

## ARRANGEMENTS FOR CONTINUITY OF PRACTICE TO COVER ILLNESS, TEMPORARY OR PERMANENT INCAPACITY OR DEATH OF A SOLE PRACTITIONER

Problems in the continuity of practice can arise where a sole practitioner has become physically or mentally incapacitated and consequently unable to continue to manage his practice, or has died without making adequate arrangements for the carrying on of his practice by his personal representatives. It is recommended that Members who are sole practitioners make suitable arrangements to ensure that their practice can continue to be carried on in the event of illness, temporary or permanent incapacity or death.

Members who hold clients' monies are required to implement specific continuity arrangements under CIPFA's Clients' Money Regulations.

Where there is no specific requirement, some self employed Members may choose not to make formal arrangements in the event of incapacity or death, due to the nature of their practice and their clients. Should this decision be made, the following measures should be taken by the Member:

- (a) They must highlight this position to the client before the assignment is commenced, and check that the client understands and agrees to it;
- (b) The agreement and decision should be documented by both parties either in the letter of engagement or via another appropriate communication.

Members should be prepared to demonstrate that they have assessed their own needs for continuity arrangements and, if they choose not to make formal arrangements, that the above measures are being taken by them.

Where continuity arrangements need to be made, the following guidance is intended to be of assistance to sole practitioners in identifying the solutions to the problems.

### General considerations

- 1 All practitioners have a duty to ensure that their practices are at all times properly supervised and conducted, including implementing arrangements to cover holidays, short term incapacity, or sickness of the practitioner. The problems which will inevitably arise where a sole practitioner ceases to be able to conduct his practice because of continuing incapacity or death are much more serious. The interruption of services will cause considerable difficulty and inconvenience to the practitioner's clients, additional anxiety for his or her family and reduction in the value of the practice or even its disintegration.
- 2 It is therefore vital for a sole practitioner to confront these problems and difficulties, preferably when he or she first enters into practice, and to make arrangements appropriate to each of the following circumstances to enable the practice to be carried on with a minimum of dislocation:
  - (a) short-term absence due to holiday or sickness;
  - (b) continuing physical incapacity;
  - (c) mental incapacity;
  - (d) death.

The arrangements in respect of (b), (c) and (d) should provide, as far as is possible, for the practice to be continued as a going concern by the Member's 'alternate' (see below) until such time as the sole practitioner recovers or a decision is made to dispose of the practice.

- 3 The arrangements may be made with another sole practitioner or with a firm having regard to any specific legal measures that may apply to particular kinds of work, such as audit.

It is recommended that all continuity arrangements are evidenced in writing. It is advisable for Members to seek legal advice as to the matters that must be dealt with by any continuity agreement. The following are matters which could be included (but the list is not definitive):

- the nature of the legal relationship between the Member and his 'alternate';
- the circumstances which will cause the management arrangement under the continuity agreement to commence operating;
- a statement of the maximum duration of the management of the practice under the continuity agreement;
- provisions for the review of the arrangements should circumstances warrant an extension of time;
- the alternate's obligations;
- the alternate's powers relating to such matters as the administration of the practice, engagement and dismissal of staff and operating bank accounts;
- the letter to be sent to clients in the event of the Member's death or incapacity.

Members are recommended to make a will and appoint executors who will be able to administer the estate. It may be advantageous if one of the executors is professionally qualified. Executors of an estate can act at once to protect a practice whereas if a Member should die intestate, his administrators will have no authority to act until they have obtained a grant of letters of administration. The resulting delay may lead to the Member's affairs and those of his clients not being properly controlled and managed. Members are also recommended to inform their executor(s) and family of the existence and purpose of their continuity agreement and the location of the agreement. This means that, in the event of a Member's death, the family/personal representatives will be able to locate the document and identify the wishes of the Member with respect to his practice.

#### **Legal considerations in respect of audit work**

- 4 ***This guidance sets out the Institute's understanding of the legal issues, but Members should always seek professional legal advice for specific assignments.*** An Audit appointment is of a firm (in the case of a sole practitioner an individual) by the audited body. As such it would be contrary to the body's intention if some other party whom it had not appointed were to sign an audit report. However, it may be possible for an alternate to conclude an audit report where the sole-practitioner has become physically (but not mentally) ill, and has completed the audit work save for the final review and signing of the audit report. It may be possible for an alternate who had been properly appointed by a power of attorney (see below) if satisfied with the audit work, to carry out the final review and sign the report on the authority of the practitioner. Temporary incapacity, mental or physical, would not necessarily determine the appointment.

When a sole practitioner auditor dies, a casual vacancy arises and there is no facility for an alternate, even if properly appointed as a special executor under the practitioner's will (see below), to sign the audit report.

## Effective arrangements

5 Members can take professional advice on a 'package' of legal measures. Implementation of these legal arrangements may be able to provide legal continuity of a sole practitioner's practice in the case of his incapacity, mental or physical, or death. In essence the 'package' might consist of the following:

- (a) a Form of Power of Attorney (to deal with incapacity), plus
- (b) a 'Special Executor' provision, for inclusion in the sole-practitioner's will or a codicil thereto, to cover the possibility of the practitioner's death. The Institute is advised by its lawyers that this is probably the only combination of arrangements which is entirely effective.

It is essential however that a Member obtains specific legal advice on the documentation to be executed and the drafting of a continuity agreement.