

Policy Statement on Termination of Training Contracts

The Society is occasionally contacted by trainees and training employers seeking guidance on whether a training contract can be terminated by reason of redundancy.

Society Policy

This brief policy statement sets out the Society's view of the position for both trainees and training employers on the subject.

It is the Society's view that a Training Contract may not be terminated by reason of redundancy. However, any firm or trainee who is affected by these issues should seek legal advice and assess the potential risks and liabilities involved.

There are two key points to consider:

1. Some employers have entered into an employment contract with trainees as well as the training contract prescribed by the Admission as Solicitor (Scotland) Regulations 2011. Although not an authoritative view, an Employment Tribunal in England was in no doubt that a trainee solicitor's employment and training contracts were "indivisible" and that a trainee could not be dismissed from employment without having his or her training contract similarly terminated in accordance with applicable regulation and the terms of the training contract. The training contract makes no provision for its termination. Regulation 17 of the 2011 Regulations makes provision for the Council of the Society to terminate a training contract but only in the particular circumstances provided for therein. The regulations make no provision for the termination of the Training Contract in any other circumstances.
2. We are of the view that a Training Contract is analogous to a contract of apprenticeship. The Employment Appeal Tribunal has held, in relation to a modern apprenticeship, that where any provisions of an employer's terms and conditions of employment were inconsistent with the terms of an apprenticeship, the provisions of the apprenticeship would prevail.

The Society's position is that normal contract law applies to offers and acceptances of future traineeships.

Steps to take

The Society advises that in place of redundancy, an employer should consider different types of work for trainees if there is less client work available, such as assisting on reviews of transactional processes and case management and working on research, educational and knowledge management projects. It may also be possible to transfer or vary a training contract.

The Education, Training and Qualifications team can give assistance and also give guidance on trainee secondments, shared training contracts and assignation of training contracts. *Please contact Katie Wood, Head of Admissions (0131 476 8162) or katiewood@lawscot.org.uk in the first instance.*