

GUIDANCE NOTES FOR APPLICANTS

RELATING TO THE CRITERIA APPLIED BY THE COUNCIL OF THE LAW SOCIETY OF SCOTLAND IN CONSIDERING WHETHER AN INTRANT IS A FIT AND PROPER PERSON TO BE A SOLICITOR

INTRODUCTION

Section 6 of the Solicitors (Scotland) Act 1980 ('the 1980 Act') provides that a person shall not be admitted as a solicitor unless (*inter alia*) he has satisfied the Council that '**he is a fit and proper person to be a solicitor**' and obtained from the Council a certificate ('Entrance Certificate') to that effect.

With a view to promoting consistency and transparency in decision-making, the Council of the Law Society of Scotland ("the Society") has issued the following guidance for intrants as to how questions of fitness for admission will generally be addressed. However, it should be emphasised that each case will be considered on its own merits, and nothing in this guidance should be construed as creating a rule or formula for making decisions.

One of the Society's many roles is to ensure that any person who practices as a solicitor in Scotland maintains the standard of honesty, integrity and professionalism expected by the public and other members of the profession, and does not pose a risk to either the public or the profession.

In the case of an intrant under the 1980 Act, any assessment of the standard required envisages the taking into account of anything which casts doubt on the suitability of the intrant to meet and maintain the high ethical standards which both the public and the profession expect.

Without prejudice to that generality, logic demands that any fact or circumstance which, in the case of a solicitor, might lead to him:

- being struck off the Roll or suspended from practice, or
- having his practising certificate revoked, withheld, or issued subject to conditions,

is also likely to be relevant to the question whether an intrant is a fit and proper person to be admitted. Examples of such matters, discussed further below, include: insolvency, mental health, and any convictions for a criminal offence.

The Society may also take into account (as it can in disciplinary matters) evidence indicating:

- Lack of probity (this expression is not limited to stealing or telling lies; it includes a failure to tell the whole truth, and any conscious act or omission which might mislead another person, including plagiarism or cheating in exams);
- disregard for the rule of law;
- intemperate or discourteous behaviour (such as anti-social behaviour orders); or
- lack of judgement or self-control.

A) BANKRUPTCY/INSOLVENCY/TRUST DEED

Solicitors are people of business, and the public has a right to expect that a solicitor can responsibly manage financial matters. Insolvency can arise in many different ways, involving varying degrees of personal responsibility on the part of the individual. In cases involving such financial matters, particular attention will be given to the following issues:

- has there been dishonesty on the part of the intransit at any stage?
- do the circumstances cast doubt on the intransit's judgement?
- what steps have been taken to meet outstanding debts?

B) MENTAL HEALTH

In issues involving mental health the Society, if made aware of any mental health issues, is likely to require professional (psychological/psychiatric) reports in order to reach a proper assessment.

C) CRIMINAL CONVICTIONS

References to convictions include all unlawful conduct, whether criminal or civil and whether or not it has been the subject of prosecution/litigation. A Disclosure Scotland Form is obtained for every intransit, and may disclose information other than criminal conviction, including police warnings or fiscal fines.

The relevance of any criminal conduct is that it reflects (or might reflect) upon the attitude of the intransit towards the law; it is a fundamental expectation of society that solicitors will uphold the rule of law and obey it themselves.

The significance of the effect which such issues can have on the question of suitability for admission, is underlined by the fact that intransits **cannot** rely on the Rehabilitation of Offenders Act 1974, to withhold details of a conviction which is otherwise regarded as 'spent' under that Act (See Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003).

However, just as a conviction will not necessarily lead to a solicitor being struck off the roll or suspended, so an intransit will not necessarily be prevented from proceeding to admission by reason only of having one or more convictions. Factors to be taken into account include:

- the number and nature of the convictions, and the sentence(s) imposed;
- the time elapsed since the last (or only) conviction, and what the intransit has been doing in life during that time;
- the age of the intransit at the time of the offence(s);
- the circumstances of the offence(s);
- whether the intransit cooperated with the police and the courts.

