

LOCUM FINANCIAL ADVICE ARRANGEMENTS

A GUIDE FOR FINANCIAL
ADVICE PROVIDERS



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ABOUT LOCUM FINANCIAL ADVICE ARRANGEMENTS

When financial advice was brought under the Financial Markets Conduct Act 2013 on 15 March 2021, industry regulation changed from supervising individuals, to licensing and supervising financial advice providers (FAPs). With this change came an expectation that licensed FAPs possess the systems and processes necessary to continue providing financial advice if a key person becomes unavailable.

These licensed FAPs can be anything from a group of companies with hundreds of financial advisers and nominated representatives, to an entity with one person who can give financial advice – which may be a company with one financial adviser, or a licensed FAP who is a sole trader. More than three quarters of licensed FAPs are at the smaller end, with two or fewer financial advisers.

What happens to the licensed FAP if a financial adviser or director is unable to provide financial advice suddenly or for an extended period? What happens to its clients when they need or want financial advice?

What did the FAP promise its clients? Did it promise to be there to provide financial advice if the client needs it in future? Did it promise to review the financial advice periodically to ensure it continues to meet the client's needs?

What reputation does the FAP want to earn in its target market? If a director or financial adviser is unavailable for a period, in what state will the business be when he or she returns?

As part of its Business Continuity Plan, a FAP with a financial adviser who is a key person should have arrangements in place for another qualified financial adviser to step in to provide financial advice if the financial adviser becomes unavailable. These are locum arrangements, and a financial adviser who steps in is a locum financial adviser. Like an insurance policy, you might never need them. If you do, you'll be very glad you have arrangements in place. Preparation is everything!



Locum arrangements are important for financial advice providers with few staff because:

A key person in the business may be unable to work for a period, and it may be sudden.

A locum adviser can care for your clients when you are unable to.

Locum arrangements help maintain your business and its value if you are unable to work.

ABOUT THIS GUIDE

If you represent a FAP with at least one financial adviser who is a key person, this guide is to help you prepare suitable locum arrangements. It can also be used in other situations where a business has a key person, and the business seeks to prepare for circumstances where that key person may become unavailable suddenly.

There may be other cases when locum arrangements are advisable. For example, if your business engages multiple financial advisers as self-employed contractors, who will run the FAP if you are unable to?

This guide presents ideas for where you may find a suitable locum adviser or FAP, and areas to consider when preparing robust locum arrangements. It is also important that you test your locum arrangements regularly, as part of testing your Business Continuity Plan.

Once you work through the details in this guide, you should agree your locum arrangements in writing. We recommend that you engage a lawyer or reputable compliance adviser to help you write your agreement.

WARNING: This guidance note has been prepared for information purposes only, and is not a substitute for legal advice. Once you find a locum adviser and work through the details in this guidance note, we highly recommend that you seek professional legal advice specific to your circumstances to discuss your arrangements and write the locum agreement.

CASE STUDY

This guide includes a case study, following the journey of fictitious companies and financial advisers.



Sam is a financial adviser, engaged by her own company, Kanuka Financial Advice Limited, trading as Kanuka Financial Advice. Kanuka Financial Advice Limited has a Class 1 FAP licence. Sam is the sole director and shareholder.

Sam gives regulated financial advice on life insurance and mortgages.



Sunil and Violet are financial advisers contracted to Pohutukawa Advice Limited, trading as Pohutukawa Advice. Pohutukawa Advice Limited has a Class 2 FAP licence.

Sunil is a mortgage adviser, and Violet gives regulated financial advice on insurance and KiwiSaver.

REGULATORY REQUIREMENTS

The Financial Markets Authority (FMA) does not have a standard requirement for licensed FAPs to have locum financial advice arrangements. However, Standard Condition 5 for FAP full licenses requires licence holders to have and maintain a business continuity plan. The FMA expect that your business continuity plan considers the loss of availability of key resources, including staff. Therefore, you should have a process for providing an alternative service to clients if a financial adviser is unable to work. This may include providing a locum adviser to act on the FAP's behalf by prior written arrangements.

