

SELLING YOUR BUSINESS

*Everything you
need to know
about selling
your business
in the UK*



STEVEN MATHER

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INTRODUCTION

Making the decision to sell your business is a big thing, and actually selling is even bigger. It's a complex process and perhaps you're looking for a little help. This guide covers eight key areas in selling your business in the UK and is aimed at small and medium sized owner-managed businesses, typically up to around £5-7m turnover per year.



Steven Mather Solicitor

You might be at the start of the journey, contemplating whether selling your business is even a viable option. There are some alternatives to a business sale, and we'll cover these in Section 4 Alternatives to Selling Your Business. Or you might have already found a buyer and you're trying to work out the next steps to the process. Wherever you are in selling your business, this guide should tell you everything you need to know about selling a business in the UK.

Selling a business often comes after years of hard work for a business owner or entrepreneur. You'll want to maximise the amount you get out of the sale, reduce stress in the process, and once you've found a buyer conclude matters swiftly. For most people though, selling a business is something they only do once in life – and therefore it's important to get it right first time.

This guide will take you through the process of selling your business from start to finish. It's written by Steven Mather Solicitor (more about me at the end of the book) with contributions from various professionals along the way – just as you'll need the help of various professionals too, such as a corporate finance/deal advisory firm, an accountant/tax advisor, a great lawyer and the help of your spouse, family and team around you to.

If you've got any questions after reading this guide, please do not hesitate to drop me a line Steven@stevenmather.co.uk or arrange a FREE no-obligation call about selling your business.

REASONS FOR SELLING YOUR BUSINESS

Your reason(s) for selling is going to be any potential buyer's first question – “Why are you selling?”. And while of course you have to be 100% truthful at all times when dealing with a buyer to avoid future claims for misrepresentation, saying “I hate it, it drives me mad, I'm not making any money and I just want out” probably isn't the right answer.

The commercial reasons for wishing to sell a private company can be wide-ranging, but in a small owner-managed businesses, the usual reasons are:

- Retirement
- Ill-health
- Doing something different
- Finding a new home for the business to allow it to realise its potential
- Purely driven to extract the cash
- A change in circumstances
- Co-owner/partner dispute
- Becoming overworked
- Boredom

Crucially, if it wasn't obvious, to maximise value out of the sale, you'll want to ensure that turnover and profitability are high (or at least on an upward trend over the last 3 years). Selling when a business is unprofitable is likely to lead to you being in a poor negotiating position. Moreover, if you're too honest with the buyer on your reasons, and you are totally driven by your reasons, it will also disadvantage you and the buyer may take advantage by chipping away at the purchase price knowing that you're so desperate to sell you'll possibly take less. Like any negotiation, you may need to poker face it from time to time and having advisors in your corner to help do the negotiations can often help drive up the value you will receive. We'll look at negotiation under section 8 Agreeing Commercial Terms and Doing The Deal.

When thinking about your reasons, you really need to be looking at what the objectives are for:

- You as an owner/investor – do you want to realise some or all of your investment?
- You as a manager – do you want to retire or reduce your hours, still have an involvement in the business or not?
- The business itself – where is the company going and how can it get there? Does it just need a fresh eye, new funding, or a new direction?
- Third Parties – or at least, consider how customers, clients, suppliers and employees might be affected.

This section can be overlooked, but it is important that you ensure the decision to sell your business is one which is properly and logically thought through, even if there are emotional drivers to the decision making process.

James Blacklaws, JB Commercial Finance



Taking the emotion out of the process of selling your business is vital to pricing the business correctly, negotiating a good deal, and ensuring that everyone is happy with the terms of the transaction.

I always suggest that when selling your business you look at the cold hard facts of the financial position of the business

while also looking at the situation of the buyer. For example, if your most significant local competitor is looking to buy you then it's likely that your business will have more value to them than a 'cold' buyer, and maybe more than a traditional valuation would indicate.

It's always best to discuss the pros and cons with a series of professional trusted advisors such as your Accountant, broker, solicitor plus any other business contacts who have been through the process before.

TIMING

Timing the sale of your business is important, and the advice is usually to plan a couple of years ahead in order to give you time to prepare and get the business ready for sale (see section 5).

Doing this will ensure that you have everything in place – contracts, insurances, records, structure etc.

A key in any business sale is the financial figures, and so timing things here means selling at the best time when the figures are high. This may be as a result of:

- Increasing profits
- Wide ranging contracts
- One or more major contracts
- A strong customer base
- A patent or other great IP

Throughout the process of planning, it will be important to maintain confidentiality so not to rock the boat with customers and employees. You may be able to do it all without help but you may want to enlist one or two confidants to assist. You'll certainly need the support of your spouse or partner over the next few months and years. You may even want to get a business coach on board to help you with some of the planning for exiting.

While it is a great idea to think ahead and plan, many owners don't – so don't worry if you've not given it two years thought. Indeed, for many others, the decision to sell may be reactive to a buyer showing interest; one recent seller told us that they hadn't thought about selling until they received a speculative letter from their prospective buyer.

