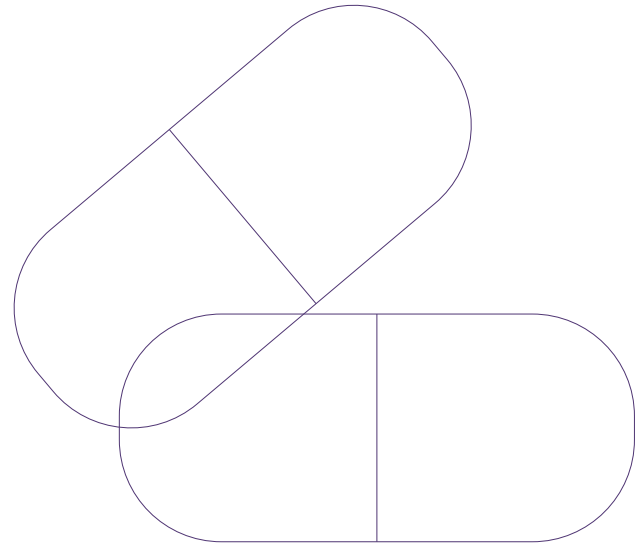


# Top 10 questions asked by pharmacists on selling a pharmacy

Selling a pharmacy is never easy, especially when you've built it up and served your patients for many years. So not only do you want the best value for your business when selling, but you also want the best for your patients and staff. With this in mind, our solicitors specialising in the pharmacy industry have compiled and answered a list of the questions most frequently asked by pharmacists when selling their pharmacy business.



## 1. Can any solicitor help with the sale of my pharmacy?

As the pharmaceutical industry is a niche sector with its own set of regulatory requirements, you should engage financial and legal advisors with the necessary industry expertise. This will streamline the transfer by keeping due diligence proceedings focused and relevant, ensuring that the buyer receives all information promptly.

## 2. How long will it take to sell my pharmacy?

While it can take just six to twelve weeks to complete the sale, this timeframe can be affected by many different variables: for example, the pharmaceutical industry has many statutory regulations, so preparing all of the necessary responses to due diligence enquiries may impact the timeframe for completion. In addition, the buyer will need to transfer the pharmacy's regulatory consents (e.g. NHS contract, GPhC registration) into its name, the approval of which is usually the aspect that dictates completion timescales.

## 3. Will my employees be able to retain their positions after I sell?

Your employees will be protected under the Transfer of Undertakings (Protection of Employment) (TUPE) Regulations, which requires the incoming employer to retain all employees under their existing employment terms, unless an economical, technical or organisational reason requires a change in the workforce. TUPE requires outgoing employers to comply with various measures when transferring ownership of their business, so it's important to consult with a qualified solicitor to ensure full compliance.

## 4. Can I open a new pharmacy or do some locum work after selling?

Yes, but to safeguard the goodwill value of your old pharmacy, the sale and purchase agreement (SPA) will likely stipulate a mutually agreed geographical area within which you must not open a new pharmacy or take locum positions. Your lawyer should negotiate such provisions in your best interest to avoid there being any impracticable restrictions on your ability to work or do business.

## 5. What is likely to be the most important asset of my pharmacy business to the buyer?

Many buyers would consider the pharmacy's NHS contract to be its most valuable asset, as it gives the pharmacy the right to provide NHS dispensing services. As this is not a written contract, however, you must submit proof of your pharmacy's inclusion on the NHS pharmaceutical list in order to prove that you hold an NHS contract. Additionally, the pharmacy's stock value is incredibly important since

this is essentially the product that the pharmacy sells. It is therefore important to agree a stock valuation methodology that is sensible, but also which maximises the value you can get for the pharmacy's stock.

#### 6. What is the difference between a share sale and an asset sale when selling a pharmacy business?

In an asset purchase, the buyer purchases the assets that comprise the pharmacy business, including its stock, NHS contract, property and goodwill. The buyer can choose to purchase the pharmacy's assets selectively, and liabilities are not automatically included in the sale. In this scenario, the buyer also becomes the operator of the pharmacy.

In a share purchase, on the other hand, the buyer purchases shares of the company operating the pharmacy. This means there is no change to the operator of the pharmacy from seller to buyer, and the buyer purchases the company's assets, liabilities and obligations through the transfer of shares.

A share purchase usually allows the seller to have a clean break from the pharmacy, disposing of all assets and liabilities, but before making a decision appropriate tax advice should be obtained to determine any capital gains tax and other tax implications.

#### 7. Should I include a disclosure letter with the SPA?

It is highly recommended that you submit a disclosure letter to the buyer, as it will allow you to inform the buyer of any inaccuracies in the warranties or indemnities included in the SPA.

The disclosure letter will usually also feature a 'general disclosures' section which includes matters which are 'deemed' to be disclosed to the buyer, even if not specifically mentioned, such as the buyer's search results, the contents of due diligence replies, the pharmacy's contracts and financial information.

This will protect you from being held liable for breach of warranty following completion and gives you the opportunity to inform the buyer of any additional issues prior to completion.

#### 8. What types of warranties may be included in an SPA for a pharmacy?

Warranties and indemnities are a typical feature of SPAs for pharmacy businesses; for example, a warranty may likely be included stating that there have been no claims against the business.

An indemnity clause commonly included in pharmacy SPAs might state that the seller must bear any costs incurred by unresolved litigation against the

pharmacy business after completion.

#### 9. Which documents do I need to show the buyer that the premises are approved for use as a pharmacy business?

Firstly, the buyer will need proof of your local planning authority's consent for the property to be used as a pharmacy. You must also provide the buyer with proof that your pharmacy is included on the pharmaceutical list for the relevant NHS Team, and that the premises are registered with the GPhC.

#### 10. How can I protect myself in terms of cost if the buyer decides not to move forward with the transaction?

A set of heads of terms can be negotiated from the outset of the transaction to protect you in the event that the buyer pulls out. This may include a costs indemnity capped to a certain sum in order to cover costs. Note, however, that these clauses can be challenging to negotiate, depending on market conditions.

Selling any business can be intimidating, but as we've shown with the above questions, it needn't be a challenging process with the right legal guidance.

For more information, or for expert advice on business or personal legal issues, call us on 020 3475 6751 or via email at [info@carterbond.co.uk](mailto:info@carterbond.co.uk)

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#### HIGHLIGHT

Over the last few years, we have assisted over 800 pharmacy owners to either buy or sell a pharmacy business

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