

CONTINUITY OF PRACTICE GUIDANCE

The following summary is not to be relied upon as a complete description of the legal obligations and issues concerning Continuity of Practice and does not constitute legal advice which should be sought from an appropriate body. Instead the following is basic guidance only to be used to familiarise ICB members with some of the considerations when preparing their own Continuity of Practice Policy and Contract.

THE PURPOSE OF CONTINUITY ENGAGEMENT

ICB strongly recommends all practice licence holders enter into a Continuity of Practice Engagement (“COPE”) with another ICB practice or bookkeeper, to ensure each licence holder’s practice can continue in the event of long term absence, incapacity or death. This will ensure the services you provide to your clients remain uninterrupted and protected at all times and ensure your family’s future interests are properly protected.

CHOOSING YOUR CONTINUITY APPOINTEE

When entering into the COPE, you will need to prepare a written agreement with another bookkeeper (an “appointee”) who can take over the management of your practice following your incapacitation or death.

When choosing an appointee there are a number of things it would be prudent to consider such as:

- The appointee’s similarities/differences in fees structures
- The appointee’s similarities/differences in work undertaken
- The appointee’s level of qualification
- The appointee’s location in relation to you and your clients
- The appointee’s number of available staff ready to begin working on your practice
- The appointee’s technical skills
- Your clients’ needs and expectations

It is essential that you and the appointee are aware of each other’s practices and procedures, so if the COPE commences the appointee will take over your practice effectively and quickly.

ICB recommends you select an appointee with whom you have a friendship and rapport, or equally an appointee whom you meet regularly at ICB branch meetings and other events, as this will assist you in keeping up to date with any changes to your respective practices. ICB also recommends you both review the continuity arrangements at regular intervals, to ensure they remain appropriate.

PREPARING THE COPE

In order to avoid any misunderstanding or potential issues, ICB recommends the COPE is clearly worded and formalised in writing. The COPE should also be compliant with ICB Rules and Professional Conduct Regulations.

Regardless of whether the COPE is in the form of a single contract or agreed over a number of letters/emails, the final principles of the COPE should be on letterhead and signed by both you and your appointee.

You will also need to ensure that everyone likely to be affected by the COPE is made aware of it, such as: your dependents, your insurer, your bank, ICB, your solicitors, your suppliers and your clients. All of these people should be given the appointee's contact details once the COPE is signed. You should also ensure there are clauses in the COPE which guarantee these people are quickly notified once the COPE actually commences and also when it expires.

It would be prudent to keep a copy of the COPE with any other documents the appointee is likely to need under the COPE, such as your most up to date PII certificate and policies.

ITEMS TO INCLUDE IN THE COPE

When preparing the COPE you should ensure it includes the name and contact details of the appointee and the date the COPE was signed. You will also need to make sure your clients are aware who the appointee is and that your client agrees to their appointment. You should also let your client know that if they don't agree they are entitled to disengage your services. In order to ensure all your clients are aware of their rights and your continuity plans, ICB recommends you include a paragraph in your Letter of Engagement dealing with continuity, and notifying your clients of the appointee, and your clients' options.

Another important point to consider is that, in the event of your incapacitation or death, you will need a trusted and competent person to manage your affairs and act in your place as your personal representative. This person will assist in commencing the COPE and may need to manage your practice until the appointee is in a position to take control.

When initially preparing the COPE it may be prudent to consider including clauses such as:

- Confirmation that the appointee does not accept any responsibility for the quality of the work prior to the COPE commencing
- Clarification of the legal relationship between you and the appointee
- The exact nature of the appointee's responsibilities
- Whether you are forming a partnership with the appointee, or not
- the events which will activate the appointee's responsibilities and actions under the COPE
- How your clients will be informed that the COPE has commenced
- The Appointee's responsibility to notify your clients of their right to opt out of the COPE and to keep a record of those clients who choose to opt out
- The period for which the appointee will manage your practice and how an extension of time can be arranged
- Who is sufficiently experienced to act as your personal representative if you are permanently incapacitated or die without formalising a Will and their familiarity and experience of your practice and bookkeeping
- Who may act as your executor if you are formalising your Will and their familiarity and experience of your practice and bookkeeping
- If there is more than one executor/representative, how they will confirm decisions (e.g. by majority vote)
- Authorisation for your executors/representatives to have reasonable access to your practice books during the course of the COPE to allow monitoring of your practice
- Deadlines which reflect any time limits in your PII policy regarding notification of your incapacity or death
- A procedure to ensure you and the appointee are updated regarding any changes of contact details before the COPE is implemented

THE ASSISTANCE OF A WILL

ICB strongly recommends you make a Will and appoint executors who are competent to manage your estate and assist in implementing the COPE.

If you appoint executors they can immediately act after your death to protect your practice. However, if you die without a Will or appointing executors, anyone attempting to administer your estate will have to apply for and obtain a Grant of Letters of Administration from the Probate Registry, before they are authorised to do anything. The resulting delay may result in a period in which your practice is not properly managed.

You should consider informing people involved with your practice and/or your family that you have prepared the COPE and where it can be located. If you decide to prepare a Will, you should also notify your executors of this information.

These preparations will minimise any delay in the continued management of your practice following your incapacity or death.

