

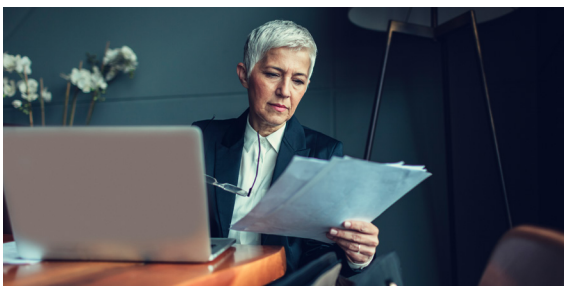
# Ashtons

LEGAL

## Franchising - Buying



EXCEPTIONAL CLIENT SERVICE EVERY TIME



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# Ashtons Legal – Lawyers you want to work with

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Ashtons Legal is an award-winning law firm with a strong focus on customer service. The legal teams provide a wide range of advice to businesses and private individuals regionally, nationally and internationally from our offices across East Anglia and Leeds. We are one of the largest law firms in the region with offices in Bury St Edmunds, Cambridge, Ipswich and Norwich, as well as an office in Leeds. We are a broad service firm, which currently employs over 400 people.

The franchising team at Ashtons Legal are among the leaders in the franchising world. It has over 20 years of assistance in helping franchise networks and franchisees to succeed both nationally and internationally and maintains a reputation for high end quality advice coupled with genuine sector expertise – all of which is provided at a cost which means we are able to add real value in helping you achieve your goals.

Our dedicated franchise team is made up of specialists within their fields who understand the often unique needs of franchisee owners. Assisting many of the country's largest and most prestigious franchise networks in the running of their resale processes, we are well placed to understand the issues which are of key importance to franchisees. Completing the transaction in a smooth and efficient manner and avoiding delays ensures that if you are buying a franchise the relationship between you and the franchisor remains buoyant.

When you are buying a franchise and looking to begin your journey in franchising we have developed a package which we can tailor to suit your needs.

We recognise that each business owner is different and the level of support which each buyer of a franchise business needs varies depending on each buyer's experience, business skills and budget.

Depending on your circumstances, there are a number of key areas on which you may need assistance:

## Heads of Terms

These set out the main commercial terms of the deal and need to be agreed upfront, although they are usually not binding apart from in a couple of respects such as confidentiality and any exclusivity period. We will work with you to ensure that they reflect the deal that you have struck.

## Due Diligence

Whenever you are looking to acquire a business it is important that you carry out some level of due diligence to ensure that the assumptions that you have made as to what you are buying are correct. The level of due diligence that you undertake will vary depending on whether you are buying the assets of the business or you are buying shares in a company which operates the business. In the case of the latter you will be acquiring all of the liabilities of the Company as well as its assets and therefore a higher level of investigation will normally be required.

The due diligence process can essentially take two forms. The first is a physical inspection of the business and any significant assets you are considering acquiring (e.g. stock) – although this is not always possible as the seller may not want the employees to get wind of the fact that they are looking to sell at this early stage. The second is a paper exercise – requesting information and documentation about the business - which is where we come in. For example – if you are buying a business that depends on regular work you need to ensure that there are robust contracts already in place.

We will work with you to help ask these questions and review the responses that are received from the seller.

Your accountants may also help you in requesting information and documentation about tax, accounts and other financial matters.



## Purchase Agreement

The purchase agreement may be in the form of either a share purchase agreement or an asset purchase agreement (sometimes referred to as a business transfer agreement) depending how the transaction is to be structured. The agreement itself will give legal effect to the commercial terms of the deal that are contained in the Heads of Terms and will set out exactly what each party is buying or selling, how the purchase price is to be paid, any mechanism for price adjustments after completion and will also detail the mechanism of completion.

It has become increasingly more common for the purchase price to be paid over a period of time (known as deferred consideration) and the seller may request some form of “security” from the buyer that can be called upon if the buyer does not make the deferred consideration payments when they are due.

One of the most substantial elements of the purchase agreement is the schedule of warranties to be given by the seller to the buyer. Warranties are essentially promises made in the form of statements which the seller is asked to give about the business. Should it transpire, after completion, that any of the warranties are untrue then the buyer may have the ability to sue the seller for breach of warranty and seek to claw back part or all of the purchase price. Warranties tend to be more comprehensive in a share purchase agreement because the company’s liabilities are also taken on. These can be very extensive and run for many pages.

