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ICAS Regulatory Guidance on 'Contingency Arrangements' for sole practitioners

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1. Introduction

ICAS Public Practice Regulations (the Regulations) require contingency arrangements in Regulation 3.20

Contingency arrangements

3.20 A Practising Certificate holder who is a sole practitioner must certify to ICAS that written arrangements are in place to enable the functions of the Practising Certificate holder's Firm to be continued, with a minimum of disruption, in the event of the incapacity or death of the sole practitioner.

This guidance is to assist members in understanding how they can meet this requirement. It should be read in conjunction with the helpsheet 'Appointing an alternate and continuity of practice' in the General Practice Manual.

2. The purpose of the requirement

The Regulations requirement was made in recognition of the significant difficulties which can be encountered by clients and family members where an accountant in practice is incapacitated (temporarily or permanently) or dies without having arrangements in place. It should be noted that each member has a professional duty to look after the affairs of their clients at all times.

The requirement for all sole practitioners to have contingency arrangements in place complements the regulatory requirement for any sole practitioner who receives or holds client monies to have an Alternate. For regulated services, such as audit, insolvency and investment business, it is likely that full Alternate arrangements will be necessary to ensure that time critical and legal obligations can be undertaken during incapacity or following death. Further information on regulated activity impact is given in the helpsheet 'Appointing an alternate and continuity of practice'.

3. What is a 'sole practitioner'?

Many may have a view of what a sole practitioner is; however, in this context the measure is aimed at those who would need someone else to step in and facilitate client matters should the practitioner be incapacitated or die.

Examples to illustrate sole practitioner situations

- 1. I practice as an individual in my own right (with or without employees)**
This is a sole practitioner for the purposes of the Regulations requirement and would require contingency arrangements.
- 2. I practice through a partnership but the other partner(s) are not actively involved in the practice**
This is a sole practitioner for the purposes of the Regulations requirement and would require contingency arrangements.
- 3. I practice through an LLP although the other designated member(s) are not actively involved in the practice**
This is not a sole practitioner for the purposes of the Regulations requirement and would not require separate contingency arrangements. Designated members have statutory duties which are sufficient to ensure the functions of the firm are continued where one designated member is incapacitated and such statutory duties are undertaken by the other designated member(s).

4. I practice through a limited company and there is another director, although they are not actively involved in the practice

This is not a sole practitioner for the purposes of the Regulations requirement and would not require separate contingency arrangements. Directors have statutory duties which are sufficient to ensure the functions of the firm are continued where one director is incapacitated and such statutory duties are undertaken by the other director(s).

5. I practice through a limited company and I am the sole director

This is a sole practitioner for the purposes of the Regulations requirement and would require contingency arrangements.

4. What constitutes contingency arrangements?

Contingency arrangements are arrangements documented by a sole practitioner which take effect in the event of the incapacity or death of the sole practitioner. These arrangements should have the objective of ensuring that:

- there is a person(s) (the appointed person) as a point of contact during a period of incapacity or death and who can take appropriate action as required
- a client's affairs can be progressed without undue detriment to the client
- the affairs of the firm can be dealt with appropriately, and
- where appropriate, ICAS can be informed.

The extent of such arrangements will vary depending on the specific facts of the sole practitioner's personal circumstances, their clients and the type of work which is carried out. As the arrangements will take effect at a time where the sole practitioner is unable to act, they will require a third party to take steps at the relevant time. It is important therefore that the person(s) who will step in are both aware of, and have consented, to the arrangement.

At a minimum, the appointed person is expected to be a point of contact regarding the sole practitioner's practice for clients, and for ICAS, in the event of the incapacity or death of the sole practitioner.

5. What is expected in a contingency arrangement?

As highlighted above, the extent of the arrangements will vary depending on individual circumstances. What is important is that the arrangements facilitate the objectives set out in the bullet points in the section above (What constitutes contingency arrangements?).

In putting together contingency arrangements, consideration should be given to whether they cover situations involving temporary incapacity as well as permanent incapacity/death. Arrangements are likely to also be influenced by whether there is an intention or desire to preserve/realise value or whether it is simply an arrangement to allow an orderly transition and winding up of the firm's operations.

The level of detail and degree to which contingency arrangements require to be documented will similarly depend on the circumstances outlined above. Where there is no intention/desire to preserve or realise value then a relatively short, straightforward document may be all that is required.