Convictions are not directly relevant in themselves; they are only relevant in so far as they affect the question whether or not the intransit is a fit and proper person to proceed to admission. Thus, the existence of convictions will always raise the question of fitness for admission, and the circumstances will normally need to be investigated further before a decision is made. An isolated offence, committed in exceptional circumstances, might not be a bar to admission even if it occurred quite recently; but an intransit with even a

single conviction for an offence suggesting lack of probity is likely to have to provide persuasive arguments to convince the Society that he or she is a fit and proper person to be a solicitor. Where the offences, or any of them, suggest a lack of probity (and thus tend to cast doubt on the integrity of the offender) the penalty imposed by the court provides little assistance in considering that issue. The whole circumstances may need to be carefully scrutinised.

Minor Offences

Where an inrant has convictions for minor offences, such convictions are unlikely (in themselves) to be a bar to admission unless:

- they, or any of them, suggest a lack of probity (including any kind of deceptive behaviour such as displaying an incorrect vehicle excise licence), or
- their number and/or frequency suggests a pattern of unlawful behaviour which casts doubt on the inrant's regard for the rule of law.

Traffic Offences

Isolated traffic offence will not normally be a bar to admission, but:

- multiple offences (on the same occasion or separately);
- offences involving a serious disregard for the safety of the public (such as those concerning driving under the influence of drink or drugs, where the level of impairment was substantial, or driving without insurance); and
- offences involving an attempt to obstruct or pervert the course of justice (such as refusing to provide a specimen or giving a false name)
- will generally be regarded as serious matters.
- Traffic offences leading to imprisonment will be dealt with as indicated below.

Violence and Public Disorder

Involvement in offences of this type (all forms of assault, breach of the peace, and the like) raise a suspicion of a lack of self-control or a willingness to engage in lawless activity.

Nevertheless, isolated offences of this kind, not resulting in imprisonment, will not necessarily be a bar to admission. However:

- multiple offences (on the same occasion or separately);
- offences resulting in serious injury to the victim; and
- any offence aggravated by an attempt to obstruct or pervert the course of justice

will generally be regarded as serious.

Offences leading to imprisonment will be dealt with as indicated below.

Offences Affecting the Administration of Justice

Offences of this type will always be regarded as more serious, even if the penalty imposed by the court was modest; they are contrary to the whole ethical basis of the solicitors' profession.

The group comprises:

- any offence (however it may have been categorised by the courts), and
- any other act or omission (whether or not it led to a prosecution)

which involved an attempt to undermine the due administration of justice. The following list contains examples but is illustrative rather than exhaustive:

- perverting or attempting to pervert the course of justice;



- perjury;
- any attempt to influence witnesses either to give evidence, or not to do so, or to modify their evidence;
- giving false information (including false name) to the police;
- using documents (such as, but not limited to, vehicle excise licences or insurance certificates) fraudulently.

An intransigent with even a single conviction of this kind is likely to find it difficult to persuade the Society that he is a fit and proper person to be a solicitor, unless:

- there were wholly exceptional mitigating circumstances, or
- a significant period of subsequent law-abiding life demonstrates that the conviction is no longer a reliable indicator of his fitness for admission.

Offences Leading to Imprisonment (Immediate or suspended)

This section covers all offences leading to imprisonment (immediate or suspended), other than those dealt with above.

In general, offences which lead to a sentence of imprisonment suggest either a single very serious offence or a series of offences which together may indicate a serious disregard for the rule of law.

As in other areas, there can be no rigid rules, but an intransigent who is currently serving a custodial sentence or who:

- is subject to a suspended sentence, or
- has been released on parole and is still liable to recall, or
- has served a custodial sentence within the last five years,

is likely to find it very difficult to persuade the Society that he is a fit and proper person to be a solicitor.

Where a custodial sentence has been served in the more distant past, the Society will carefully examine the whole circumstances; the potential variety of circumstances is so enormous that no further meaningful guidance can usefully be given.

D) ONUS OF PROOF

The onus is always upon the intransigent to satisfy the Society that he is a fit and proper person to be admitted. The Act does not say that the Council of the Law Society may refuse to issue the relevant certificate if it is satisfied that the intransigent is not a fit and proper person to be a solicitor; it says that a person may not be admitted unless '**he has satisfied the Council that he is a fit and proper person to be a solicitor**'.

So, in any of the examples outlined above which require further investigation, it is for the intransigent to establish, on the balance of probabilities, that he is a fit and proper person to be admitted as a solicitor.