So don't overthink timing; the most important part is to ensure you're prepared for a business sale and that it is in fact the right thing for you to do.

ALTERNATIVES TO SELLING YOUR BUSINESS

Once you've considered and worked out your reasons for selling (or not) as set out in Section 2, it may be that you conclude that now isn't the time to sell. However, you may decide that you still want to "take it easier", "reduce my hours" or let the younger management team take on more responsibility.

A sale may not always be the best solution.

It may be that actually what you're looking for is less time involvement for now, or to pass the baton on to a junior management team who still need some input and guidance from you.

There's a number of alternatives to an outright sale of the business, such as:

- A management buy out/buy in
- Raising finance
- Getting a business coach or non-exec director
- Recruiting for management roles
- A partial share sale
- Employee Owned Trusts (EOT) and similar
- Issuing of new shares and restructuring
- Solvent Liquidation (Members Voluntary Liquidation/winding up)

Getting a partial realisation of your business's value might be a good idea, if it fits your why of selling.

Take a management buy-out (MBO), for instance. Usually this involves the sale of 100% of the shares in the company to a younger manager or management team. MBO's are often funded by the seller, meaning that you wait a number of years to be paid out in full. There may be sufficient money in the bank to fund it, in which case that money can be extracted relatively tax efficiently.

Along with an MBO is a restructuring of shares. It may be that shares are converted into loan notes, so that you get payments over the next few years, while still being involved in the business. Or not.

But the point is, there are a number of options and alternatives to selling your business to consider as well – what matters is why you are selling and what do you want now and in the future.

GETTING THE BUSINESS READY FOR SALE (PREPARATION TIME)

Information is king.

Imagine you were *buying* a business. You'd want to know as much about it as you could, so that you could hit the ground running, knowing the good the bad and the ugly.

One of the key steps in the legal process of buying and selling a business is due diligence (DD) and we'll cover that in more detail in Section 9. In short, due diligence is the process through which the buyer (and their advisors) starts to understand everything about the legal, financial, operational and any other aspects of your business. Your role as seller is to take an active role in helping the buyer, providing documents and clarifying any issues. The due diligence process that a buyer will go through is intense, so the more ready you are now, the easier and better this will be. The key is to remove any skeletons in the closet as early as possible, so that the buyer has no reason to change the terms of the deal at the latter stages.

So it makes sense to get things ready prior to selling.

Carry out a diagnostic review. Download our [free DD questionnaire](#) as a starting point. It is useful to go through the checklist making sure you have all of the documents ready to go. Most law firms will set up a Virtual Data Room (VDR) (or Shared Drive) which allows the Seller to upload all the documents for the Buyer to inspect.

Nick Wallis, Gerald Edelman Deal Advisory



GERALD
EDELMAN

It is never too early to start preparing for the sale of the business – even if it's not likely to be for another 10 years. There are

things you can implement now that will make the process more efficient down the line.

The best thing you can do today is to talk to a corporate finance advisor and/or lawyer to understand the particulars of your business.

What you need to look at now are:

- Accounts and financial information
- Borrowings and indebtedness
- Assets (a list is always helpful)
- Insurances
- Any licences and consents
- Employees and workers details
- Contracts with customers and suppliers
- Premises & Leases

Some businesses might already have documented systems in place; operating manuals and the like. These are also useful to provide to buyers. So if you do not have something, think about documenting the basics of the business now and how it works. **Making yourself dispensable is actually a sound idea, because an incoming buyer will look and think this business runs itself without the input of the seller and that is usually more attractive.**

When collating documents, go back three years. If there is a major issue, such as an insurance claim or litigation, that impacted the business, then cover that off too. A buyer is really looking to know as much as possible at the early stage, and the more transparency and information you can give, the more the business looks professional and well managed, and ultimately that reflects in the purchase price.

Planning ahead allows you to tidy up those aspects of the business that need tidying up. Filling in the cracks, as it were. Your task is absolutely not to hide any issues, just to make the business as presentable as possible. If you were selling your house, you'd probably Hoover and tidy up before having a viewing, and the business is no different.

Make sure that:

- Any equipment is useable and maintained
- That key contracts are in place, documented and signed and not just verbal
- The book debts are as clean as possible
- There is no litigation or disputes
- Your employees all have contracts and you have a staff handbook in place
- You've complied with all legislation (data protection is a particular hotbed at present).

A variety of sources suggests that the average time for a business to be “on the market” is 6-8 months. Our experience is that by using a good advisor and having a good business this time frame could be less, but nonetheless it gives ample time to put things in place even if they've not been in place before.

It also gives you a chance to scrutinise your finances too. Look at the expenses and see whether anything can be stripped out, to make the figures look even better.

It might also be worth taking steps you hadn't before considered, particularly with respect to intellectual property such as trade marks. If your business has a good name, logo or slogan, it might be worth registering them so that there is a tangible asset being purchased. It doesn't cost much, but again makes the business look much more professional.

