

ANNEX 2: Experience Portfolio

Instructions:

- You must provide 3 portfolios which cover a range of matters you have handled from your caseload.
- These portfolios should demonstrate your experience in the relevant area of practice.

(If you have completed portfolios at **Annex 1** you do not need to complete this section).

Date you were instructed in the case:

Provide an outline of the facts of the case.

Instruction received to act in the purchase of a freehold residential property. The client had previously instructed the firm in other capacities but this was the first time they instructed the firm in a personal matter. The client was living in rented accommodation following the sale of their previous house and so there was no related sale. The seller had an onward purchase.

ANNEX 2: Experience Portfolio *continued*

Provide an explanation of the law arising in the case and how the law applies to the facts of the case.

Client Due Diligence in accordance with requirements of the Money Laundering Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.

The transaction is a sale of land and the contract must comply with Section 2 of the Law of Property (Miscellaneous Provisions) Act 1989. It must:

- Be in writing;
- Incorporate all terms that the parties have expressly agreed in one document or, where contracts are exchanged, in each; and
- Be signed by or on behalf of each party to the contract.

The transaction was completed by a transfer deed in the HM Land Registry standard form "TR1" which must be created by a deed in accordance with Section 52 (1) of the Law of Property Act 1925.

On completion, a Stamp Duty Land Tax (SDLT) return will need to be completed and submitted within 14 days of completion (as per Section 76 of the Finance Act 2003) as it is a transaction of a major interest for value exceeding £40,000. The transfer must be registered as a requirement of Section 27 and Schedule 2, Paragraph 2 of the Land Registration Act 2002. HM Land Registry will not complete the registration until they have received evidence that any SDLT return has been submitted and tax paid in accordance with Section 79 of the Finance Act 2003.

Provide an outline of any procedural and process matters that arose in the case and how they were dealt with.

On instruction from my clients, I carried out a conflict check and opened a file. I then sent the client a Client Care Letter with terms of business and a quotation. The Client Care Letter set out what work was included within the fee estimate as well as my hourly rate, details of my supervising partner and the complaints procedure should this be required. The clients signed an acceptance form to say they accepted the terms and conditions and I then began considering the draft contract papers received from the seller's solicitors.

I reviewed the draft contract papers and searches which were provided by a previous proposed purchaser who withdrew and raised enquiries with the seller's solicitor. These included amending the contract, raising enquiries on the legal title as well as the protocol forms completed by the seller (the Property Information Form and the Fittings and Contents Form). The Seller had also carried out works on the Property so I asked for copies of relevant planning permissions and certificates and guarantees for the benefit of my clients.

I prepared a report on the title to my clients and sent the contract and transfer for signature. Once I received their duly executed transfer and signed contract, I obtained my clients' express authority to exchange contracts under Law Society Formula B. As there were two contracts, we exchanged these by post in accordance with the standard undertaking in the Formula. I then carried out pre-completion formalities search as an Official Search at HM Land Registry and preparation of an SDLT return. I also prepared a completion statement for my clients and sent this with the firm's bank details so that we had sufficient funds for completion to take place. The client was providing the full balance.

On the day of completion, I sent the completion funds to the seller's solicitor and upon receipt, we all dated the Transfer with the completion date and the seller's solicitor arranged for the estate agent to release the keys to my clients. They sent their client's signed transfer in the post and upon receipt, I made an application to HM Land Registry to register the transfer using HM Land Registry form AP1. I also submitted the clients' SDLT return and arranged a BACS payment for the necessary tax payment. On completion of the registration at HM Land Registry, I received an updated copy of the Register Entries and I sent a copy of these to my clients. I then arranged to close my file and sent a closing letter to my clients advising that the file would be held for a minimum of 15 years.

ANNEX 2: Experience Portfolio *continued*

Provide an outline of the evidential issues that arose in the case and how they were dealt with.

