

Guidance Notes For Applicants

Relating to the criteria applied by the Council of the Law Society of Scotland in considering whether a person is a fit and proper person to be a solicitor in Scotland.

Introduction and background

The Solicitors (Scotland) Act 1980 provides that a person shall not be admitted as a solicitor unless (*inter alia*) they have satisfied the Council that **'he is a fit and proper person to be a solicitor'**.

Every person who practises as a solicitor in Scotland maintains the standards of honesty, integrity and professionalism that the public and other members of the profession expect.

Any person who practises as a solicitor in Scotland must be competent to do so and should not pose a risk to their clients, the public or other members of the profession.

The Society promotes transparency in its decision making and therefore has issued the following guidance as to how fitness and properness will be addressed at the following stages:

- Application for an Entrance Certificate
- Admission to the Roll for the first time
- Application for Restoration to the Roll at any time
- Application for a Practising Certificate having not held one for 12 months or more

This guidance seeks to set out:

- (i) The Society's key indicators of a Fit and Proper Person
- (ii) Matters which might cause concern as to a person's fitness and properness
- (iii) The process of application

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.

What is a Fit and Proper Person?

The Society considers 'fit and proper' to combine two concepts: **Fitness** and **Properness**.

Fitness relates to a person's competence and capability to fulfil their responsibility as a member of the Society.

Criteria which will be used when considering fitness will include:

- The possession of relevant qualifications;
- Evidence of achievement of relevant Outcomes;
- Knowledge;
- Skills;
- Values and attitudes;
- Experience;
- A commitment to continuing professional development.

The nature of competence will necessarily change during the route to qualification and post-qualification. For example, the competence expected of a person applying for an Entrance Certificate will be different to that of a person applying for Admission to the Roll.

Properness relates to a person's character and suitability to fulfil their responsibility as a member of the Society.

Criteria which will be used when considering properness will include:

- The ability to demonstrate that the person meets the standards of conduct outlined in Rule B1 of the Law Society of Scotland Practice Rules 2011;
- The ability to demonstrate that the person meets the standards outlined in the Solicitors (Scotland) Act 1980
- Whether or not the person is considered honest, honourable, reliable, and a person of integrity;
- Whether or not the person has a criminal record, and the nature of any such record;
- Good behaviour in personal and professional life. Applicants should not behave, either in personal or professional life, in a way that is likely to bring discredit on themselves, the Society or the Solicitors' profession;
- Financial integrity

Detailed requirements in order to demonstrate a person's fitness and properness

Fitness

The Society expects all solicitors to be capable and competent as regards the administration of legal services. Persons wishing to become solicitors will need to demonstrate their fitness and properness at various stages of the route to qualification and during their working lives. Those are:

- Application for an Entrance Certificate
- Application for a Restricted Practising Certificate
- Application for a Full Practising Certificate

Application for an Entrance Certificate

When applying for an Entrance Certificate, a person will demonstrate their fitness by holding the appropriate qualifications and providing evidence that they have achieved the Outcomes of the Foundation Programme and PEAT 1 (or equivalent).

Application for a Restricted Practising Certificate

When applying for a Restricted Practising Certificate whilst undertaking PEAT 2, a person will need to provide evidence that they have undertaken a sufficient amount of their Trainee CPD. All quarterly performance reviews must be up to date prior to a trainee being granted the certificate.

Application for a Full Practising Certificate

When applying for the first time for a Full Practising Certificate and having completed PEAT 2, a person's training partner will sign-off on a trainee's competence. All trainees will need to be able to demonstrate that they have met the PEAT 2 Outcomes.

Competence in this case means the achievement of the PEAT 2 Outcomes and means, on balance, that the trainee has performed sufficiently well in meeting those Outcomes.

For any queries relating to Practising Certificates, including those solicitors who are re-qualifying from another jurisdiction, via an alternative route, who seek restoration to the Roll of Solicitors, or are applying for a Practising Certificate having not held one for 12 months or more please, contact the Society's Registrar's Department (registrar@lawscot.org.uk) for further guidance and information.