VALUING YOUR BUSINESS

Working out how much your business is worth can be tricky, and it's certainly something with which we believe serious sellers will have spoken to accountants and deal advisory companies to get expert opinion on this.

There are a number of ways to value a business, most of which are highly subjective and require substantial industry experience.

Net Assets

One ultra-simple way of valuing a business is to simply attribute a value to the business net assets – that is the asset value after any liabilities.

However, the downside of this approach is that the seller rarely gets paid for the business's goodwill, customer base and future potential.

Multiples

A valuation is often arrived at by taking a financial metric and multiplying it with a multiple. What that multiplier is, to be honest, is anyone's guess – usually based on recent transactions or what someone will pay, rather than science.

A typical financial metric could be 'recurring income', 'turnover', 'profit' or the ubiquitous EBITDA – Earnings Before Interest Tax Depreciation and Amortisation. EBITDA is commonly used because it is deemed a good measure of underlying earnings of a business, since the impact of debt, tax and depreciation & amortisation (usually being large non-cash items) are excluded.

Cash Flow Analysis

Sometimes businesses are valued on analysis of cash flow projections, and these definitely require expert input.

- Discounted Cash Flow (DCF) which involves building a forecast model to predict the future cash flows of the company and then discounting them back to the present day.
- Free Cash Flow (FCF) working out how much available cash a business has left over after it has paid for everything it needs to continue operation, including expenditure and taxes.
- Weighted average cost of capital (WACC) calculates the cost of capital weighted proportionately against the level of equity and long-term debt used to fund the business. WACC is used to discount against FCF to arrive at the present day value.

Intangible Elements of a Business Sale

Sometimes, sources of true business value cannot be measured easily or at all, and yet to the seller and the buyer, the value is in that more intangible thing.

For example, if the business holds a licence or distributorship for a new product which is expected to be 'hot', but doesn't have the sales to prove it yet, then the buyer is taking a punt on future value.

An established buyer in an industry may see value above one of the financial metrics for expansion by acquisition, or may pay more than true value to get certain clients/customers, access to new sectors or even just experienced management or sellers input.

As one can see, it is imperative that a seller looking to sell their business does their research and gets expert advice on the valuation. But that said, sometimes a buyer will just pay more than the value to buy the business.

But it's better to be overpaid than underpaid, right?!

And of course, like selling a house or a second-hand car, the valuation isn't set in stone, and so you can expect negotiation to take place as well.

Fundamentally the value is what the buyer is willing to buy for and the seller is willing to sell for. The big difference with selling a house is that if you use a corporate finance advisor, it is very unlikely that the business will be "put on the market" for a price – it'll be up to the buyer to come with a price. In reality, for most small deals, a multiple of current year / most recent year EBITDA is used.

FINDING A BUYER FOR YOUR BUSINESS

There are a number of websites where sellers can sell their businesses. These are probably best suited to very small local businesses, like a café or nail bar, that are worth less than £50k.

But if you're serious about selling your business and its going to be for £1/2 million upwards, then you really need to consider using a business broker, deal advisory or corporate finance advisors. You'll pay for their services, usually between 1-10% of the business value. They will also allow the business information to be kept confidential until the signing of an NDA (see Section 8 below).

Business Broker – a broker helps communications between you and your potential buyers. They will help find buyers and secure the best deal.

Deal Advisory / Corporate Finance – more than just an agent finding a buyer, these experts will help you with much of what is written in this guide such as:

- helping in the pre-sale preparation and 'grooming'
- producing credible sales material, information memorandum and sales memorandum
- researching, finding and vetting potential buyers
- negotiating a sale on your behalf
- project management to get the deal to completion

Many are linked to/attached to accountancy firms and therefore can also provide advice on tax, the deal structure such as completion accounts, net asset, target cash target assets and such like.

If you're serious about selling your business and maximising value, a Deal Advisory firm would be strongly recommended but not essential.

If you decide to market yourself then you'll probably want to:

Create a sales brochure/prospectus

Start with a one-page summary focusing on the headline points:

- the work you do
- your location
- USPs
- reasons for sale
- turnover
- keep confidential information out of a sales memorandum
- show areas for growth and potential for new buyer

Find potential buyers

Your buyers could include:

- Competitors, suppliers and even customers
- New market entrants including foreign entities
- Your current management (management buy-out, MBO)
- Private equity / investment companies

You'd then be wise to draw up a list of possible buyers.

Approach potential buyers

The initial step is contact them to see if they are interested. As above, it is usual to make this contact through an advisor such as a business broker or advisory firm, although your accountant or solicitor could also do this. Using an advisor here helps keeps the business anonymous – there could be some reputational issue or trading issue to consider, were it to be public knowledge that your business is 'on the market'. It could also upset and unsteady staff were they to know the business is being marketed for sale.

Once you have a party who is showing interest, it is time to get a Non-Disclosure Agreement (NDA) in place in order to keep your business confidential information confidential.

AGREEING TERMS AND 'DOING THE DEAL'

As mentioned above, before providing any of the business's confidential information to prospective buyers, get them to sign a Non-Disclosure Agreement (NDA).