Note that while Class 1 licences permit the FAP to have one or fewer financial advisers, locum arrangements are expressly permitted. This enables businesses with one financial adviser to continue to care for clients even when the financial adviser is unable to work. However, there will be challenges to update the FSPR. The holder of a Class 1 licence can only have one financial adviser, so someone may have to disengage the financial adviser on the FSPR before they can engage a locum adviser.

If the FAP engages the locum adviser to give financial advice on its behalf, the FAP will remain responsible for the provision of financial advice. The FAP will need policies, procedures, controls and a contract to ensure that the locum meets the FAP's duties, including steps to ensure capability, and to monitor compliance (see page 25). If the arrangements are activated, it is likely that disclosure will need to be updated, such as the FAP's website, scope of engagement and statement of advice templates, and possibly complaints disclosure (see page 24). If the arrangements are activated, someone must also update the FSPR, to reflect the FAP's engagement of the locum adviser.

Standard Condition 7 for FAP full licenses requires licence holders to notify the FMA within 10 working days of implementing any material changes to the way you provide financial advice. For a Class 1 licence holder, a material change includes engaging a locum adviser for a period of three continual months or longer, to provide regulated financial advice on its behalf.

When you notify the FMA, in some circumstances they may respond that they require you to apply for a variation to your licence. The more robust your arrangements, the easier you will find any such hurdle to overcome.

QUICK REFERENCE GUIDE

This section provides a very high-level summary of the details in the rest of the guide. Use this section to gain a broad understanding of locum arrangements, then read the remaining sections to understand the details. Together, they can help you prepare your own locum arrangements.

DEFINING YOUR OBJECTIVES

Before you begin, consider whether you need locum adviser arrangements. Think about who will run your business in the short, medium and long term if you are unable to. Consider the work that you do, and think about which of your tasks a locum adviser can perform for you. Consider how the locum agreement will work commercially, such as how you will pay them, and whose licence, systems and brand you want them to use.



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FINDING A SUITABLE LOCUM FINANCIAL ADVISER

Find a suitable locum financial adviser by talking to as many people in the industry as you can. Service providers and industry associations will know a lot of financial advisers, and may give you good ideas. Create a short list, discuss them with your product providers and service providers, and perform robust due diligence on each option. Check whether your product providers have any restrictions on locum adviser arrangements. Find someone who fits with your philosophy and culture.



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AGREE IN WRITING

Agree your arrangements in writing, and have your agreement written by a specialist (lawyer or compliance adviser). Agree how the locum adviser will be remunerated, and what expenses you will pay. Agree the term of the agreement, and how it can be terminated or renewed. Agree all the primary details before you ask the specialist to write the agreement. You will then iterate with the specialist and your locum adviser to agree the final version.



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PHYSICAL LOCATION AND HARDWARE

Determine whose physical location and assets the locum adviser will use. If they operate from your premises, they will need all the details for your property (e.g. access and maintenance). If they work remotely, they will need to access your systems and client records. If they use their own systems or assets, are you happy with their quality, and their cybersecurity?



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SOFTWARE AND TRAINING

The locum adviser will need access to your software, and you will have to teach them to use your software and processes. You should also refresh this training regularly, so the locum adviser recalls how to use your software and processes if the agreement is activated. Create separate usernames and passwords for your locum adviser for all your software – consider using a password manager.



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ACTIVATING THE ARRANGEMENTS

If you are suddenly incapable, consider who will contact your locum adviser to activate the arrangements. Prepare an email containing all of the relevant details, and save it in that person's email drafts. This email will contain relevant software URLs and usernames (a password manager will make this easier), but should not include the passwords. They should be sent with a different medium, such as text message. The email should also contain your policy manuals, and your desired priorities for the locum adviser. Also consider who will update the FSPR to reflect your FAP's engagement of the locum adviser.