A share purchase agreement will also contain a detailed tax covenant, under which the seller will agree to pay to the buyer an amount equal to any tax liability of the company which relates to the period up to completion which is unpaid and not provided for in the company accounts.

We will advise you on the terms of the purchase agreement and work with you to help negotiate its terms so that you are happy with the purchase agreement before you sign it.



## Disclosure Letter

The disclosure letter is the document which gives the seller the chance to disclose certain information to the buyer to qualify the warranties detailed in the purchase agreement. The seller cannot be sued by the buyer in relation to information they have ‘disclosed’ to the buyer prior to completion.

By way of illustration, the purchase agreement may contain a warranty to the effect that the business is not involved in any litigation. To the extent that the business is involved in litigation, then the seller can disclose details of it to the buyer and the buyer cannot subsequently claim that the warranty is untrue.

Where required, we will review any disclosure letter produced by the seller and help ensure that you understand the disclosures that are being made within it.

## Employees

Employees are a key aspect of any business, as many businesses would not survive without them. English law offers employees certain legal protections when it comes to transactions. Where a transaction involves the sale and purchase of the assets of a business (as opposed to the shares in a company), the employees of that business will automatically transfer to the buyer on their existing terms of employment, as a result of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE). There are certain procedural hoops that need to be completed by both parties in order to comply with TUPE.

In limited circumstances a buyer can propose certain changes to the employees terms of employment. The buyer would be required to inform the employees about any such changes prior to completion but generally the employees are transferred without any changes being made

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“The ‘absolutely excellent’ team at Ashtons Legal has a ‘professional, approachable and commercially minded team’.

Legal 500

“I would rate them amongst the best. Good value for money.”

Chambers & Partners

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The requirements of TUPE vary according to the circumstances of each business and whether there are 10 or more effected employees. But in many cases the requirements are fairly simple. However, it is important to get the procedure right as the financial implications for failure to do so can be significant.

Please be mindful that under limited circumstances TUPE may apply where you are buying shares in a company, for example, where part of the business is being transferred out of the company immediately before or after the sale of shares in the company.

Where the seller is also an employee of the business, it is common for their employment to be terminated upon completion. In such circumstances you may want the seller to enter into a settlement agreement, dealing with the termination of their employment and confirming they have no claims against the business.

### Franchise Agreement

If you are considering taking on a franchise it is extremely important that you understand the terms of the franchise agreement. This document sets out the commercial terms of your relationship with the franchisor. Once signed, the franchise agreement is normally placed in a drawer and rarely referred to. However, by being familiar with its terms, you can ensure that you start your journey as a franchisee with your eyes wide open.

The franchise agreement is by its very nature a one sided document. It allows the franchisor to exercise control over the network as a whole and to maintain its brand reputation – ultimately for your benefit.

On the basis that the franchise agreement is offered to franchisees, in almost all cases, on a “take it or leave it” basis, clients benefit from the franchise agreement reporting service we offer. As part of the reporting service we will review the franchise agreement and prepare a report on its principle terms, highlighting any unusual or onerous provisions, as well as preparing key questions which you may wish to raise with the franchisor.

### Property

In many businesses, one of the key assets is the property from where the business is operated. There are a number of different structures which franchisors use from the franchisees owning the freehold of the property (although this is relatively uncommon) to, more likely, the franchisee having a leasehold interest in the property.

On a franchise re-sale, where the transaction involves the sale and purchase of the assets, the likelihood is that it will involve either the buyer entering into a new lease or arranging for an existing lease to be transferred. A transfer will not only involve the formal transfer between the buyer and seller of the franchise but also obtaining the landlord’s consent. In other situations, the landlord may well require additional security from the buyer such as a rent deposit or personal guarantees.

Where the transaction involves the sale and purchase of the shares of a company, the buyer would need to check whether the lease contains what is known as a “change of control” clause. If it does, the company’s continued occupation of the property under the lease will likely require the landlord’s consent.

It is essential that when you are taking on a lease, you ensure that you will be permitted to run the business from the property and it is “fit for purpose” and also that you are clear on your obligations and potential liabilities under the lease not only during the term of the lease but also on expiry of the term of the lease.