A good, albeit basic, free NDA can be found at www.onenda.org which is written in collaboration with a number of top law firms.

Alternatively, your advisors should be able to prepare one – or just ask [Steven Mather Solicitor](#) and we'll send you one.

An NDA, also known as a confidentiality agreement, ensures that all confidential that you provide to your buyers must remain confidential and provides consequences should confidentiality be breached.

Once you've provided information to the buyer, it is time (hopefully) for the offers to come in. There's a whole host of options and alternatives here, and your task (perhaps with your deal advisory team) is to weigh up the offers and decide which to proceed with.

Some key questions to consider might be:

1. Who is the buyer? Are they financially sound? Can they pay what they're offering?
2. Are they financing the transaction? Sometimes deals are financed by way of Leveraged Buy Out (LBO) where the target company takes on debt immediately prior to completion in order to loan to the buyer so that they can pay off the sellers. It leaves your company with debt and needs to be carefully considered. Alternatively, the buyer may be seeking its own finance by way of bank loans, usually secured on property. This can sometimes slow deals down, or create more legal work.
3. Is there an element of deferred consideration – where not all of the purchase price is paid upfront – and if so why? What security do you have for getting that payment?
4. Is there an element of earn out – that is the purchase price is based on earnings of the business post-completion – and if so, why, and ought more of it be paid upfront and if not, what are the terms of the earn out? Do you need to be involved in the management to ensure the earn out is hit?
5. Does the buyer want you to remain in the business? Do you want to? If so, on what terms? What will be your responsibilities? For how long? Remember, going from boss to employee is often very difficult and can be frustrating.
6. How long will completion of the sale take? Does the buyer require approval from a PLC board, for instance, which will take longer than an SME decision. Again, is finance involved?

Once you've weighed up the offers and decided in principle to proceed with a particular buyer, it is a great idea to document the headline terms of agreement in a **Heads of Terms Agreement** (sometimes known as letters of intent, Memoranda of Understanding (MOU) or heads of agreement, but we prefer HOTs).

Heads of Terms outline the main terms that the parties have agreed and evidence serious intent. They have more a moral force than legal, to be honest, in that they are not legally binding – as they are subject to contract, subject to due diligence and legal process – although some terms can be made to be legally binding.

The key terms in a Heads of Terms for Share Purchases are as follows:

1. Identification of the Shares being sold and the Shareholders selling
2. Identifying whether the Target (the company being sold) has any subsidiaries
3. The Price
4. Any Price Adjustments
5. Whether the Price is paid in full on completion, or structured in instalments
6. Any assumptions the buyer has made based on the IM (Information Memorandum)
7. Any conditions of the offer (usually at least 'subject to satisfactory legal financial tax and commercial due diligence)
8. Agreement to co-operate on due diligence and progress the matter to completion
9. Provision of SPA (by set date?) and whether there are any key terms to be included in the SPA (e.g. restrictions, warranties, specific issues etc)
10. Timetable
11. Exclusivity (often binding) giving the two parties exclusive negotiation time – the seller will agree not to proceed with any other interested party for a period of time
12. Confidential (binding) to ensure each party's confidential information remains confidential. Usually links back to earlier signed NDAs
13. Costs – usually each pays their own, but some buyers ask for costs if the seller pulls out

Given the fact that exclusivity is a legally binding provision in the HOTs, which by its nature means that the buyer knows at that point that they are exclusive and there is no one else legally allowed to be looking at buying your business, the bargaining position for negotiation changes once HOTs are signed.

It is generally better then to agree as much as you can before a buyer becomes exclusive. Although not legally binding, if it is written in the HOTs, it will be much harder for a buyer to change the terms.

Prior to HOTs being signed, if a buyer believes there are 3-4 interested parties, you are potentially able to negotiate key points in your favour. Using an elastic band analogy though, you need to make sure the band doesn't snap! If you do have three buyers and one pulls out because you've pushed the negotiation too far, you'll still be left with two. But if you only have one and the band snaps (buyer pulls out) you're left with nothing. Using an corporate finance/deal advisor should help to mitigate this risk as they will likely bring more than one buyer to the table and be able to negotiate on your behalf.

THE LEGAL PROCESS OF SELLING YOUR BUSINESS

There are two core ways to sell your business – an asset purchase or a share purchase. While the documents are different the process is similar:

1. The Buyer carries out legal due diligence
2. The transaction documents are prepared, reviewed, negotiated and finalised
3. The Seller makes disclosures against any warranties.
4. Completion – you get your money!

Asset Purchase v Share Purchase

An asset purchase requires the sale of individual assets. A share purchase requires the purchase of 100% of the shares of a company, and effectively transfers all of the business's assets and liabilities to the buyer.

An asset transaction involves the purchase or sale of some or all of a business's assets, such as equipment, inventory, property, contracts, or lease agreements. An asset transaction can be more complex than a share transaction because documentation is required for each asset being transferred, and if contracts are transferring over they may need to be novated – which means the two current parties need to sign the contract over to the new company.