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CLIENT IMPACTS, PRODUCT PROVIDERS AND OUTSOURCE PROVIDERS

Someone should notify your clients, and you can draft communication for this, too. Someone must forward your calls and email, or update all your advertising media with the new contact details. In any case, you may want your website updated to introduce your locum adviser. Someone will need to notify your product providers and key outsource providers. You may also need to update your prescribed disclosure.



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MONITORING AND OVERSIGHT

Consider who could oversee the business in your absence, and monitor your locum adviser. You might extend the mandate of your compliance adviser. Read your provider agreements to understand what product providers will do in your absence. Do they have greater monitoring powers, and how would they exercise them? Ensure the person overseeing your business has the necessary knowledge and skills, and governance experience.



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RETURNING TO THE BUSINESS

When you return to the business, you will have to unwind your locum arrangements. You should meet with your locum adviser and the person overseeing the business to debrief. Notify your clients, product providers and outsource providers. Your locum adviser may have physical assets to return. Remember that you may need to activate the arrangements again.



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PREPARATION

Preparing your business to implement the arrangements is essential. Ensure you have your clients' consent to share their personal information with your locum adviser (in your onboarding documents). You will need someone with authority to create payments for the business, and someone to approve them. Once they are finalised, discuss your locum arrangements with your product providers and key outsource providers. This will avoid delays if they are activated. You might also notify the FMA.



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TESTING THE ARRANGEMENTS

Test your locum arrangements at least annually, and be contactable during the test. After each test, meet with the locum adviser to discuss how to improve your arrangements.



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POTENTIAL PROBLEMS

Discuss non-solicitation with your locum adviser, and consider including a clause in your agreement. You should also agree in advance how you will handle clients who want to transfer to your locum adviser permanently. Consider what can be done if the locum adviser wants to terminate the agreement while it is active. Consider someone who can make key business decisions if you are incapable.



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REVIEWING THE ARRANGEMENTS

Review your locum agreement at least annually, and perform a due diligence review on your locum adviser. If your business changes in some way, you may need to update your locum arrangements. Remember to revise and execute the agreement.



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GOVERNANCE ARRANGEMENTS

Locum agreements are designed to be short term. You should also consider what your business should do if you are incapable of working for a longer period. You should have an Enduring Power of Attorney for property, who can make shareholder decisions for you. Consider a Deed of Delegation, which defines who can make what types of decisions in your absence. Also consider an alternate director, or a shareholder resolution to appoint a director contingent on your incapacity or death.



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MEDIUM TERM

In the medium term, you may receive money from key person insurance, or other contingency funding. How should this money be used? Consider whether you want someone to hire a contract replacement for you. Consider who would arrange the hire. If you hire a replacement, consider who would train them, what their duties will be, and whether the role of the person overseeing your business will change.



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LONG TERM

Consider the point when you need a long-term solution. Consider whether you want a permanent replacement, or whether you will sell the business. If you hire, consider who would manage the process and select your replacement. If you sell, consider who will manage the details, and who will make the final decision.



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DEFINING YOUR OBJECTIVES



KEY POINTS:

What do you want to happen in your absence in the short, medium and long term?

What scope of business activities do you want the locum adviser to cover?

How do you want the commercial arrangements to work?

Before you begin, determine whether you need locum adviser arrangements. If your FAP has multiple financial advisers, and any sudden and prolonged absence of one (or more) can be covered easily by others, you may not need these arrangements. More broadly, if your business does not have any key person (or people) without whom it cannot operate, you probably don't need these arrangements. However, reading this guide may prompt you to consider how workable your cover arrangements may be in practice.

The first step to establishing suitable locum financial advice arrangements is to define your objectives. How do you want your locum arrangements to work? How will you ensure your clients continue to receive a similar quality service? You will want to consider time frame, scope of service, and commercial arrangements.

In what circumstances will a locum operate your business? Do you want someone to cover you when you take a long holiday, or only someone to cover you if the unexpected happens, such as a health event? Are there circumstances where you may not be available, but your support staff could operate your business for a short time without activating locum arrangements? Are there circumstances when you would refer clients to another financial adviser, rather than activate locum arrangements? In what circumstances?