The seller had carried out works at the Property which required a Building Regulation Completion Certificate under The Building Act 1984 and The Building Regulations 2000 (as amended) which had not been supplied. The seller did arrange for an inspection before exchange of contracts and provided the Regularisation Certificate. Before the seller had received the certificate, the seller's solicitor and I had negotiated a rider to the contract which specified that the seller's solicitor would hold a retention sum of £5,000 back from the purchase price until the seller provided the Regularisation Certificate. The Regularisation Certificate was provided before exchange and so the Rider was not attached to the contract in the end.

There were various search entries on the Local Authority search which did not immediately appear to relate to the Property that my clients were purchasing. I raised this with the search provider and the seller's solicitor and they were able to provide a copy of the Local Plan which showed that there was a very minor overlap the site plans showing the neighbouring property planning permissions and this appeared to be an error rather than these applications relating to the Property my clients were purchasing. In any event, I checked that there were no planning conditions which appeared to have been breached and was satisfied that there was no risk to my clients of any enforcement action for breach of a planning condition or obligation.

Provide an outline of any ethical or conduct issues that arose in the case and how they were dealt with.

I was acting for two clients who were purchasing jointly and therefore needed to advise on holding the property as "Joint Tenants" or "Tenants in Common". My colleague was acting for the clients in succession planning and therefore, my clients were fully advised on these options and how they would impact their succession planning. I was able to advise on the differences between "Joint Tenants" and "Tenants in Common" but my colleague was able to advise on the impact of this on the clients' succession planning which is outside of my specialism.

I requested a desktop Environmental Search as part of the standard searches. However, these reveal information which relates to the physical condition of the Property and deal with matters outside of my specialism. I therefore referred the client to their surveyor if there were any specific queries relating to this.

ANNEX 2: Experience Portfolio *continued*

Provide an outline of any funding issues that arose in the case and how they were dealt with.

My clients had sold their previous home and they were in rented accommodation and did not need the aid of a mortgage.

In order to comply with the Anti-Money Laundering requirements, I asked the client to provide proof of their funds (a bank statement in their name showing the full purchase monies) and source of wealth (evidence of how funds had accrued). The client provided the bank statement and a completion statement and letter from their previous solicitors which confirmed completion of the sale and the funds which were transferred to the client by that firm.

Provide an outline of the advice provided to the client and the outcome of the matter.

I reported to my clients on the terms of the contract and transfer, the title, the standard enquiries which the seller provided and the searches.

I advised that the Title was freehold and registered under a single title number with title absolute. I advised the client how the Land Registry now record property matters and the relevance of the Property Register, the Proprietorship Register and the Charges Register. There were no express rights granted for the benefit of the Property and I advised the client that their use did not require rights over neighbouring land as access was direct from a public highway. The services which the property benefitted from (water, foul and surface drainage and electricity) were also received direct from the public highway. Similarly, there were no rights reserved for the benefit of neighbours to report to the client.

I advised the client on the terms of the contract and the transfer. I advised the clients on the replies to the standard form enquiries (Property Information Form and Fittings and Contents Form).

I advised the client on the results of their searches which included the Local Search, the Water and Drainage Search, Environment Search and Chancel search. I advised the client on the Local Search result which included erroneous entries which actually related to neighbouring properties but the boundary slightly overlapped on the site plan. I advised on the planning conditions and the fact that these did not interfere with their proposed use of the Property.

I advised the client that they should take out a chancel repair indemnity insurance policy in lieu of a search as this was not provided by the previous proposed purchaser. I advised that I was not able to provide advice on the physical condition of the Property for matters revealed on the environmental search and advised on the importance of having a survey completed.

I advised the client on the SDLT due for their purchase and the balance required for completion and provided the firm's bank details. After completion, I applied for registration of the transfer at Land Registry and on receipt of the updated title register, I sent the client a copy and then I advised them of the need to keep their address up to date and the importance of keeping their documents safe. I also advised of the importance of having a Will and keeping this updated and the clients were in touch with a colleague in our private client department to discuss this.

ANNEX 2: Experience Portfolio *continued*

Provide an outline of the decisions that you had to make in the case and whether you had to take any strategic decisions in the case.

