

## **Guidance Notes on the fit and proper person requirements for admission as a solicitor**

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

### **Background**

Every person who practises as a solicitor in Scotland maintains the standards of the 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 13 months or more

This guidance seeks to set out:

1. What is a fit and proper person?
2. Fitness requirements at each stage
3. Matters which cause the Society concern regarding an applicant's propriety
4. Matters which cause the Society serious concern regarding an applicant's propriety
5. Factors the Society will take into account when considering matters that cause concern and serious concern
6. The process for applications

It is important to note 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.

## 1. What is a fit and proper person?

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

**Fitness** relates to a person's competence and capability to fulfil their responsibility as a member of the Society. Criteria which the Society will use when considering fitness includes:

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

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

**Propriety** 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 propriety includes:

- The ability to demonstrate that the person meets the standards of conduct outlined in [Rule B1 of the Law Society of Scotland Practice Rules](#);
- 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;
- 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.

## 2. Fitness requirements at each stage

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 propriety at various stage of the route to qualification and during their working lives.

Those stages are:

### 2.1. 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.

## *2.2. Application for Admission to the Roll*

### *Admission between months 3-12 of a training contract (or equivalent)*

When applying for Admission whilst in the first year of a training contract, a person will need to provide evidence that they have undertaken the requisite number of PEAT 2 Quarterly Performance Reviews; the Required Advocacy Course; and the mandatory sitting in.

### *Admission between months 12 and 24 of a training contract and upon completion of the training contract.*

When applying for Admission in the second year of a training contract, a person will need to provide evidence that they have undertaken the requisite number of PEAT 2 Quarterly Performance Reviews.

For those applying for Admission at the end of their training contract the Society will check that they have complied with the guidance on required CPD, undertaken the requisite number of PEAT 2 Quarterly Performance Reviews, and that they have met the PEAT 2 Outcomes.

For the avoidance of doubt, all trainees – regardless of when they are admitted and whether or not they hold a Practising Certificate – will require to evidence they have complied with the guidance on required CPD, undertaken the requisite number of PEAT 2 Quarterly Performance Reviews, and that they have met the PEAT 2 Outcomes.

Practising certificates issued during the training contract will be restricted in terms of the Admission Regulations and our usual processes.

In all cases, the Training Manager will certify that the applicant is a fit and proper person.

## *2.3. Other matters*

For those seeking to be restored to the Roll of Solicitors or who are applying for a Practising Certificate have not held one for 13 months or more should contact the Member Registration Team ([memberregistration@lawscot.org.uk](mailto:memberregistration@lawscot.org.uk)) for guidance and information

For those seeking information on requalifying from another jurisdiction please contact the Education, Training and Qualifications Team ([legaleduc@lawscot.org.uk](mailto:legaleduc@lawscot.org.uk)) for guidance and information.

## **3. Matters which cause the Society concern regarding an applicant's propriety**

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

### *3.1. 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 individuals. In cases involving such financial matter, particular attention will be given to the following factors:

- 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 circumstances.

### *3.2. 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 diversions from prosecution including Procurator Fiscal's fines and compensation offers; any diversions from prosecution including diversions for specialist support; 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 Offender Act 1974 to withhold details of a conviction which is otherwise "spent" under the Act. Disclosure of such convictions may be sought in the context of assessing suitability in this context pursuant to (and so far permitted by) the Rehabilitation of Offender Act 1974 (Exclusions and Exception) (Scotland) Order 2013 and applicants should consider the terms of that Order carefully when completing any application form to the Society.

### *3.3. 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.

Solicitors are expected to possess certain fundamental attributes and act in their personal and professional lives accordingly.

Therefore, the Society expects all applicants 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 Solicitors must act in the best interests of their clients unless those interests conflict with other 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. For the avoidance of doubt this includes conduct on social media;
- 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.

### 3.4. *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 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.

## 4. **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 propriety. An applicant is **extremely unlikely** to persuade the Society that he is a Fit & Proper person to be a solicitor.