Asset purchases allow the buyer to be selective regarding the assets that they wish to purchase. For example, the buyer might only want to buy the equipment and inventory. In this case, you may choose to accept their offer or sell the assets as a package deal.

Asset purchases are therefore often used where the target company has liabilities which the buyer doesn't wish to take on.

Conversely, with a share purchase, the buyer buys your business 'warts and all' taking on ownership of the company, and everything else such as liabilities and loans, remain in situ. The share purchase agreement will see the buyer purchasing 100% of the shares in the target company and taking full control on completion. Share sales are attractive to sellers, not least because it means you do not have to worry about closing the company down, but also because of tax reliefs available such as Business Asset Disposal Relief (previously called entrepreneurs relief) which as of writing permits up to £1m of shares to be disposed at a 10% tax rate. Even if you sell shares and don't qualify for BADR, you are selling at 20%. If you sell assets, the company will have to pay corporation tax on the profits of selling those assets – plus you'll need to pay tax to get the proceeds out of the business.

If you have a buyer who only wants to buy the assets, you will be left potentially with a shell company which needs closing via a winding up / liquidation process.

What goes into an asset purchase agreement

After the initial discussion of the proposed commercial terms for the acquisition of a business (which may already have been agreed to some extent in heads of terms), the asset purchase agreement (or APA) is negotiated. This will usually take place in parallel with the due diligence process described below.

The Asset Purchase Agreement is a key transaction document and is usually fairly lengthy and often includes a number of schedules as well. The main purpose of an APA is to document all of the terms of the transaction, specifying any conditions the transaction is subject to, allocating risk and liability and protecting the buyer against post-completion competition from the seller.

The APA is usually drafted by the Buyer, and then sent to the Seller to review. Here's some terms we'd expect to see in most standard asset purchase agreements:

1. The **Parties** – the buyer(s), the seller(s), any guarantors etc
2. Interpretation and definitions – defined terms to be referred to subsequently in the agreement.
3. **Agreement to Sell** – usually the first main paragraphs, under which the seller agrees to sell the defined assets and the buyer agrees to buy them, at the price, and on the conditions set out in the agreement.
4. **Consideration** – how much is being paid and when. This could be in cash in full on completion, or could be via a debt instrument such as loan notes, or even shares in the buyer.
5. **Completion accounts / deferred consideration / earn out** – sometimes the amount of the purchase price is fixed on completion, and sometimes it may be adjusted following completion on the basis of an agreed mechanism. In those circumstances, completion accounts are usually prepared and so there will be provisions about this. Deferred consideration meanwhile is where not all of the purchase price is paid on completion, and so as a seller you'll want to ensure you will get paid and so may seek security on the unpaid sums, either by guarantee or a charge.
6. **Completion** – this section describes some practical steps to occur on completion, usually the provision of records and documents being signed etc.
7. **Assets being acquired** – a list of assets being acquired are usually scheduled to the agreement. This section will also oblige the seller to ensure that agreements can be assigned or novated. There may be a requirement for stock check before completion, or a post-completion stock change and price adjustment. The section will also deal with debtors and creditors and who gets what.
8. **Excluded Assets** - will describe what is NOT being sold, which is particularly important if you're not selling the whole of your business and just a segment of it.
9. **Property** – that is, leasehold or freehold property and what is happening with that (usually an excluded asset as well)

10. **Intellectual Property** – are trade marks and other rights transferring over, does the seller retain the right to use certain names or not?
11. **IT** – are the IT systems part of the transferring assets or not, and if not does the buyer require some access to them (eg to access client data occasionally).
12. **Employees** – TUPE is likely to apply if there is a transfer of a business as a going concern, meaning that employees will automatically transfer over to the new company. This section will include warranties and undertakings from the Seller that it/the company has complied with the obligations under TUPE, and have indemnities allocating the risk of employment-related claims between the parties.
13. **Restrictive Covenants** – these will typically ensure the Seller is not permitted to carry out certain activities for a certain period of time for example:
 1. Soliciting existing customers or suppliers
 2. Poaching staff
 3. Competing generally with the business
14. **Warranties and Indemnities** – always the most negotiated part of any transaction agreement. Warranties are promises or statements by the seller as to the state of affairs of the target company, and if the statements turn out to be untrue and cause the buyer loss, the buyer may be able to make a claim against the seller.
15. **Limitation of Seller's Liability** – a seller will usually seek to limit their liability under the warranties, eg where the buyer has knowledge, where the sums involved are too small, to place an overall cap on liability, to limit the time period in which claims are made, to ensure the buyer has to exhaust other options first.
16. **Apportionments / Prepayments** – dealing with certain periodical charges
17. **VAT**
18. **Employees**
19. **IP Rights**

20. **Book Debts** – is the buyer passing any money to the seller and how will that work?
21. **Data Protection**
22. **Announcements & Confidentiality**
23. **Boilerplate clauses** – these are standard clauses in many contracts, such as entire agreement, jurisdiction and notice provisions.

What goes into a share purchase agreement

Although the following may look similar, there are obviously key differences between an SPA and an APA.