The Local Authority search revealed some entries which appeared to relate to neighbouring properties. I had to obtain a copy of the Local Plan from the Local Authority which showed the relevant planning application numbers and work out whether or not these related to the Property being purchased. I then had to check the planning conditions and make sure that these did not apply to my clients intended use and occupation of the Property as even though these clearly related to other properties, the plan provided did overlap onto the boundary of the Property being purchased but this was clearly an error with the site plans.

Provide a description of any training or development needs you have identified as a result of having dealt with the case.

I had to research enforcement action for a breach of planning conditions throughout this case to ensure that I provided the best and most practical advice to my clients.

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Date you were instructed in the case: **24.01.2023**

Provide an outline of the facts of the case.

I was contacted by a long standing client of the firm who wished to grant a fishing licence. They had previously had a licence in place (drafted by another firm) and they wanted the new licence to be on broadly the same terms of this fishing licence. The new Licensee was one of the previous Licensees but now acting in his sole capacity.

On discussion during the drafting, the client specifically wanted the licence to include a right to take and carry away the fish which were caught. I advised the client that this should not therefore be a fishing licence but instead a lease of fishing rights (which is grant of a profit a prendre).

ANNEX 2: Experience Portfolio *continued*

Provide an explanation of the law arising in the case and how the law applies to the facts of the case.

A profit a prendre is a type of incorporeal hereditament which is a type of intangible real property. It can be an interest in land under section 1(2)(a) of the Law of Property Act 1925. A profit can either be appurtenant to land or held in gross as a proprietary interest in land. In this case, the Lessee of the fishing rights is acting in his personal capacity and the rights are not intended to be attached to any land and this was therefore a grant of a profit in gross.

Our client is the freehold owner of the land and therefore the person entitled to grant the lease of fishing rights. As an interest in land, the express grant of a profit must be made by Deed under Section 52(1) of the Law of Property Act 1925.

As the term of the fishing lease was only 5 years, there was no requirement to register this under paragraph 6(1) of Schedule 2 of the Land Registration Act 2002.

When drafting the lease, I had to consider the implications of the Landlord and Tenant Act 1954. If the provisions of section 24-28 were not excluded within the lease, there was a risk that the lease would confer security of tenure on the Lessee. I considered the risk to be small on the basis that there was no lease of land, just rights, but decided it was worthwhile complying with the procedure set out in Section 38A of the Landlord and Tenant Act 1954 to exclude the security of tenure conferred in sections 24-28 of the Landlord and Tenant Act 1954.

Provide an outline of any procedural and process matters that arose in the case and how they were dealt with.

On instruction from the client, I had to carry out a conflict check to ensure that we did not have a conflict with the proposed Licensee. As this is a client with a retainer, we send an annual terms of business and client care letter and so all I was required to do in this instance was a scoping letter.

Once the client had approved the matters set out in the scoping letter, I began drafting the Fishing Licence. The client had provided a copy of a previous fishing licence and wanted the licence to be on roughly the same terms.

I drafted the licence and sent this to the client for approval. The client had some questions and wanted some of the drafting to be "tightened up" specifically relating to the termination provisions. I carried out these amendments but I researched fishing licences generally and noticed that a fishing licence should not be granted where there are provisions to "take and carry away". I therefore discussed this with the client who said that the proposed Licensee was adamant that they wanted to be able to take and carry away. I then advised the client that we should instead grant a lease of the fishing rights. I agreed with the client that I would prepare a draft and send this through by email. I ensured that I kept the format as similar as possible to the fishing licence and was able to keep the vast majority of the provisions in the lease. The client approved this and I sent the engrossment to the client for signing.

I also sent the client the notices and declaration as required by Section 38A of the Landlord and Tenant Act 1954. The Client is a sophisticated user of legal services and he dealt with service of these and the completion of the fishing lease personally. As the lease was only granted for 5 years, there was no requirement to register the same. I therefore produced a bill for my time as there were no disbursements and sent this to the client for settlement.

