

## **Practice note on cover in the absence of an adviser, inability to work, and closing a business**

### **Introduction:**

1. This Practice Note addresses the arrangements registered organisations should make to cover for an authorised adviser's absence as required by Code 5.6 of the Commissioner's Code of Standard's. It takes into account planned and unplanned absences including an adviser's inability to work. It also explains what steps an organisation must take to protect its clients when closing its business.
2. While this note is mainly aimed at sole practitioners, there are areas of good practice that must be noted by all advisers regardless of the size of their organisation.

### **Holiday or other planned absence:**

3. There may be instances when an adviser is unable to provide immigration advice and services to a client due to planned absences. Planned absences may include holidays, family duties, maternity or paternity leave, jury service or similar events. There is a continuing duty on the registered organisation and the authorised adviser to ensure that during such periods the adviser's practice will carry on with minimum interruption and inconvenience to their clients. Arrangements must be made to ensure the continued effective delivery of service, to clients.
4. When an authorised adviser expects to be away for longer than five working days, they must have a system in place to cover any emergencies that may arise on their case files. Such a system could include a reciprocal arrangement with another suitably qualified adviser whereby the latter will check the former's hard and electronic mail and telephone messages at least three times a week and agree to undertake all necessary work on any urgent matters, where the submission of documents is time critical. The adviser should inform their clients in writing as to how long they will be away for, who is looking after their matters in the adviser's absence and how the covering adviser can be contacted in an emergency. The adviser should consider displaying this information at their premises and on their answer phone and

out-of-office auto reply on their emails. The adviser should also make their IAA caseworker aware of the arrangement that has been put in place.

5. It is not expected that any covering adviser would take on new work or receive monies on behalf of the absent adviser. If money is received from existing clients, this should be paid into the client account. However, no withdrawals should be made from the client account in the adviser's absence. Should an emergency arise for a client, the covering adviser must obtain that client's written authority for them to act on the client's behalf.

#### **Advisers who work part-time:**

6. Some authorised advisers work part-time. Registered organisations must ensure that arrangements have been put in place to enable clients to reach advisers in emergencies. All clients should be made aware of these arrangements, in writing.

#### **Supervising adviser:**

7. Registered organisations may have caseworkers who have been authorised by the Commissioner to practise under the supervision of a qualifying supervising adviser. If a supervising adviser will be away for a month or more, arrangements must be in place, which may include another adviser, who is qualified to supervise, taking on their supervisory responsibilities during the absence. The covering supervisor must be able to satisfy the Commissioner that they are compliant with Code 3.3 of the Code of Standards and adhering to the requirements of the Commissioner's 'Guidance on Supervision'. The Commissioner must have been informed of the arrangement and authorised it, before it can begin. If it is not possible to make such a supervision arrangement, then the Commissioner must be informed immediately. Being unable to make an adequate supervision arrangement will be considered a "significant change" under Code 3.6. Where the supervisor is not available to supervise work sufficiently, the supervisee should revert to working at the Level or in the category to which they have themselves already been authorised.

#### **Long term sickness and unplanned extended absences:**

8. Registered organisations must have systems in place to cover extended sickness or other unplanned extended absences of more than five working days, including arranging for a designated person to be able to attend to all emergency work that has, or may, arise. In cases of long-term absence (i.e. for more than a month), the organisation must arrange for another authorised adviser (within the same organisation) or registered organisation (if the absent

adviser is a sole trader) to oversee the running of the business and to take on the responsibility of doing so, during the period of absence. They must also contact their caseworker at the IAA to inform them of the situation and discuss their arrangement, to ensure the continued effective delivery of service to the clients.