Like an APA, the Share Purchase Agreement is a key transaction document in the sale of your business, and will heavily feature in discussions with you and your team, negotiated between lawyers and it may take 5 or 10 versions to get it to a point where both parties can agree.

Obviously, from a Buyer's perspective, they want to ensure as much liability rests on the shoulders of the Seller so that if there are any issues, the Buyer can seek a reduction in price, avoid or reduce deferred payments or make a claim as appropriate. From a Seller's point of view, we're looking to give as much protection to the Seller as we can, although realising that ultimately you will have to give warranties and the buyer will generally have the upper hand in negotiations.

The following are key terms in a share purchase agreement:

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1. The **Parties** – the buyer(s), the seller(s) – often buyers are companies rather than individuals.
2. **Interpretation and definitions** – defined terms to be referred to subsequently in the agreement.
3. **Sale and Purchase** – usually the first main paragraphs, under which the seller agrees to sell the defined sale shares and the buyer agrees to buy them, at the price, and on the conditions set out in the agreement.
4. **Purchase Price** – how much is being paid and when. This could be in cash in full on completion, subject to a price adjustment such as completion accounts or an earn-out, or fixed but deferred over a period of time.
5. **Completion** - details when completion will occur and how, as well as some practicalities on completion.
6. **Warranties** - always the most negotiated part of any transaction agreement. Warranties are promises or statements by the seller as to the state of affairs of the target company, and if the statements turn out to be untrue and cause the buyer loss, the buyer may be able to make a claim against the seller.
7. **Limitations on Claims**, including a minimum amount to bring a claim, a seller will usually seek to limit their liability under the warranties, eg where the buyer has knowledge, where the sums involved are too small, to place an overall cap on liability, to limit the time period in which claims are made, to ensure the buyer has to exhaust other options first.
8. **Property** – if the target company has property, there will be provisions on that usually in a schedule, and often including warranties specific to property.
9. **Tax Covenant** – usually a schedule, and should cover off situations where HMRC says the company in your ownership underpaid or under declared on tax issues and a tax charge arises, the buyer will say that is the seller's responsible. Sellers may want upside protection so that if the buyer obtains a tax refund, that is paid to the seller.

10. **Restrictions on the Seller** - these will typically ensure the Seller is not permitted to carry out certain activities for a certain period of time for example:

1. Soliciting existing customers or suppliers
2. Poaching staff
3. Competing generally with the business

11. **Confidentiality and announcements**

12. **Boilerplate clauses**

Due diligence

Usually the process of due diligence is started early on as possible in the legal process, and often before an APA/SPA is drafted. Due diligence refers to the legal and financial investigation of the company in preparation for the sale. The buyer will want to ask questions about your business that take the form of financial, legal, tax, or property issues (but can be HR, management, political and more besides). Answers to information requests and due diligence will inform the transaction document particularly in respect of warranties and indemnities. DD should ideally just be confirmatory (i.e. confirming that everything is as you've said it is, and so the deal is as per the HOTS).

Often, the potential buyer will have started collecting information about your business to start building a picture to decide if it's worth buying or not. Due diligence can be time-consuming, but it's essential to be transparent and disclose any potential issues at this stage. Some key aspects that can crop up during due diligence include:

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- Financial documents – provide tax returns and detailed accounts and tax documents for the last three years.
- Liabilities – be transparent about any or pay them off.
- Properties and assets – define what is included in the business sale and prepare lease documents if relevant.
- Statutory registers – ensure that Companies House and other registers are up to date.
- Contracts – review supplier, client, and employee contracts to ensure they are up to date and clear.
- Insurance – relevant business insurance must be in place until the deal has gone through.
- Shareholders – prepare detailed information about the shareholders
- Disputes – is the company involved in any legal disputes of any kind.

Your role in the due diligence process is to make all documents available in a timely fashion. This involves authorising the disclosure of confidential information to the buyer and keeping an accurate record of all the information that you've provided.

We've got our template Information Request when we're acting for Buyers as a free download via this link. It will give you an idea of what your buyer might ask. It's a great idea, if you're considering selling, to get your house in order and we suggest using this as a starting point.

For each question, you should look to provide where possible a document or documents to support the question/answer. We would suggest you create a folder on your PC, and have a sub-folder for each section of the questionnaire. Within each subfolder, you can then add in scanned documents, emails, etc. The better organised you are, the easier it will be for your team and for the buyer to see what they are buying.

Disclosure Letter

As mentioned above, you will be required to give numerous warranties about the business you're selling. You will be warranting (legally promising) that the information you provide is true accurate and complete, and you may be held liable if this is not the case. You will be asked to give warranties in the event where the buyer cannot otherwise know the true position. For example, your buyer would not know if your business is in the throes of litigation proceedings. Therefore, you would be asked to warrant that this is the current position and disclose any legal information accordingly.

Indemnities and warranties can be negotiated. The more warranties and indemnities requested, the more confidence your buyer will have in the business sale. As a seller, you really want to give as limited warranties as possible, but the buyer will want as many as possible, to get a full as picture as possible.