ANNEX 2: Experience Portfolio *continued*

Provide an outline of the evidential issues that arose in the case and how they were dealt with.

The Client initially instructed me to prepare a fishing licence. On discussion with my client, the proposed Licensee required the right to take and carry away. It was not appropriate to grant a licence as the right to take and carry away created a proprietary interest and this must be made by deed under Section 52(1) of the Law of Property Act 1925. Therefore, I advised my client we should instead prepared a lease of fishing rights. This was important also because, had a Court decided that the agreement was indeed a lease and not a licence, we may have fallen foul of excluding the security of tenure from the fishing licence.

Provide an outline of any ethical or conduct issues that arose in the case and how they were dealt with.

I had originally drafted the fishing licence on the basis of my client's instructions and I had also had to undertake research in order to be able to advise on the grant of a profit a prendre and drafting a lease of fishing rights. I had to consider at the point of billing, how much time was recoverable given that a large portion of the time recorded was for a document which we were unable to use and also legal research. Had I known from the outset that the right to take and carry away would require a lease of fishing rights, I would not have prepared the licence initially. I decided that, on balance, I would only charge the proportion of my time in drafting the lease of fishing rights and the advice to the client on the lease of fishing rights itself and that I would discount the fees for the research and the fishing licence.

ANNEX 2: Experience Portfolio *continued*

Provide an outline of any funding issues that arose in the case and how they were dealt with.

There were none as my client did not need to provide any funding for the transaction.

Provide an outline of the advice provided to the client and the outcome of the matter.

I had to advise my client on the differences between a fishing licence and a lease of fishing rights. I explained that a licence was personal and contractual. In addition to the requirement to include provisions to take and carry away, the Client was also keen to include a longer term so as to minimise annual administration. I advised the client that the lease would allow this but I had to advise the client that a licence would be dubious if there was to be a longer term as well as the right to take and carry away. I also had to advise the client on the risks of the security of tenure provisions within the Landlord and Tenants Act 1954 and how they needed to serve the notices and follow the declaration process as set out in Section 38A of the Landlord and Tenant Act 1954.

I advised my client that there was no requirement to register the lease as this deed not meet the definition set out in paragraph 6(1) of Schedule 2 of the Land Registration Act 2002. I advised my client that lease of fishing rights need to be executed as a deed to validly grant the profit a prendre.

The client took my advice onboard and agreed that the lease of fishing rights was the best way to protect their interests and we supplied the engrossment lease of fishing rights.

ANNEX 2: Experience Portfolio *continued*

Provide an outline of the decisions that you had to make in the case and whether you had to take any strategic decisions in the case.

As above, I had to advise the client not to proceed with the fishing licence and to instead proceed with the lease of fishing rights.

Provide a description of any training or development needs you have identified as a result of having dealt with the case.

I had to do research whilst preparing these documents and this lead me to identify a need to develop my knowledge in profits a prendre and specifically, fishing licences and lease of fishing rights. There are a lot of specialist tenancies, licences and leases which arise in Agricultural matters and I have identified a training need to develop knowledge of these.

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Date you were instructed in the case: **08/02/2023**

Provide an outline of the facts of the case.

The client was an existing client who contacted us to advise that they wanted to purchase land in the name of their retirement benefit scheme. Therefore, the client in this matters would be all the trustees of the retirement benefit scheme which included the two personal trustees and also a professional pension trustee company. The land involved was agricultural in nature and as the land would be owned by the trustees of the retirement benefit scheme, there would also need to be a Farm Business Tenancy in place to regulate the occupation of the farming clients.

ANNEX 2: Experience Portfolio *continued*

Provide an explanation of the law arising in the case and how the law applies to the facts of the case.

Client Due Diligence in accordance with requirements of the Money Laundering Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.

The transaction is a sale of land and the contract must comply with Section 2 of the Law of Property (Miscellaneous Provisions) Act 1989. It must:

- Be in writing;
- Incorporate all terms that the parties have expressly agreed in one document or, where contracts are exchanged, in each; and
- Be signed by or on behalf of each party to the contract.