Properness

A number of matters will cause the Society concern regarding a person's properness to become a solicitor or be restored to the Roll of solicitors including:

- (i) Insolvency
- (ii) Disregard for the rule of law or for authority
- (iii) Behaviour unbecoming of a solicitor
- (iv) Matters regarding the Solicitors (Scotland) Act 1980

More information on each of the above is given below.

When considering any such matters, applicants must disclose both spent and unspent convictions (pursuant to and only to the extent that a requirement to disclose is consistent with the terms of The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013). Questions about convictions and cautions in applications for an Entrance Certificate or an application for Admission as a Solicitor (and the content of this guidance so far as it relates to these applications) should be interpreted as only referring to spent convictions which may properly be required to be disclosed in terms of the said Order. Applicants should consider the terms of that Order carefully when completing the application form.

The Society will take into account any past behaviour indicating:

- Lack of probity (including theft, dishonesty, deception, the failure to tell the whole truth, and any conscious act or omission which might mislead another person including plagiarism, collusion, ghostwriting or cheating in an academic setting);
- Disregard for the rule of law or authority;
- Intemperate, discourteous or anti-social behaviour;
- Lack of judgement or self-control;
- Failure to meet the standard of conduct outlined in Rule B1 of the Law Society of Scotland Practice Rules 2011;
- Lack of financial integrity;
- Unlawful conduct;
- Any behaviour which suggests a material risk of harm to clients or others.

For the avoidance of doubt, all of the above information relates to circumstances or situations which may have taken place both in the United Kingdom and abroad.

(i) Insolvency

Solicitors are people of business, and the public has a right to expect that a solicitor can responsibly manage financial matters, whether they be his own or those of his business. Insolvency can arise in numerous 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:

- the level of the person's involvement in the company or business;
- whether the circumstances cast doubt upon the person's judgement;
- whether reasonable steps have been taken to meet outstanding debt;

It is vital that a person who has been declared bankrupt or is in danger of being declared bankrupt contacts the Society at the earliest possible opportunity in order that consideration may be given to their own circumstances.

(ii) Disregard for the rule of law or for authority

Disregard for the rule of law refers to all unlawful conduct whether criminal or civil, including, but not limited to, convictions, conditional offers of fixed penalties for any unlawful criminal or civil conduct, any alternatives to prosecution including Procurator Fiscal's fines and compensation offers, any diversions from prosecution including diversions for specialist support and diversions for mediation and reparation, and whether or not the conduct has been the subject of a prosecution or litigation.

The significance of the effect which such issues can have on the question of suitability for admission is underlined by the fact that persons cannot necessarily rely on the Rehabilitation of Offenders Act 1974 to withhold details of a conviction which is otherwise regarded as 'spent' under that Act. Disclosure of such convictions may be sought in the context of assessing suitability in this context pursuant to (and so far as permitted by) the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013 and applicants should consider the terms of that Order carefully when completing the application form.

Matters Causing Serious Concern

Any one of the following range of matters would cause the Society serious concern as to a person's fitness and properness and is **extremely unlikely** to persuade the Society that he is a Fit and Proper person to be a solicitor.

Any person who fails to disclose convictions (to the extent disclosure may be required in terms of the 2013 Order referred to above), or other matters detailed below, will in itself cause the Society serious concern.

The following is not an exhaustive list and is for guidance only. If you have a criminal or disciplinary record, no matter how minor you consider it to be, you must bring it to the Society's attention (to the extent disclosure may be required in terms of the 2013 Order referred to above):

- Violence against the person;
- Offences involving serious disregard for the safety of the public
- Dishonesty and deception (including plagiarism or other form of cheating in any form of assessment);

- A presence on the Violent and Sex Offender Register (ViSOR);
- Perjury, the perversion of the course of justice or other offences affecting the administration of justice (including giving the police or relevant authorities a false name);
- Money laundering, identity theft, fraud or tax-related offences;
- Breach of a court order;
- Multiple minor offences;
- An adverse finding, or pending disciplinary hearing or investigation, by another professional body or regulator either within Scotland or in another jurisdiction.

