statutory duty to investigate complaints in relation to a Solicitor's conduct or service arising from any time when the Solicitor was active in practise even if that Solicitor has subsequently ceased to practise. The Law Society expects that any Solicitor who is the subject of a complaint will co-operate with any formal investigation which is taking place.

STAFF OF THE PRACTICE

PROTECTIVE LEGISLATION

The unfair dismissals and Transfer of Undertakings legislation provides protection for all employees. It is important to ensure that in dealing with staff of a practice on a sale or wind-up of the practice that there is compliance with the provisions of the relevant legislation.

When a practice is sold the retiring solicitor and the purchasing solicitor should be aware that the sale may be the sale of an undertaking which protects the rights of employees in the event of a relevant transfer of business. A solicitor should be sure to take advice in this particular respect.

TRAINEES

If the retiring solicitor has a trainee, the Law Society should be notified of the situation and will do whatever possible to assist the Trainee to find another firm with which to complete his or her training contract. Enquiries should be addressed to the Education and Training Department at the Law Society.

INVESTMENT BUSINESS

FSA Regulated

A Solicitor who intends to cease practice, if he or she is authorised to conduct mainstream investment business by the FSA should follow FSA Rules and Guidance relative to cessation.

Licensed to conduct Incidental Financial Business

- Advise all clients for whom the practice provides incidental financial business advice from whom such clients should obtain such advice in the future.
- Ensure that any Documents of Title relating to investments held on behalf of clients are either returned to the clients or passed to the practice which will be providing incidental financial business advice to such clients in the future.
- Complete and submit the final Incidental Financial Business Compliance Certificate to the Society for the period from the date of the last certificate to the date of cessation.

If any practice is in doubt as to the procedures to be followed on cessation relative to investment or incidental financial business, please contact the Director of the Guarantee Fund, in the first instance.

NOTIFICATIONS

LAW SOCIETY OF SCOTLAND

Whether a practice is sold or wound up, the Law Society should be sent formal written notification of the matter so that the Society's records can be updated. Notification should include information on who to contact in the event of future enquiries.

PERSONNEL

The Records Department at the Society requires information on the partnership and needs to receive written advice of the cessation together with dates and new contact details of all Solicitors and Trainees.

TRANSFER OF FILES

The Records Department of the Society should be informed of the identity of any Solicitor to whom files have been transferred. This is important so that the Law Society personnel are in a position to answer queries from clients in relation to the whereabouts of their files.

INVESTMENT BUSINESS

Where the firm is Licensed by the Law Society of Scotland to carry on Incidental Financial Business notification of cessation to the Records Department should include reference to this.

COMPLAINTS

If, at the time of ceasing practise, there are ongoing complaints, then it is suggested that the Solicitor should contact either the Case Manager in the Client Relations Office or the Director or the Deputy Director of the Client Relations Office to discuss the position to ensure that arrangements are in place to enable these matters to be dealt with and concluded as quickly as possible.

MEMBERSHIP OF THE LAW SOCIETY

When a solicitor ceases practise he or she can maintain one of three categories of membership of the Society.

- i) Full practising membership,
- ii) Non-practising membership,
- iii) Retained on the Roll of Solicitors.

There is a different annual charge for each type of membership. Only those in categories i) & ii) will receive publications, including the Journal, be able to vote in elections and at General Meetings and attend Seminars and Conferences.

LAW SOCIETY RETIREMENT FUND

Retiring Solicitors who are members of the **Scottish Solicitors Pension Fund** should notify:-

Momentum Financial Services Limited,
15 Minories,
London,
EC3N 1NU.

quoting the scheme reference number.

If the Solicitor's staff are also retiring and are members of the **Scottish Solicitors Staff Pension Fund** (formerly the Scottish Law Assistants Fund) then notification should be to:

Mellon Human Resource and Investor Solutions Ltd.
17 Ainslie Place,
Edinburgh,
EH3 6AU.

WHO ELSE SHOULD YOU NOTIFY

Legal Aid Board

They should be advised that the firm has ceased trading and notified of the status of any solicitors within the firm registered with the Board, whether for criminal or legal aid work. Accounts can be submitted, where appropriate, for work carried out to the date of cessation. However, particular care should be taken in relation to the recovery of outlays.

Arrangements should be made by the acquiring firm or new solicitor for the transfer of legal aid certificates held by the former firm for those clients for whom they are now acting. In the case of Advice and Assistance, generally these certificates cannot be transferred and the acquiring firm or new solicitor requires to have the client complete a fresh application.

HM Revenue and Customs

HM Revenue & Customs should be notified that the firm has ceased and guidance may be required from your Accountants in relation to the returns to be produced.

Registers of Scotland

It is important to advise Registers of Scotland that from the date of cessation, all deeds and correspondence should be forwarded to the acquiring firm or some other suitable person to ensure that no deeds are lost.