The transaction was completed by a transfer deed in the HM Land Registry standard form "TR1" which must be created by a deed in accordance with Section 52 (1) of the Law of Property Act 1925.

On completion, a Stamp Duty Land Tax (SDLT) return will need to be completed and submitted within 14 days of completion (as per Section 76 of the Finance Act 2003) as it is a transaction of a major interest for value exceeding £40,000. The transfer must be registered as a requirement of Section 27 and Schedule 2, Paragraph 2 of the Land Registration Act 2002. HM Land Registry should not complete this until they have received evidence that any SDLT return has been submitted and tax paid in accordance with Section 79 of the Finance Act 2003.

The Farm Business Tenancy will need to comply with the requirements in the Agricultural Tenancies Act 1995. As the land is agricultural, the agricultural condition set out in 1(3) of the Agricultural Tenancies Act 1995 could be relied upon but as there is the potential to diversify the land and we decided it would be safest, especially given the nature of the client being the retirement scheme trustees rather than just the farming individuals, to rely on the notice condition under section 1(4) of the Agricultural Tenancies Act 1995 and I therefore needed to prepare the notices for the landlord and the tenant.

Provide an outline of any procedural and process matters that arose in the case and how they were dealt with.

On instruction from my clients, I carried out a conflict check and opened a file. I then sent the two personal trustee clients a Client Care Letter with terms of business and a quotation and a further copy of the Client Care Letter was sent to the pension scheme trust company who were also trustees of the retirement scheme. The Client Care Letter set out what work was included within the fee estimate as well as my hourly rate, details of my supervising partner and the compliants procedure should this be required. The clients signed an acceptance form to accept the terms and conditions and I then began considering the draft contract papers received from the seller's solicitors.

I reviewed the draft contract papers and searches and raised enquiries with the Seller's solicitor. These included amending the contract, raising enquiries on the legal title as well as a precedent form of enquiries completed by the seller (agricultural land short form enquiries for bare land). I drafted the Farm Business Tenancy (FBT) as instructed between the trustees of the pension scheme and the personal farming clients. The FBT was made by reference to an existing tenancy which was already in place between the same parties over nearby land. I also drafted the notice to the landlord and the notice to the client to comply with section 1(4) of the Agricultural Tenancies Act 1995.

I prepared a report on the title to my clients and sent the contract and transfer for signature. Once I received their duly executed transfer and signed contract, I obtained all clients' express authority to exchange contracts under Law Society Formula B. As there were two contracts, we exchanged these by post in accordance with the standard undertaking in the Formula. I carried out pre-completion formalities search as an Official Search at HM Land Registry and preparation of an SDLT return. I also prepared a completion statement for my clients and sent this with the firm's bank details so that we had sufficient funds for completion to take place. On the day of completion, I sent the completion funds to the seller's solicitor and upon receipt, we dated the Transfer and FBT with the completion date. They sent their client's signed transfer in the post and upon receipt, I made an application to HM Land Registry to register the transfer using HM Land Registry form AP1. I also submitted the clients' SDLT return and arranged a BACS payment for the necessary tax payment.

On completion of the registration at HM Land Registry, I received an updated copy of the Register Entries and I sent a copy of these to my clients. I then arranged to close my file and sent a closing letter to my clients advising that the file would be held for a minimum of 15 years.

ANNEX 2: Experience Portfolio *continued*

Provide an outline of the evidential issues that arose in the case and how they were dealt with.

There was notice that there was an "Electricity Supply Agreement" within a historic filed Transfer on the register entries but the seller did not have a copy of the same. Whilst this document was not noted on the title register it was set out within a transfer which was noted on the title register entries, there was a risk it imposed obligations on the owner of the land that our client would be subject to. The seller agreed to split the cost of an indemnity policy for missing documents and our client agreed to be responsible for half of the cost as well.

Provide an outline of any ethical or conduct issues that arose in the case and how they were dealt with.