As a minimum, it would be expected that such documentation would set out:

- the circumstances under which where the arrangements would take effect
- who will be the appointed person and their contact details
- the outcome to be achieved, and
- practical considerations such as where to find information or how to access systems.

Where there is an intention/desire to preserve or realise value then it is likely that more formal arrangements and agreements along the lines of an Alternate will be required to give this effect.

Examples to illustrate how contingency arrangements may be met

1. Sole practitioner, no employees, small number of clients and where no intention to preserve/realise value

In the event of death or permanent incapacity, clients would simply be allowed to move to another accountant. In such a situation, then arrangements which facilitate that are likely to meet the requirements of the Regulations. This could include for instance:

- express instructions of this being documented in the contingency arrangement documentation and communicated to family/inclusion in the sole practitioner's will
- provisions within termination clauses in letters of engagement
- documentation/instruction prepared on how professional enquiry letters would be dealt with from the incoming accountant, how information required to be provided to the new accountant would be able to be gathered and passed across in a timely manner, and how any client owned books and records would be identified and returned.

In respect of temporary incapacity there would require to be consideration of the time period where it is practical for clients not to have access to services. It may be that provisions within letters of engagement for instance would state that where a temporary incapacity of [x] weeks exists then the client is entitled to treat the engagement terms as terminated and seek an alternative accountant. Arrangements in relation to professional enquiry letters and transfer of information to the new accountant set out above would apply equally in this situation.

2. I am a sole practitioner with employees

A sole practitioner with senior employees who are suitably qualified (as CAs, or as members of non-chartered accountancy bodies, or are otherwise not formally qualified), and who would manage the practice in the sole practitioner's absence, may set in place (written) arrangements with those employees. The practitioner need not in this instance set up contingency arrangements outwith their practice.

Where it is assessed that there is no employee suitable to manage the practice, then it is likely that an arrangement with an external party via an Alternate arrangement and agreement will be required, and particularly where there is an intention/desire to preserve/realise value. If this is not the intention, then the position set out in 1 above would be equally applicable.

If there is an intention/desire to crystallise the value in a practice, then that realisation of value would normally require a separate business or asset sale agreement. Where the practice has employees the business or asset sale agreement is likely to also cover employment legislation considerations (for example, transfer of undertaking and protection of employment matters). Such issues are out with the scope of contingency arrangements and reference should be made to the helpsheet 'Appointing an alternate and continuity of practice'.

3. My appointments are personal to me / high specialised or niche work

It may be that you are operating in a personal capacity (such as an expert witness) or undertaking highly specialised or niche work where the work is only being carried out because of your personal knowledge or expertise. In such cases it should be clear to all parties that the engagement would terminate in the unfortunate event of your incapacity or death. In these circumstances, the position set out in 1 above would be equally applicable.

4. I operate as a quasi-FD/consultant role

This is likely to be viewed by you and the client as a personal type appointment and as such the comments in 3 above are applicable.

6. What does '....must certify to ICAS' mean?

Each sole practitioner will be required to provide ICAS with the name and contact details of their alternate, or their contingency arrangements with an appointed person, and confirm that the arrangement is in writing. ICAS Practice Monitors may ask to review this documentation when visiting the practice; failure to meet this may result in referral to the ICAS Authorisation Committee for regulatory action.

Each sole practitioner must affirm to ICAS on an annual basis that such arrangements are in place, by confirming compliance with the Regulations in the Firm's Annual Return. Furthermore, it is expected that ICAS should be informed promptly of any change regarding the appointed person with whom the sole practitioner has in place contingency arrangements.

7. Further queries

My practice is specialised, and I am unsure what contingency arrangements to put in place?

Should you wish to discuss the needs of your practice and the requirement to put contingency arrangements in place, or an alternate, please contact the ICAS' Practice Support team (practicesupport@icas.com).

What are the consequences of failing to have contingency arrangements?

Failure to meet this regulatory requirement may result in referral to the ICAS Authorisation Committee for regulatory action.

Do I need to inform anyone other than ICAS about my contingency arrangements?

For practical purposes, you should take steps to ensure that those closely connected to you and your business and who are likely to be amongst the first to know of your incapacity or death (close family, senior employees, friends and/or your solicitor) know:

- that contingency arrangements exist
- where details of these arrangements can be found, and
- who to contact in this regard in the event of the incapacity or death of the sole practitioner.

Clients might also be informed that arrangements exist (normally within letters of engagement provisions).



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