Appendix 1(a)

FAO – Senior Partner

Dear Sir

Solicitors
Sale of Practice

I refer to your recent intimation of interest in acquiring the assets or part of the assets of the firm of Solicitors. I now enclose for your attention further particulars, and would be happy to discuss these with you.

Yours faithfully

SOLICITORS

OFFICE PARTICULARS

WORK IN PROGRESS

1. **CONVEYANCING**

X Current transactions, where the majority of the work is ongoing.

Approximately X transactions where the majority of the work is completed.

X Properties are currently being advertised for sale in the Solicitors' Property Guide.

A small box of leases is held by this office and a couple of clients have previously instructed the drawing up of a number of leases.

A couple of properties are presently being factored by the firm.

2. **MATRIMONIAL**

Approximately X ongoing cases where there is a substantial amount of the work to be done.

3. **CLAIMS**

X ongoing transactions.

4. **VARIOUS MISCELLANEOUS TRANSACTIONS**

Approximately X transactions where the majority of the work is to be done.

5. **EXECUTRY/TRUSTS**

X ongoing Trusts/Executries

6. **WILLS**

Of the Wills held approximately X have been identified as likely to be current.

7. **TITLE DEEDS & OTHER DEEDS**

Approximately X sets of Titles are held and approximately X other types of Deeds. There are also a number of prior titles held.

8. **COMPANY WORK**

X Companies have appointed XXXX as Company Secretary. X confirmed that where the clients wish him to resign from office he will do so.

XXXXXX, SOLICITORS

GENERAL INFORMATION

The Agency and Court work XXX

The financial accounts show that the fee income in recent years has been around XXX.

The Law Library is substantial in nature. A full inventory is not yet available. XXX will consider any bids for this asset separately from the rest of the practice.

The Building Society Agency with XXX contributes approximately XXX per annum to turnover.

A recent valuation of the heritable property in XXX has valued this at approximately XXX.

Your offer for all or any part of the practice should be notified to the XXX Law Agents XXX no later than 12 noon on XXX

Further information can be obtained by speaking to XXX directly.

To Client

Dear

Former Firm of

We write to advise that we have acquired the former practice of XXX and have taken possession of the files, title deeds, Wills and other client papers from that firm. We are a well established practice (*information re firm*).

We now hold your file/deeds/Will and are happy to continue doing so unless you wish to appoint a new solicitor to act on your behalf. We enclose a form of mandate which you should complete and return to us if you wish to have your papers transferred to new agents.

If you are aware of any current work being undertaken by the former practice on your behalf, you should urgently contact our office or alternatively return the mandate enclosed to ensure that no prejudice is caused to your case by any delay in receiving instructions.

Yours faithfully

MANDATE

To Acquiring Firm

I/We

Of

Declare that I/we am/are a former client(s) of XXX and am/are lawfully entitled to take possession of my/our title deeds/Will which Messrs XXX took custody of from the said firm and request that it/they are delivered to me/us/my new solicitors, who are XXX

I/we confirm that no other person has any prior title or claim thereon by way of mortgage, charge or lien.

Signed.....

Dated.....

Master Policy of Insurance : Excerpt re Letters of Obligation

3. a) In this Special Condition a “Classic Letter of Obligation” shall mean an undertaking given by a solicitor in connection with the settlement of any transaction for the disposal for onerous consideration of any interest in property of any description or the granting of security over any such property by a client of that solicitor in terms of which the solicitor personally undertakes any one or more of the following
- (i) to deliver a clear Search in the Property and Personal Registers or a Letter of Obligation in or substantially in the styles of Letter of Obligation set out in the Registration of Title Practice Book (HMSO Edinburgh) paragraphs G 2 20 to G 2 25 with reference to the later of (a) the date of settlement of the transaction or (b) where the disponent, feuar, tenant, assignee or lender as the case may be requires to complete title by recording in the Register of Sasines or registration in the Land Register the date of recording of that title or the Land or Charge Certificate (as the case may be) provided that in the case of (b) such undertaking is effective for no more than a reasonable period after settlement of the transaction (which in the case of an undertaking granted after 31st October 1994 but before 1st November 2002 shall be a period not exceeding 14 days and in the case of an undertaking granted after 31st October 2002 shall be a period not exceeding 21 calendar days)
 - (ii) to deliver a duly executed (and recorded if appropriate) discharge of any security or to cause such discharge to be registered in the Land Register provided that the solicitor granting the undertaking has or will on settlement of the transaction to which it relates have control of sufficient funds to discharge in full the obligations to which that security relates or
 - (iii) to deliver a redemption receipt in respect of ground burdens in circumstances where the solicitor granting the undertaking is aware of the identity and whereabouts of the party entitled to the redemption monies and has available sufficient funds with which to redeem the ground burden in question.