Think it of as you were the buyer; you'd want to ensure there were no 'skeletons in the cupboard' and that is what the buyer is doing. So as a seller, our recommendation is that you give as much detail to the information requests as possible, supported by documents, and then with regard to warranties, provide as much detail if any of them is not 100% correct.

Your lawyer will go through these warranties with you and create a list of disclosures you wish to make against the warranties (this is called a 'Disclosure Letter'). This process also limits your future liability post sale. In short, any information fully and clearly disclosed in the Disclosure Letter should see that the buyer cannot sue you as they entered the transaction knowing what you had disclosed.

Disclosure Letters are really important to get right. Assume that any issue or discrepancy with the warranty is not know, even if you've 'discussed it' with the buyer. Whatever the issue, however small, it's best in the disclosure letter.

As an example, a warranty may say:

“All licences, permissions, authorities and consents required for carrying on the Business effectively and in the places and manner in which it is now carried on are in place, in full force and effect”.

Say for instance your business requires a licence from a government authority and last year they carried out an inspection/audit and flagged up 4 relatively minor issues.

You would be best advised to make a disclosure against this warranty, just to be on the safe side. The buyer knows about it and, to labour the point, you cannot be sued for a breach of warranty if you make a disclosure.

Sellers are sometimes reluctant to go into the detail on warranties and disclosure but doing so is key to a worry-free future retirement.

Additional documents

If you're selling via a share sale, there will be additional documents to sign on completion, such as letters of resignation, stock transfer forms, and Companies House forms.

These are often referred to as 'ancillaries'.

Completion day

This is the day that the documents get signed and the money is paid (unless you are having a gap between exchange and completion for some reason). You and your buyer will agree when the completion date is.

Usually, the seller will sign a set of documents. The buyer will sign their set. The lawyers exchange the two sets of signed documents electronically and then send the purchase price/consideration payment between the solicitors and then, once received, hopefully straight into your account as a seller.

Congratulations – you’ve sold your business – crack open the champagne 🥂.

When the sale is completed, your business is now owned by the new buyer. Unless you are staying on as a director or employee, your resignation comes into effect at the same time as the completion of the business’s sale.

After this, it’s a case of informing all relevant parties like customers, suppliers, and clients and making the necessary filings about change of business ownership. It’s best to wait until the sale of the business is finalised before informing the relevant parties to avoid interference or issues that could affect the successful sale.

Part of informing your employees includes being transparent about what will happen next, how the sale affects them, and where they can go for support and information. Employee contract changes must be dealt with through your lawyer to avoid any disputes down the line.

Good legal advisors are crucial at this stage for both parties to have absolute clarity as to their continuing obligations and discuss any post completion matters. During the sale of your business, your lawyer will advise you on issues like employee consultation to limit any future employment-related liabilities.

Post-completion

A practical handover will occur between you and your buyer, and usually the buyer’s lawyer will submit the necessary documentation to Companies House.

Once your business is sold, it's time to pay any due tax. The tax treatment depends on whether the transaction has been structured as a share transfer, the sale of assets or sale of a business as a going concern. Different methods of extracting money - for example, through paying a dividend to yourself, or making contributions to your pension scheme prior to completion - will also have different tax implications. Your accountant should assist you with this.

You will need to consider the risks of any tax mitigation strategy. The way the transaction is structured and paid for will also have implications for the buyer and will form part of your negotiations. These are all issues you should discuss with your legal advisors and accounts/tax advisors.

Staying on / consultancy

If you have decided to stay on after selling your business in a consultancy capacity, you can use this time to adjust and plan for the next phase of your life. If you're happy to relinquish control of the business, but still want to help in some way, providing occasional business consulting could be a good option. Choosing to stay on after selling your business can create a more successful transition for both you and your buyer.

WHAT'S NEXT AFTER THE SALE OF YOUR BUSINESS

After the completion of your business's sale, it's time to turn to what's next for you.

A newfound freedom will occur post-sale, as you've probably put most of your time and efforts into running your business. Don't be worried if you experience a temporary loss of identity or community that your former business provided.

It's a good idea to spend the lead up to the sale dedicating one day per week exploring new hobbies or interests or connecting with friends, past and present. A meaningful transition provides opportunities for you to focus on freedom, relationships, and your new purpose.



Neil Wattam, Wattam Kirby Mee

Hopefully during the lifetime of your business, you have done some retirement planning already. But if not, now is the time. You'll need expert independent advice to help you work out how best to invest the sale proceeds, what income you might need in retirement and how to achieve it.

A good IFA will work with you to create a bespoke financial plan, with cash flow modelling, tactical improvements and best advice to ensure you make the most of what you have.

Here are some things to think about after your business's sale:

- Taking some much-needed time to rest
- Think about retirement planning opportunities or investments – we strongly recommend speaking to an independent financial advisor!
- Taking up exercise and working towards a healthier lifestyle
- Re-connecting with relationships
- Travelling or engaging in charitable work
- How to enjoy life!