### Transaction Management

We will manage the transaction for you and be the first point of contact for any enquiries from the seller’s solicitors. You will be given the name of the person who will be your main point of contact throughout the transaction, maintaining an oversight of the entire process and who will be supported by a team of lawyers from across the firm who you will be able to speak to directly as well.

### Fees

As we recognise that each business owner is different and the level of support which each buyer of a business needs varies, we have developed a number of packages which can be tailored to suit your needs. We set out below the key elements of a transaction which are include within each package together with an indication of our costs for each package.

## WHEN YOU ARE BUYING THE ASSETS OF A BUSINESS

	<b>Basic</b>	<b>Standard</b>	<b>Premium</b>
Drafting (if necessary), amending and negotiating the asset purchase agreement	<b>X</b> <small>(no substantial negotiation of the asset purchase agreement)</small>	<b>X</b>	<b>X</b>
Purchase Price paid in full on completion or in simple instalments	<b>X</b>	<b>X</b>	<b>X</b>
Franchise Agreement Review	<b>X</b>	<b>X</b>	<b>X</b>
TUPE advice with 9 or less employee taken on with no changes to their employment terms	<b>X</b>	<b>X</b>	<b>X</b>
Transaction management and dealing with completion	<b>X</b>	<b>X</b>	<b>X</b>
Warranties	<b>Limited</b>	<b>Full</b>	<b>Full</b>
Due Diligence		<b>Limited</b>	<b>Full</b>
Deferred consideration		<b>X</b>	<b>X</b>
Drafting (if necessary), amending and negotiating the disclosure letter		<b>X</b>	<b>X</b>
Review lease and prepare a basic lease report*		<b>X</b>	<b>X</b>
Agree the licence to assign with the landlord and seller*		<b>X</b>	<b>X</b>
Agree a contract and transfer of the property with the seller.		<b>X</b>	<b>X</b>
Settlement Agreements		<b>No more than 2</b>	<b>No more than 2</b>
Preparation of ancillaries		<b>X</b>	<b>X</b>
Advising on the Heads of Terms			<b>X</b>
Price adjustment mechanism			<b>X</b>
Security for deferred consideration.			<b>X</b>
CPSE's*			<b>X</b>
Investigating title*			<b>X</b>
Carrying out searches and reporting on results*			<b>X</b>
TUPE advice with more than 10 employee to be taken on with no changes to their employment terms			<b>X</b>
<b>Fee indications</b>			
If the franchisor provides a template sale and purchase agreement	<b>Circa £3,750 plus VAT</b>	<b>Circa £8,750 plus VAT</b>	<b>Circa £12,750 plus VAT</b>
If the franchisor does not provide a template sale and purchase agreement	<b>Circa £4,750 plus VAT</b>	<b>Circa £9,750 plus VAT</b>	<b>Circa £14,750 plus VAT</b>

\*All property work set out above assumes a single leasehold property.

### Excluded items

- Advice on any banking facilities or security;
- No contracts to be assigned;
- No consultancy agreements;
- The transfer of any freehold property;
- There are no complications with the lease;
- Any references that are needed are provided directly without our involvement;
- We are not required to negotiate the terms of any renewal lease;
- There is only one leasehold title to review and no more than one superior title to review;
- There are no material title, planning, environmental, contamination or construction issues arising which will need to be resolved prior to completion; and
- No authorised guarantee agreements.