If you are unable to work for an extended period, how much of that time do you want the locum adviser to cover? If you are unable to return to work after this period, who will make longer term decisions? Is there a period after which you would seek to hire a dedicated fixed-term replacement? Is there a period after which you would either seek a long-term replacement, or sell the business? You should consider immediate and short term (locum adviser), medium term (such as when your key person insurance pays out), and long term (when your medium-term arrangements are no longer suitable).

If you become unavailable, what would be the responsibilities of your locum adviser? They would give financial advice, certainly. Would they perform administration tasks, or do you have a personal assistant to do those? Would they

perform compliance tasks, do you have in-house compliance support, or do you outsource these activities? Would they perform governance tasks, or do you have another director or trusted person to cover the business? And importantly, if you have a personal assistant or other key person in your business, how would you function if they were suddenly unable to work, possibly for an extended period?

Do you require somebody based in the same region or area as you, or could your locum adviser operate remotely from elsewhere in the country?

How do you want the commercial arrangements to work? Will your locum adviser give advice on behalf of your licensed FAP, or under their FAP licence? This is an important distinction. If they will operate under their licence, you are essentially referring your clients to their FAP. Their FAP takes liability for the advice, but they may also gain the client relationship. They would probably use their systems and processes, but they would need access to your client records and calendar. This means they may need to use their systems and your systems, which could be complex.

If they operate under your licence, you essentially enlist the locum adviser as a contractor. Your FAP is responsible for the advice, so it will reduce risk if they use your systems and processes.

Will they use your brand, or theirs? If they operate under their licence and use their systems, it will be difficult to use your brand on all client documentation. Think about the implications for your client loyalty.

Whose professional indemnity insurance policy will cover the liability – yours, or theirs? You may need to call your insurance broker to learn how your policy works under different alternative locum arrangements.

Once you know how you want the arrangements to work, you are ready to try to find a suitable person or entity to stand in for you.

CASE STUDY



Sam is the only person in her business. She decides that she needs a locum to look after her business if she is unable to work, and if she takes an extended holiday. (For short holidays, she decides she will remain contactable.)

Sam wants her locum arrangements to cover the business for up to three months. Her accountant is also her business mentor, and she decides that he is the right person to make longer term business decisions in her absence. She would only seek to sell the business if she could never return to work.

Because she is the only person in the business, her locum adviser would need to undertake all operational activities, including giving financial advice to existing and new clients, record keeping, and some compliance activities. Her accountant would approve expenditure, manage finances, provide oversight, and make any urgent governance decisions.

Sam wants her locum adviser to operate under her licence and use her brand (Kanuka Financial Advice). They would use Kanuka's systems, processes, and documentation templates.

FINDING A SUITABLE LOCUM FINANCIAL ADVISER



KEY POINTS:

Find someone with a similar philosophy and culture.

Check your agency agreements.

Ask your industry contacts.

Create a shortlist.

Check your shortlist with your product providers.

Do the options have capacity to cover your business?

Are all relevant parties happy with your choices?

Perform robust due diligence on each option.

The next step to establishing suitable locum financial advice arrangements is to find a FAP or financial adviser who you would be happy to have care for your clients in your absence.

It is very important that you find a person or entity that fits with your philosophy and your business culture – find someone you like and would trust with your clients. Someone you know will treat your clients in a similar way, providing a similar quality service. Also check your agency agreements to identify any requirements or restrictions they have.

There are several entities you can approach to help you find a locum adviser, including:

- Financial Advice New Zealand;
- Your financial adviser groups;
- Your mortgage aggregator;
- If your business is an authorised body, your FAP;
- Your compliance adviser; and
- Your key outsourced service providers.

You should also talk to other financial advisers you know and trust in the industry. What are their arrangements? Meet as many financial advisers as you can, to find someone who you would feel comfortable looking after your clients. You may find some firms that provide locum services as part of their standard offering. You may find another FAP of similar size and approach, and consider being locum advisers for each other.