Where a person has convictions for minor offences, such convictions are unlikely (in and of themselves) to be a bar to admission unless they suggest:

- a lack of probity (including any kind of deceptive behaviour);
- a disregard for the rule of law (e.g. the number and frequency of offences suggests a pattern of unlawful behaviour casting doubt on the person's regard for the rule of law);
- indicate a material risk of harm to clients or others
- indicate behaviour unbecoming of a solicitor (see below).

The Society would encourage those unsure of their status to contact the Society's Education, Training and Qualifications team (for those entering the profession for the first time) or the Registrar's Department Team (for those seeking restoration to the roll or a applying for a Practising Certificate having not held one for a period of time) at the earliest possible opportunity.

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

As in other areas, the Society is not setting rigid rules, but a person 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 **extremely unlikely** to persuade the Society that he is a fit and proper person to be a solicitor.

In the case of custodial sentences that have been served in the more distant past, the Society will carefully examine the whole circumstances and take into account the guidance above.

(iii) Behaviour unbecoming of a solicitor

The Society, and the profession of solicitors in Scotland, prides itself upon the professional ethics and standards of the profession.

As above, solicitors are expected to possess certain fundamental attributes and it is reasonable to expect that all persons behave in such a fashion. Therefore, the Society expects all persons to:

- act with honesty and integrity;
- act thoroughly, diligently and know the relevant law;
- understand, and demonstrate their commitment to the principle, that the Client-Solicitor relationship is of fundamental importance and that a Solicitor must act in the best interests of their clients unless those interests conflict with duties to the court or to other solicitors;
- understand, and demonstrate their commitment to the principle, that a client can expect confidentiality from them;
- meet the standard of conduct outlined in Rule B1 of the Law Society of Scotland Practice Rules 2011;
- show good behaviour in personal and professional life. Persons should not behave, either in personal or professional life, in a way that is likely to bring discredit on themselves, the Society or the Solicitors' profession;
- show financial integrity;
- hold a commitment to continuing professional development.

If a person lacks any of these attributes this would cause the Society concern as to their suitability to become a solicitor.

(iv) Matters regarding the Solicitors (Scotland) Act 1980

The Solicitors (Scotland) Act 1980 sets out a number of matters which would result in a solicitor being suspended from practice. Necessarily, any matter which would prohibit a solicitor holding a practising certificate is likely also to prohibit a person entering the profession:

Extract from the Act:

18. (1) If--(a) in pursuance of the Mental Health (Care and Treatment) (Scotland) Act 2003 a solicitor is, by reason of mental disorder, detained in hospital;
- (b) a guardian is appointed to a solicitor under the Adults with Incapacity (Scotland) Act 2000 (asp 4);
- (c) the estate of the solicitor is sequestrated;
- (d) a solicitor grants a trust deed for behoof of creditors;
- (e) a judicial factor is appointed on the estate of a solicitor under section 41; any practising certificate for the time being in force of that solicitor shall cease to have effect, and he shall be suspended from practice as a solicitor.
- (1A) If—(a) an administration or winding up order, or an appointment of a provisional liquidator, liquidator, receiver or judicial factor has been made in relation to the incorporated practice; or
- (b) a resolution has been passed for the voluntary winding-up of an incorporated practice (other than a resolution passed solely for the purposes of reconstruction or amalgamation of the incorporated practice with another incorporated practice), the recognition under section 34(1A) of the incorporated practice shall be thereby revoked.

On any of these occurrences, the applicant, the solicitor, the judicial factor or the administrator/provisional liquidator/liquidator/receiver, as the case may be, must immediately contact the Society.

The process of application

Disclosure and other checks

A Standard Disclosure Scotland report is obtained for every person at four stages:

- Application for an Entrance Certificate
- Application for Admission to the Roll for the first time
- Application for Restoration to the Roll at any time
- Application for a Practising Certificate having not held one for 12 months or more

A Standard Disclosure will not be obtained for an applicant in the event of such a Disclosure having been obtained by the applicant in the preceding 6 months.

A Standard Disclosure Scotland report will disclose information other than criminal conviction including police warnings, fiscal fines, suspicions and information from the Violent and Sex Offenders Register.