This initial transition period is meant to be a learning experience. Take the time to experiment with matching values that you perceive to be of personal importance with activities accessible to you in your surrounding community.

The key is finding activities to develop your identity through post-sale endeavours. With some time and a little effort, you'll discover that there are many more enjoyment opportunities in life than you originally thought. Now is the time to grasp them.

HOW STEVEN MATHER SOLICITOR CAN HELP YOU

I hope that you've found this eBook on Selling Your Business useful.

Whether you are starting something new, moving into retirement, or just making a change in life by selling your business, I am here to make the transition easier through the right legal support. As an experienced solicitor I have the skills to help you sell your company and move on to the next stage in your life. This is my focus, and it is an absolute pleasure to do.

In fact, I don't engage with the larger corporations or take PLC work because, frankly, I much prefer to work alongside the business owners who need my help. Using my many years of experience to make a difference to someone's life is quite simply a fantastic way to make a living.

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My typical client has probably never sold a business before. Many of them have been running a limited company or family business for 20-30 years. They are experts in their field and highly capable businesspeople. However, no matter how experienced you are in other areas, you can feel like a novice when it comes to the crucial question “how do I sell my business”? This guide was designed to help cover off some of the basics. It is meant to give you a starting point so that you could begin the process with an idea of what will happen once you decide to sell. Of course, I can't cover every eventuality or potential hiccup along the way, but those are what I am there for.

If you're thinking of selling your business, already in the throes of negotiating a sale, or maybe you've found a buyer and are looking for a solicitor, call me for an free initial chat to discuss how I can help you.

I am sure you are wondering why come to me when you have so much choice? Here's some reasons to work with me.

- **Do you want an experienced lawyer who is an expert in business sales?** It isn't uncommon for my clients to also have a 'family solicitor' or a local firm that have performed your will and property work over the years. Selling your business is a one-time opportunity, so you need to make the right choice. While you may be happy with your existing legal support in some areas, are they experienced and knowledgeable in business sales? I am a specialist, and that specialism means that whatever the sale process throws at us, I have the answer.
- **Do you want great service?** My clients take comfort in the fact that they are working with a partner level solicitor who has over 15 years experience. Your sale details will be on my desk and not passed down to trainees and paralegals. I am here, easily accessed and in person, by phone, video, email, WhatsApp, and there will be no need to negotiate with a receptionist just to get some of my time.
- **Do you want the cheapest price or good value?** As everyone who runs a business will tell you, delivering great service never comes at cheap. However, price and value are two very different things. Most of the cheaper options for legal services are low in price for a reason. They are templated services with much of the work being performed by inexperienced teams.
- Not that I am expensive. Your fee will be for my experience and service, and not for high rent, glass fronted city centre buildings populated by expensive staff. I prefer to give you value over giving you expensive coffee in fancy offices and to give you the service you deserve rather than cutting corners.

- **Do you want a fixed price or a surprise bill?** We only do fixed fees so there are no surprises. Other lawyers tend to do one of two things. They either work on a range of fees and provide you with an estimate based on an hourly rate. This is often accompanied with a statement of 'it's difficult to estimate at this stage' as if they've never done a business sale before. The other thing they may do is give you a low estimate. This looks good to start with, but you always end up paying more because 'it was more complex than we anticipated'. I find it better to be straight and honest: I'll agree a fixed fee with you and (guess what) that's exactly what you'll pay. My fees are typically based on a percentage of the overall deal value.
- **Access to Specialists** – When you instruct me (through my regulated law firm) you get access to hundreds of genuine specialists across a wide range of fields. If we find we need a great property lawyer, some tax advice, immigration guidance, a specialist in intellectual property or whatever your sale throws at us, I have it on hand via my colleagues.
- **Do you want to enjoy the transaction?** It's an odd question to ask, but I'm a different type of lawyer. I enjoy what I do, and I prefer to work with clients who want to enjoy the sale process. It doesn't all need to be 'business is business'. It's ok in my book to have a laugh and joke sometimes. I'm a seasoned professional and I'll do a great job for you, but we can enjoy it too right?

If you think we'd work well together, let's have an initial free chat about where you are in the process of your sale and how I can help. If it looks like I can be of service, we can talk about costs as well. As I said at the beginning of this section, I am here to help you to achieve your sale with the best possible legal support.

Feel free to contact me **Steven Mather**

Call: 0116 3667 900

Email: Steven@stevenmather.co.uk

Website: www.stevenmather.co.uk



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"This guide is very helpful, informative in a step-by-step process, and sometimes thought provoking too. I know I will refer back to it."
Mr P, Business Owner.

Written in plain English, this guide is aimed at experienced business owners who are starting to explore the sale of their business.

Steven Mather, Solicitor, is Your Business Lawyer, a multiple business owner himself, author and speaker. He provides exceptional service and great legal advice to business owners. It's Remarkablaw®

"I've used Steven to help with a number of corporate M&A transactions over the last couple of years. I wish I had this book before I started as it's full of really useful information."
Prof. Rishabh Prasad