Once you have a shortlist of people or entities that give you comfort, talk with your product providers. Are they comfortable with your shortlist? Check whether your product providers have any restrictions on who you appoint as a locum adviser and how you appoint them. Do these financial advisers have access to (distribution agreements with) the same product providers as you do, and are they accredited (if necessary)? Do these financial advisers have the capacity to cover your business in your absence? For example, would they be running your business and their business at the same time? How many hours per day or week would they be available to work for your business? For how long would they be available to cover your business – weeks or months? Depending upon your scope of service, you may need more than one financial adviser to cover you (possibly a mix of financial advisers with different specialties).

Ensure all relevant parties are happy with your shortlist. Does each financial adviser on your shortlist have the authority to act as a locum adviser? For example, if they are engaged by another FAP and they are not a director of the business, they may need express permission. If you have other directors or shareholders, are they happy with your choices? Are your family comfortable with your choices?

Then perform a robust due diligence process on each financial adviser in your shortlist. Do they have appropriate competence, knowledge and skill for the range of services you currently provide to your clients? Are they correctly registered on the FSPR and engaged by a FAP? Will the financial adviser continue to provide financial advice for the foreseeable future? Your due diligence should include an internet search for public information. Do they meet the FMA's fit and proper requirements? Have any complaints or disciplinary actions been taken against them? It helps to ask them for a few clients and product providers to contact as references.

CASE STUDY



Sam begins by discussing her goals with her accountant, and he agrees to her objectives and approach, and the role she wants him to undertake.

To create a shortlist of possible locum advisers, Sam contacts Financial Advice New Zealand, her mortgage aggregator, and her relationship managers at life insurance and KiwiSaver providers. She also reaches out to other advisers she knows, to ask what they are doing.

Her shortlist includes Kowhai Advice and Pohutukawa Advice. Given the breadth of services she offers, Sam discovers that she is likely to need two financial advisers to cover her absence, rather than one. She talks with the financial advisers in her shortlist, discusses them with her product providers, and performs her due diligence. She finds an excellent cultural and business fit with Sunil and Violet at Pohutukawa Advice.

PRODUCT PROVIDERS ARE OFTEN UNSUITABLE AS LOCUM ADVISERS

If your financial adviser provider has agencies with multiple product providers, or offers financial advice on several types of financial advice products, then it is likely that the product provider will not be an ideal locum adviser.

Your locum adviser should be there to cover client servicing, as well as onboarding new clients. Product providers do not have access to the information you collected to understand the client and make your recommendations. An insurer, for example, only has access to the information the client provided in the application to enable underwriting. They don't know the client's goals, needs and plans. It is possible that some providers may offer a locum service, which will require access to your client files. This may overcome this weakness.

Many of your clients are likely to have products with more than one provider. This can happen due to changes in health, or because you identified that a mix of products with different providers was best for the client. The product provider does not have the full picture, and may not be ideal as a locum adviser. Can a product provider offer impartial financial advice on the products of its competitors?

The broader your service offering, the less likely that a product provider can act in your stead effectively. For example, what product provider offers mortgages, investments, KiwiSaver, life and health insurance, and fire and general insurance?

AGREE IN WRITING



KEY POINTS:

Agree the arrangements in writing.

Engage a specialist to write your agreement.

How will the locum adviser be remunerated?

Can the locum adviser claim expenses?

How can the agreement be terminated before it is activated?

How can the agreement be terminated while the locum adviser is operating?

How can the agreement be renewed before the end of the term?

Consider renewing a locum agreement six months or a year before it expires.

As with all commercial arrangements, it is important to record your agreement. Once you work through the details of how the arrangement will work, a lawyer or compliance adviser can help you write an agreement. The more detail you prepare in advance, the easier (and cheaper) it will be for a specialist to write the agreement.