It should be noted that obtaining a Standard Disclosure may take up to one calendar month and in certain circumstances can take considerably longer.

When applying for an Entrance Certificate **only**, the Society will also obtain two references – one personal and one academic and obtain proof of identity.

The full cost of the application, including the Disclosure and Register of Insolvencies check is met by the applicant.

The onus of proof

The onus is always upon the applicant to satisfy the Society that they are a fit and proper person to be admitted.

In any of the examples of concerning matters outlined above which require further investigation by the Society, it is for the person to establish, on the balance of probabilities, that they are a fit and proper person to be admitted as a solicitor.

Procedure followed by the Society

The Admissions Sub Committee of the Society will consider applications for an Entrance Certificate where any of the above circumstances have been brought to the attention of the Society.

The Admissions Sub Committee is also responsible for any consideration of an applicant whose circumstances have changed between being granted an Entrance Certificate and applying for admission to the Roll. The Society's Head of Admissions has delegated authority in some instances.

The Practising Certificate Committee of the Society may consider applications for restoration to the Roll or for a Practising Certificate if one has not been held for the last 12 months where any of the above circumstances have been brought to the attention of the Society or other circumstances have changed.. The Registrar and Deputy Registrar have delegated authority in some instances.

Each application is in confidence and is considered on its own merits. The Society welcomes early approaches from applicants who are in any doubt about their eligibility to become a solicitor.

Disregard for the rule of law will not necessarily lead to a person being prevented from entering the profession, proceeding to admission etc.

A number of factors will be taken into account by the Society when considering an applicant's properness. It is **essential** that the Society is provided with the following information where they apply to the applicant:

- the number and nature of the convictions, and the sentence(s) imposed;
- the time elapsed since the last (or only) conviction, and what the person has been doing in life during that time;
- an absence of prior disciplinary record or criminal record;
- the circumstances of the offence(s) including:
 - (i) whether there was premeditation with respect to the commission of the crime;
 - (ii) whether the motive was for personal enrichment;
 - (iii) whether the offences were related to the practice of the law (has the conduct impacted on the person's professional duties and has it resulted in harm to clients or other people);
- whether the person was honest with, and co-operated fully with, the police, the courts and other relevant authorities;
- the ignominy of having suffered a conviction and the deterrent effect;
- appropriate evidence of good character and suitability to practice the law;
- clear and convincing evidence of rehabilitation (e.g. probation reports, references from employers and a character reference from at least one solicitor of good standing)

When considering any such matters, the Society will take into account that applicants must disclose both spent and unspent convictions (pursuant to and only to the extent that a requirement to disclose is consistent with the terms of The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013)). Questions about convictions and cautions in applications for an Entrance Certificate or an application for Admission as a Solicitor (and the content of this guidance so far as it relates to these

applications) should be interpreted as only referring to spent convictions which may properly be required to be disclosed in terms of the said Order. Applicants should consider the terms of that Order carefully when completing the application form.

The Admissions Sub Committee and Practising Certificate Sub Committee usually meet on the first Thursday of the month and applications should be with the Society at least ten days before the meeting.

Applications should be in writing and should include all relevant details (see above) and any relevant supporting documentation.

If you have any questions about the procedures relating to the Admissions Sub Committee please contact legaleduc@lawscot.org.uk and for the Practising Certificate Sub Committee please contact registrar@lawscot.org.uk

Right of appeal

Any person who is the subject of a decision by Admissions Sub Committee or the Practising Certificate Sub Committee may, within 21 days of written intimation of the decision, appeal to the Society's Appeals and Reviews Sub Committee except where there is a specific statutory right of appeal to the Court.

To apply

Please send the information to either the Head of Admissions or the Deputy Registrar c/o The Law Society of Scotland, Atria One, 144 Morrison Street, Edinburgh EH3 8EX or LP 1 Edinburgh 1

For additional information, or if you would like to discuss a future application please email either legaleduc@lawscot.org.uk or registrar@lawscot.org.uk or telephone 0131 226 7411.