### 4.1. *Failure to disclose*

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 in this guidance, will in itself cause the Society serious concern.

#### 4.2. *Other matters likely to cause 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, collusion, ghostwriting or other form of cheating in any form of assessment);
- A presence on the Violent and Sex Offender Register
- 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, Terrorist financing, identity theft, data theft, fraud or tax-related offences;
- Offences relating to the misuse of computers;
- Breach of a court order;
- Multiple minor offences;
- An adverse finding, or pending disciplinary hearing or investigation, by another professional body, tribunal, court 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 Member Registration Team (for those seeking restoration to the roll or 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 an applicant 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 this guidance.

## **5. Factors the Society will take into account when considering matters that cause concern and serious concern**

The Society will consider the following when adjudicating such matters including whether the matter(s):

- o involved a lack of probity including, but not limited to: theft, dishonesty, deception, the failure to tell the whole truth, and any act or omission which might mislead another person or organisation. This includes plagiarism, collusion, ghost-writing, or cheating in an academic setting);
- o involved a disregard for the rule of law or authority;
- o indicate intemperate, discourteous or anti-social behaviour;
- o indicate a lack of judgement or self-control;
- o indicate a failure to meet the standard of conduct outlined in rule B1 of the Law Society of Scotland Practice Rules 2011;
- o Indicate a lack of financial integrity;
- o Involved unlawful conduct.

For the avoidance of doubt, all of the above relates to circumstances or situations which may have taken place within the United Kingdom and/or elsewhere.

## **6. The Application processes**

### *Disclosure and other checks*

A Level 2 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 13 months or more

A Level 2 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. Applicants seeking admission five months or later into their training contract will require a second Disclosure.

A Level 2 Disclosure Scotland report with information including: unspent convictions, relevant spent convictions, and unspent cautions.

It should be noted that obtaining a Level 2 Disclosure may take up to one calendar month and in certain circumstances can take considerably longer.

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

## 7. The onus of proof

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

In any of the examples of matters causing concern or serious concern outlined above which require further investigation by the Society, it is for the applicant to establish, on the balance of probabilities, that they are a fit and proper person.

## 8. 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. In some instances, the Society's staff have delegated authority to act.

The Practising Certificate Sub-Committee of the Society will consider applications for restoration to the Roll or for a Practising Certificate if one has not been held for the last 13 months where any of the above circumstances have been brought to the attention of the Society or other circumstances have changed. In some instances, the Society's staff have delegated authority to act.

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.

A number of factors will be taken into account by the Society when considering an applicant's propriety. 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:
  - o whether there was premeditation with respect to the commission of the crime;
  - o whether the motive was for personal enrichment;
  - o 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).



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 any 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](mailto:legaleduc@lawscot.org.uk) and for the Practising Certificate Sub Committee please contact [memberregistration@lawscot.org.uk](mailto:memberregistration@lawscot.org.uk)

## **9. 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.

## **10. How to apply**

Please send the information to either the Head of Admissions c/o The Law Society of Scotland, Atria One, 144 Morrison Street, Edinburgh EH3 8EX (or to [legaleduc@lawscot.org.uk](mailto:legaleduc@lawscot.org.uk))

For additional information, or if you would like to discuss a future application please email either [legaleduc@lawscot.org.uk](mailto:legaleduc@lawscot.org.uk) or [memberregistration@lawscot.org.uk](mailto:memberregistration@lawscot.org.uk) or telephone 0131 226 7411.

## **11. Other relevant Society guidance**

Applicants may wish to consider the following Society rules, regulations, and guidance in conjunction with this guidance:

- o The Admission as Solicitor (Scotland) Regulations 2019
- o The Law Society of Scotland Practice Rules 2011
- o Foundation Programme Guidelines
- o PEAT 1 Programme Guidelines
- o Guidance Notes for Training Managers
- o CPD Requirements and Guidance
- o Guidance on Early Admission
- o Social media: advice and information for the legal profession.