If the locum arrangement is activated, it will involve significant work for your locum adviser, so it is important that you agree how they will be compensated. Will you pay an hourly or daily rate, or will the locum adviser earn a share of commission? Remember that remuneration influences behaviour, so design the remuneration package to compensate for the activity you want the locum adviser to perform. For example, a share of upfront commission will drive new business, but will not inspire servicing, nor governance and compliance activity. Match the remuneration design to the scope of work the locum adviser will perform. This may include client reviews, claims support, and advice to new clients. The locum adviser will be enlisted as a contracted service provider. Who will arrange payment of the locum adviser's invoices?

Will your business reimburse the locum adviser's expenses? What types of expenses can they claim? What value of expenses can they claim per period (week or month)? Will you pay the locum adviser for the time they spend training and learning your business? Will you pay the locum adviser for time they spend testing the arrangements?

Your agreement should include your expectations around service delivery and the duty of care your locum owes to your clients, to your business, and to you. The locum adviser must comply with the duties in the law, but you may set a higher standard for your business, defined in your policies and processes.

You might want to secure an indemnity, to protect you if the locum adviser brings your FAP into disrepute, leaks confidential information, or damages the business in another way.

You must also agree the term of the agreement, and under what conditions the agreement can be renewed and terminated. For example, can the agreement be terminated with notice, and what is the notice period? Consider termination conditions both before the locum agreement is activated, and while the locum adviser is operating in your stead – are the termination conditions the same, or different? For example, do you need more notice to terminate the agreement if your locum adviser is operating your business and you are unavailable to make decisions. Before the end of the agreement term, how can it be renewed for another term? If the agreement were terminated, what further assistance do you need from that locum adviser to transition arrangements back to you, or to their replacement?

Compare a locum agreement to a passport, which must be replaced six months before it expires – it should always have an unexpired term. If your locum agreement is activated a day before it expires, it will end while the arrangements are active. You might consider renewing the agreement six months or a year before it expires.

Although locum agreements across different businesses will have common elements, the details will vary widely. For this reason, be careful with agreement templates. Ensure you have your final agreement drafted, or at least reviewed, by a legal specialist. Use the table on page 25 to note key areas that the agreement should cover. Once the specialist drafts the agreement, you will iterate with the locum adviser and the specialist to agree the final version.



CASE STUDY

Sam briefs her lawyer, who will write the agreement once all the details are agreed with Sunil and Violet. She also notes to discuss her arrangements with her compliance adviser before her lawyer drafts the agreement.

Sam agrees to pay Sunil and Violet an hourly rate, plus reasonable expenses (defined in her budget). She also considers that she wants to incentivise their work, and she decides to pay a bonus if they meet the targets she sets herself in her annual plan for any period the locum arrangements are active. These targets include measures of client satisfaction, client reviews, and other service metrics, as well as measures of new business.

Sam agrees to pay Sunil and Violet for the time she spends teaching them her systems and processes, and refreshing this material every six months. She will also pay them when they test the arrangements, which they will do twice in the first year, and annually thereafter, for a period of two days each. Sam sees this cost as an important investment in the sustainability of her business.



Sunil and Violet agree to an initial term of five years, and either party can end the agreement with three months' notice. They will review the agreement together annually, and discuss renewal after four years. They agree that if the locum arrangements are activated, they can operate for up to three months. If Sam's absence is longer, her accountant will activate longer term plans.

WORKING THROUGH THE DETAILS

This section works through the details of how your locum arrangements will work. The more you agree with your locum adviser before you write your agreement and test your arrangements, the stronger your position if you need to activate them.

PHYSICAL LOCATION AND HARDWARE



KEY POINTS:

Will the locum adviser use your office and hardware, or their own?

For your office, they will need details for access and maintenance.

To use your hardware, how will they access it?

If they use their own office and hardware, is it suitable to run your business and meet your brand standards?

If your locum adviser steps into your business, will that happen from your premises, from their own, or a hybrid of both? If they need access to your office, they may need keys or security cards, and alarm codes and instructions. They will need to know where to park their vehicle, how to turn lights off and on, and where the toilets, kitchen and other amenities are.