I was receiving instructions from a personal trustee client who was acting as the ultimate farming client. However, he was also one trustee of the retirement benefit scheme along with his father. Another of the trustees was a professional pension trust company and I needed to remember to take instructions and report all matters to all clients. I ensured all clients had sight of the report and signed the contract and Transfer. I also ensured that all parties approved the FBT.

The firm were also acting for the vendors. This presented a potential conflict of interest scenario. I had to consider my obligations within the Code of Conduct for Firms for the Solicitors Regulations Authority, paragraphs 6.1 and 6.2 of the Code of Conduct for Solicitors, RELs and RFLs and also the CILEX Code of Conduct, specifically clause 7.1. The firm has policies in place for acting on both sides of a transaction and all clients must sign a notice to confirm that they are happy for the firm to act on both sides. We have internal procedures to ensure that each file is locked so that the other fee earner may not access the other fee earner's file and that there are separate partners supervising and offices acting for each party. I adhered to the firm's protocols and was satisfied that there was no conflict of interest arising during the transaction or after completion though this was monitored throughout and both clients were aware that we would cease acting for all clients if a conflict did arise.

ANNEX 2: Experience Portfolio *continued*

Provide an outline of any funding issues that arose in the case and how they were dealt with.

The funding was being provided by the pension trust company and I needed to ensure that I complied with the requirements of the Money Laundering Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.

Provide an outline of the advice provided to the client and the outcome of the matter.

I advised the client on the contract, the title itself, the transfer to them, the results of their searches and the enquiries raised and replies received from the seller.

The Title was freehold, registered under a single title number with title absolute. I advised the client how the Land Registry now record property dealings and the relevance of the Property Register, the Proprietorship Register and the Charges Register in replacement of historic deeds being passed between owners. There were no express rights granted for the benefit of the Property and I advised the client that their use did not require rights over neighbouring land as access was from a public highway and there were no service provisions benefitting the land. The client also confirmed that there were no additional rights they required. I advised the client that the Property had been sold subject to existing wayleaves and easements in relation to cables and the missing electricity agreement (referred to above) and suggested that an indemnity policy was put on risk on completion.

I advised the client on the terms of the contract and included provisions for limiting the liability to the assets of the trust so as not to make the trustees personally liable in the event of a breach of contract. I also included a provision for the transfer of entitlements under the Basic Payment Scheme. The contract confirmed the Property was sold with vacant possession and I added a clause to the contract to ensure the sellers, who were farming this land under their farming partnership and were in actual occupation, did not retain rights over the Property.

I advised the clients on the replies to the standard form enquiries and the results of the local searches. This included advising that the access was from a public highway but explaining that, unless we did a highways search, we could not confirm this directly abutted the highway. I advised the clients that the Local Search also revealed that the Property was in an area of special control for advertisement purposes and an area of safeguarding for mineral purposes.

I advised the client that there were no public rights of way over the Property and that there had been no application to be made to register the land as a Town or Village Green. I advised the client that the chancel search showed that the Property is not in the historical boundary of a parish with a continuing chancel repair liability.

On receipt of signed documents and funds, I proceeded to simultaneously exchange contracts and complete their purchase.

ANNEX 2: Experience Portfolio *continued*

Provide an outline of the decisions that you had to make in the case and whether you had to take any strategic decisions in the case.

On reviewing the title, I noticed that there was a reference to an Electricity Supply Agreement which was noted as affecting the land in a historic transfer. The seller did not have a copy and did not know what this related to. The seller confirmed that there was no electricity supply to the Property and no electricity apparatus that they were aware of nor any wayleave agreement. With this in mind, I decided it would be best for the client to have the benefit of an indemnity policy for a missing deed. There may be obligations on the landowner or covenants affecting the use of the Property and as we are unaware of these, I advised the client it would be beneficial to have the indemnity insurance policy to fall back on.

Provide a description of any training or development needs you have identified as a result of having dealt with the case.

I have not drafted a Farm Business Tenancy in the past 2 years so I undertook some research whilst drafting but also noted it as a training need to be more thoroughly reviewed with my CPD.