### **Information to clients when the office is closed in an emergency:**

9. Not all registered organisations can arrange for their office/s to be continually staffed during opening hours; for example, an adviser (who is a sole trader) may need to attend the Tribunal or an immigration detention centre. Registered organisations are expected, however, to put in place arrangements that enable clients to get in touch with them in case of their own emergencies. The organisation should leave such contact details on their premises (e.g. a notice), on their answer phone and their out-of-office auto-reply notification if on e-mail. This could be by way of using a 'Serviced Office' or message relaying facility. Whatever the arrangement made, registered organisations should ensure that their clients, as well as their IAA caseworker are aware of what arrangement is in place.
10. The Commissioner expects that all messages or communications left for the registered organisation are checked regularly and dealt with as soon as reasonably possible.

### **Closing a practice:**

11. A registered organisation may have to close for a variety of reasons and should have a plan in place for this, even if there is no prospect of them deciding to close down in the foreseeable future. When preparing a plan, registered organisations should take the following steps, to protect their clients when closing the business.

### **Informing the Commissioner:**

12. In all instances, a registered organisation that wishes to close or cease to practise or no longer requires to be registered with the IAA, must inform the Commissioner of their plans, as far in advance as possible, and certainly before it ceases to practice. The organisation must inform the Commissioner, in writing, of the following:
  - the date they intend to close
  - the reason for closing
  - how active client matters will be transferred to a successor firm or another firm and who this firm will be

- the arrangements for notifying clients and former clients of the closure
- the arrangements made, in relation to the return of client files, documents and any client monies still held on account
- how archived files will be stored

### **Informing clients:**

13. Registered organisations must inform clients, giving as much notice as possible, of their intention to close. The organisation must inform all clients, in writing, of the following:

- the date they intend to close
- that they can assist with referring the client to an appropriate alternative legal representative
- that clients are free to instruct any alternative legal representative if they have an ongoing matter
- an explanation of how clients can retrieve their case files and documents or arrange for their case file or documents to be transferred to any legal representative of their choice
- how they can be paid back any client monies still held by the organisation in their client account

14. There may be occasions where there is an urgent need to transfer client files (for example, if there is a risk that the office will be repossessed and files removed). The registered organisation should have a 'closure plan' in which they have made contingency plans for occasions such as this; for example, by making arrangements with another IAA registered organisation or a suitable solicitor's practise, for the transfer of client files, documents and possibly client monies. On occasions such as these, the registered organisation must also contact their IAA caseworker to discuss what further options are available to ensure that client files, documents and monies are not compromised.

### **Informing others:**

15. The registered organisation will also need to identify who else must be informed and then inform them of the closure. For example, Tribunals, Home Office, Accountants, professional indemnity insurance supplier, bank, Information Commissioner, Landlord and HMRC may need to be informed of the closure so that it is completed in an orderly and efficient manner. The registered organisation should also ensure that all outstanding bills and disbursements are paid, and all client monies have been accounted for.

**Informing staff:**

16. The registered organisation must consider issues such as redundancy and other employment issues as well as providing references and ensuring there are sufficient staff to assist in an orderly and efficient closure of the business.

**Voluntary closure:**

17. It is important to plan the closure carefully and with enough time to ensure that client matters are not adversely affected or compromised. A registered organisation may decide voluntarily to close for a variety of reasons such as the retirement of a sole practitioner or because the business is no longer financially viable. In such circumstances the organisation should give clients, the Commissioner and any other relevant organisation as much notice as possible of the closure.

**Not applying for continued registration:**

18. Registered organisations that have not applied for continued registration and have subsequently had their registration with the Commissioner cancelled must not retain any client files even if there are decisions pending or it is expected that matters will shortly be resolved. They must, however, still retain copies of the files.

**Refusal of continued registration:**

19. The Commissioner may decide to refuse to continue the registration of an organisation if he believes it is no longer fit and/or competent to provide immigration advice and/or services. Such a decision is appealable to the First-tier Tribunal (Immigration Services) (the Tribunal). Not all organisations exercise the right of appeal, and, of those that do exercise their right of appeal, not all are successful.
20. Where an organisation chooses not to appeal, it must not retain client files. Subject to the client's consent, their file should be referred immediately (and not later than 28 days) either to another regulated organisation able and willing to assist the client, or, where no such organisation can be identified, be sent to the client/instructing sponsor.
21. If an organisation exercises a right of appeal they should make provisional arrangements for the possibility that the Commissioner's decision will be upheld on appeal. During the appeal process, the organisation can apply to the Tribunal for a stay of the Commissioner's decision and the Tribunal may

grant or refuse this application. If the application is granted the organisation may continue providing immigration advice and services and retain its client files up until the Tribunal makes its final decision on the appeal. If the application is unsuccessful, the files must be referred immediately in the manner required for an organisation which has chosen not to appeal as mentioned above.