THE INITIATION OF THE COPE

When you prepare the COPE you should consider what procedures and actions your representatives/executors should undertake. You should be minded that the COPE is likely to be implemented during a stressful and highly emotional time and you should try to ensure it is as straight forward as possible. Initial actions you may wish to consider include:

- who delivers notices and documents to the appointee/third parties and the proof (if any) required to establish your death or incapacity (and whether these notices are to be passed on in writing or verbally)
- The form of any notice the appointee is to receive
- If you die, a procedure to ensure the appointee receives proof that that the person dealing with your estate has a Grant of Letters of Administration (if you don't have a Will) or Grant of Probate (if you do have a Will)
- The procedures to follow if you are incapacitated, and if during your incapacitation you die (e.g. whether the appointee is to continue acting without further notice, how further consents/authorisations may be obtained)
- An agreed notice period for the appointee to ready their own affairs before taking on management of your practice
- An initial procedure for the appointee, including notifying their own clients of any likely delay and contacting their own professional indemnity insurers and if necessary, their regulators

DURATION OF THE APPOINTEE'S MANAGEMENT OF YOUR PRACTICE AND EXTENSIONS

ICB recommends the COPE continues only for a limited period after which it will terminate (6 or 12 months may be an appropriate period). ICB also recommends you include a clause which allows for a review of the COPE and for the management period to be extended, with both parties' (or the appointee's and your representative's) written and signed mutual consent.

With regard to extending the management period, you may choose to include a clause in your COPE to enable periodic reviews of the management, or such reviews as the representatives/parties consider appropriate. In either case, both parties will need to consider the current circumstances at each review, including whether you or your representatives want to (and are authorised) to sell your practice to a third party or the appointee.

YOUR INCAPACITY OR DEATH

Depending on whether you are incapacitated or have died may require you to grant the appointee different levels of authority and consent. When drafting the COPE you will need to consider whether the appointee is to be granted access to your bank accounts and how your staff will be paid, managed and if necessary, dismissed, if applicable.

If you are incapacitated you may not be able to deal with the day to day business but may still want to make decisions concerning your practice and clients. Accordingly, you may want to include a clause in the COPE stating that if you are incapacitated the appointee will require your signature and written consent on certain decisions.

ICB recommends that when preparing your Will you give careful consideration as to who shall act as your personal representatives/executors. In the case of your death you may require your personal representatives/executors to maintain a level of control in your practice and/or to be involved in certain commercial decisions. Accordingly, it may be appropriate to select a representative/executor who is familiar with your practice and/or is experienced in bookkeeping.

If you do not feel that any one person is appropriately qualified to act in this way, you may appoint up to four executors/representatives, who may between them have the necessary skills. If you choose this course of action, you may want to include instructions in your Will that commercial decisions require a majority vote of the executors and/or particular executors have involvement in the decisions and running of your practice during the COPE. ICB advises that you discuss such matters in detail with the person preparing your Will so that suitable options and arrangements can be discussed and included, as appropriate.

To assist the management of your practice in the case of your death, you may want to include a clause requiring the appointee to seek written consent or instructions from your personal representatives or executors or that on particular matters the appointee be automatically granted consent or the ability to act without instruction.

In the event of your death you may also want to include clauses instructing the sale of your practice, how the sale is to proceed, and sale price calculated, or whether such a sale is to take place at the discretion of your personal representatives.

When preparing the COPE. You should approach third parties, including your bank and regulators to confirm the form and level of the consent they would require to authorise the appointee's access to your practice's records and accounts pending the Grant of Probate/Letters of Administration.

THE APPOINTEE'S RESPONSIBILITIES AND POWERS

The COPE should clearly list and describe your responsibilities and the responsibilities of your representative and the appointee. Items you should consider including in your COPE may be:

- That the appointee continues to adhere to the rules of ICB (if the appointee is not a member of ICB, ICB recommends you contact ICB to discuss the matter further to ensure money laundering supervision requirements continue to be met)
- Maintaining the quality with which you manage your practice during the appointee's management
- An undertaking from the appointee to maintain your books and records, and the storing of receipts, invoices and records in accordance with your established systems
- Whether the appointee is required to abide by the terms of your PII

- Who must notify ICB, your PII and any other third party that the COPE is activated and when must they send the notifications and in what form
- That the appointee ensures payment of ICB membership fees to maintain your practice licence and certificates
- Who has the deciding vote if your representatives are unable to reach a unanimous decision, and/or whether decisions are to be made on a majority vote
- What information is to remain confidential regarding your practice and clients
- The fee structure to apply when the appointee charges your clients
- Whether the appointee is authorised to increase or discount fees and/or write fees off
- The basis on which the appointee recruits and dismisses staff to deal with your practice, and whether consent is required from you or your representatives
- Ensuring any staff employed by the appointee to deal with your practice has the appropriate competence and expertise
- Who shall access and use your practice bank accounts to pay bills, expenses and wages, or a process allowing the appointee to access practice money
- Whether the appointee will keep your practice's accounts and money separate from their own practice and personal affairs
- Whether the appointee shall be responsible for compiling and submitting your tax and VAT returns, and if not, who will
- Where meetings with your clients and staff will be held
- A procedure to ensure the appointee's PII are notified that they are managing your practice
- How the appointees shall be remunerated (including payment dates, rates, expenses)
- That, following your incapacity or death, the appointee will not solicit and/or aid a third party to solicit your clients for at least a specific period after the termination of the COPE

ENDING THE COPE

You may want to consider and include clauses allowing either party to terminate the COPE under specific circumstances either before the COPE commences (by giving written notice) or during the term of the COPE.

You may also want to consider including a clause terminating the COPE after it has commenced, under specific circumstances, such as:

- The appointee breaching the terms of the COPE
- The appointee being adjudged bankrupt
- The appointee being convicted of dishonesty or a criminal offence
- The appointee being subject to ICB disciplinary investigations and actions

If such a termination occurs you may want to include a clause ensuring the appointee agrees to immediately return all books and papers to you or your representatives.