## WHEN YOU ARE BUYING THE SHARES OF A COMPANY

	Basic	Standard	Premium
Drafting (if necessary), amending and negotiating the asset purchase agreement	<b>X</b> <small>(no substantial negotiation of the asset purchase agreement)</small>	<b>X</b>	<b>X</b>
Purchase Price paid in full on completion or in simple instalments	<b>X</b>	<b>X</b>	<b>X</b>
Franchise Agreement Review	<b>X</b>	<b>X</b>	<b>X</b>
Preparation of stock transfer forms	<b>X</b>	<b>X</b>	<b>X</b>
Transaction management and dealing with completion	<b>X</b>	<b>X</b>	<b>X</b>
Warranties	<b>Limited</b>	<b>Full</b>	<b>Full</b>
Due Diligence		<b>Limited</b>	<b>Full</b>
Deferred consideration		<b>X</b>	<b>X</b>
Drafting (if necessary), amending and negotiating the disclosure letter		<b>X</b>	<b>X</b>
Review lease and prepare a basic lease report*		<b>X</b>	<b>X</b>
Dealing with the landlord regarding any change of control*		<b>X</b>	<b>X</b>
Settlement Agreements		<b>No more than 2</b>	<b>No more than 2</b>
Preparation of ancillaries		<b>X</b>	<b>X</b>
Advising on the Heads of Terms			<b>X</b>
Price adjustment mechanism			<b>X</b>
Security for deferred consideration.			<b>X</b>
CPSE's*			<b>X</b>
Investigating title*			<b>X</b>
Carrying out searches and reporting on results*			<b>X</b>
<b>Fee indications</b>			
If the franchisor provides a template sale and purchase agreement	<b>Circa £3,750 plus VAT</b>	<b>Circa £9,750 plus VAT</b>	<b>Circa £15,750 plus VAT</b>
If the franchisor does not provide a template sale and purchase agreement	<b>Circa £4,750 plus VAT</b>	<b>Circa £10,750 plus VAT</b>	<b>Circa £16,750 plus VAT</b>

\*All property work set out above assumes a single leasehold property.

### Excluded items

- Advice on any banking facilities or security;
- No contracts with change of control clauses that need to be dealt with;
- No consultancy agreements;
- The transfer of any freehold property;
- There are no complications with the lease;
- We are not required to negotiate the terms of any renewal lease;
- There is only one leasehold title to review and no more than one superior title to review;
- There are no material title, planning, environmental, contamination or construction issues arising which will need to be resolved prior to completion; and
- No authorised guarantee agreements.

# Meet the Team

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## Geoff Hazlewood

**Partner**  
**Corporate & Commercial**

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Geoff is a partner and Head of the Corporate & Commercial team. He acts for clients in a number of sectors which include a number of professional partnerships and LLPs who have required assistance with LLP incorporations, LLP and Partnership agreements and partner appointments and retirements. In addition to this he also acts for clients providing general commercial advice as well as advice on corporate acquisitions, corporate finance and banking.

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## Damian Humphrey

**Partner**  
**Franchising**

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Damian heads up the firm's nationally recognised franchise team, which provides a first-class service to many of the country's leading franchise brands. His work involves helping franchisors set up and grow their franchise networks with a particular emphasis on helping franchisors expand their brands internationally. Damian regularly speaks at franchise industry events (both nationally and internationally) and has been awarded the Qualified Franchise Professional qualification by the British Franchise Association.

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## Mark Watson

**Senior Associate**  
**Corporate & Commercial**

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Mark advises upon a broad range of corporate transactions including partnership and LLP matters. Mark also advises on a variety of complex commercial arrangements and agreements. Clients include a range of local and national businesses, in a variety of sectors, together with our panel banks and other financial institutions whom Mark advises as part of our cross-team banking group.

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## Tracy Williamson

**Senior Associate**  
**Franchising**

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Tracy has extensive knowledge of franchising matters having worked in the industry for over 25 years. Her experience and knowledge of the franchising industry is invaluable and provides her franchising clients with continuity and a seamless service. Tracy acts for new start, growing and mature franchisors providing them with ongoing support and advice.

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## James Brighton

**Paralegal**  
**Corporate & Commercial**

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James is a paralegal in our Corporate & Commercial team in Norwich. James is studying for his CILEX qualifications, completing his Level 3 Diploma. James will be the first point of call for many of the department's clients, providing first-class client care, while assisting fee earners across all aspects of business law. James has over three years' experience within the legal field, working for a regional law firm in a client relations role.

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## Ruth Burrell

**Senior Associate**  
**Commercial Property**

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Ruth specialises in Commercial Property work, including commercial landlord and tenant work and commercial conveyancing, also working with large estates involving agricultural land and industrial premises to enable diversification. Ruth also has an interest and expertise in leasehold enfranchisement work, acting for landlords and tenants on agreed and statutory lease extensions, purchases of freeholds and rights to manage.

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## Jessica Piper

**Senior Associate**  
**Employment**

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Jessica is involved in advising on a range of contentious and non-contentious employment issues, for both employers and employees, including representing clients in claims before the Employment Tribunal, such as for wrongful and unfair dismissal. She also has experience in advising on directors' service agreements, employment contracts, policies and procedures, settlement agreements, and within corporate transactions.

## Ashtons Legal office locations

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For further information on how we can help  
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