22. Organisations considering appealing the Commissioner's decision must therefore consider their clients' best interests while awaiting the Tribunal's decision and should make contingency plans for the care of their clients should the Tribunal dismiss their appeal.

### **Suspension:**

23. The Commissioner may request that the Tribunal agree to suspend a sole adviser from the Commissioner's scheme of regulation. If the Tribunal agrees to this, then the adviser must refer any open cases either to another registered organisation that is able and willing to assist the client, or, where no such organisation can be identified, be sent to the client or instructing sponsor. The client should be advised that the organisation can no longer act for them and of the need for referral or return of the case.

### **Bankruptcy:**

24. A further reason for registered organisations closing may be due to an order of bankruptcy. This may be foreseeable and so arrangements should have been considered and put in place, in the organisations 'closure plan'. The organisation must comply with the requirements already referred to in this Practice Note, when closing down, for these reasons.
25. The IAA does not have the power to intervene in these circumstances or to retain the client files of a bankrupted business. If an individual who has responsibility for such an organisation fails to deal with the organisation's client files accordingly, this will be taken into account should they apply to be registered in the future.

### **Change of legal entity:**

26. Registered organisations will need to apply to the Commissioner if they wish to change from one legal entity to another. As the IAA cannot transfer registration from one legal entity to another, the new legal entity cannot provide immigration advice and/or services until its application is approved. However, while the application is being considered, the existing registered organisation can continue to operate.

27. If approving the new legal entity, the Commissioner will cancel the registration of the previous legal entity. The new legal entity must arrange for the transfer of the old legal entity's clients to the new organisation by writing to the clients informing them that the new registered organisation has been created replacing the previously registered organisation. In that letter the organisation must enclose a new letter or form of authority for the client to sign agreeing to the new organisation acting for them. Clients who agree to be advised by the new organisation must receive a new client care letter in accordance with the Commissioner's Code of Standards. Clients must be given the option of instructing the new organisation, moving to another provider or retrieving their file.

#### **Arrangements on the death of a sole adviser:**

28. The Commissioner notes that authorised advisers will have worked hard to build up their business. It is therefore good practice to think about what might happen to the business should the adviser die.
29. Authorised advisers should prepare and leave a Will containing adequate provision for the running of their practice after their death, by another registered organisation, or for the business to be closed. A sole adviser should ensure that their executors are able to make arrangements immediately after to appoint an appropriately authorised adviser to run the practice pending the practice's termination. The adviser's clients must be notified of the adviser's death and of their right to seek assistance from another registered organisation, even if the practice is purchased by another registered organisation.
30. Instructions should be left for matters such as freezing the client account and fresh accounts being opened, by any incoming adviser, to deal with the deceased adviser's cases until the practice is sold or closed. The incoming adviser must also make arrangements for the former client account's balances to be transferred to the new client account as soon as the grant of probate is registered with the bank or building society. The incoming adviser must not draw money from the new account in any circumstances where it would be improper to draw an equivalent amount from the old account.
31. A similar arrangement should be made for the office account, and it is important that no further monies should be paid into the deceased adviser's client account. Clients' money received after the advisers death by the practice must be placed in the new account operated by the incoming adviser.
32. Advisers should be aware and leave instructions that if a sole adviser dies intestate, then the administrators of their estate either pass the client files back to the clients or instructing sponsors or refer them with the clients' consents to another registered organisation, or the clients must be given the option of retrieving their file.