They will need to know who to contact for building maintenance, internet, electricity, plumbing and water concerns. Who restocks the kitchen, toilet, and other amenities? Who is responsible for cleaning?

If you expect them to operate remotely or in their own office, do they have all these requirements in place? Will clients visit their office, and if so, does it meet the standards of your brand? Will your company brand be displayed for clients?

Will the locum adviser use their own computer hardware and mobile phone, or yours? If they use their own, is it powerful enough and new enough for your business' needs? Does it meet your cybersecurity requirements? How do they

access your software? How are client calls diverted to their phone, or will clients be provided the locum adviser's contact details? Who will update your email out of office notification and voicemail message, and how will this happen?

If the locum adviser will use your hardware or mobile phone, will this hardware be delivered to them? Who will arrange delivery and how will it be delivered? What if the emergency occurs while you are overseas?

What about printing, and consumables, such as paper? Yours or their own? If they use their own printer, are you happy with its quality?

Are there any other physical assets the locum adviser will need, or that you will provide?



CASE STUDY

Sam operates from a home office, and meets with her clients at their homes, offices, nearby cafes, or online. All her software is online. Sunil and Violet will operate her business remotely, using their own computers, printers and mobile phones. (For video conferencing, they will use her virtual background.)

Sam and her accountant meet with Sunil and Violet at the Pohutukawa Advice office, and talk about their hardware and cybersecurity, and related policies. They are happy that their requirements are met.

SOFTWARE AND TRAINING



KEY POINTS:

Create a list of the software you use in your business.

Create usernames and passwords for your locum adviser for each software application.

Train your locum adviser to use your software and systems regularly.

Update your relevant policies, such as IT Security and Business Continuity Plan.

Create a list of all the software you use in your business. Include your usernames, and the website URLs for any software as a service (SaaS). Does your locum adviser need to access these systems, or do you have support staff who will do this for them? (If your personal assistant is suddenly unavailable, can you or your locum adviser still access the systems?)

If you use any software installed on your computer, how will the locum adviser access this software? Do they use it themselves? Do you need to install it on their computers, or will the locum adviser use your hardware?

You should create a separate username and password for your locum adviser for each software application you use in your business. We recommend that you do not share your own usernames and passwords, because this is a significant cybersecurity risk. Sharing your password with a locum adviser will usually breach the contract you have with the software provider. Additionally, two-factor authentication makes it difficult to share passwords, because the user would need access to your mobile phone, as well as your username and password.

The locum adviser will need access to your client data, your historical advice, your calendar, and other software. Does the locum adviser know how to use all the software? Do they use the same software in their own business, in the same configurations? (Some advice software has different configurations for different customers, so the same software may work slightly differently for financial advisers in different firms.)

It is important to train the locum adviser to use your software and processes, including your recordkeeping process, and to refresh that training periodically (e.g., six-monthly). If the agreement is activated, you may not be available to answer

questions about how to use your systems. You may also change your systems and procedures over time, and it is important that your locum adviser knows your current versions. Consider the breadth of systems you use in your business – not just advice systems, but also accounting, banking, client communications, provider communications, training, etc.

You could prepare guides that explain how to use your software and processes. Depending upon how detailed the guides are, these can reduce the need for regular training, and also make training more structured and efficient. If you have support staff who can teach your locum adviser how to use your systems, or who can perform some of these tasks, this may reduce the extent and frequency of training required.

It is important that your locum adviser reviews your documented policies and procedures, such as your operations manual, human resources manual, and Business Continuity Plan. Depending upon their scope, they should also review your compliance assurance programme, risk management framework, and governance framework. As you change your business, you must update your documented manuals, programmes and frameworks. It is important that you keep your locum adviser abreast of these changes. If you track your changes, you can more easily update your locum adviser during your periodic training.

Once you have these details agreed, do they impact your information technology (IT) security arrangements? Do you need to update your FAP's IT Security Policy, Cybersecurity Policy, Business Continuity Plan, or other policies to account for the arrangements?



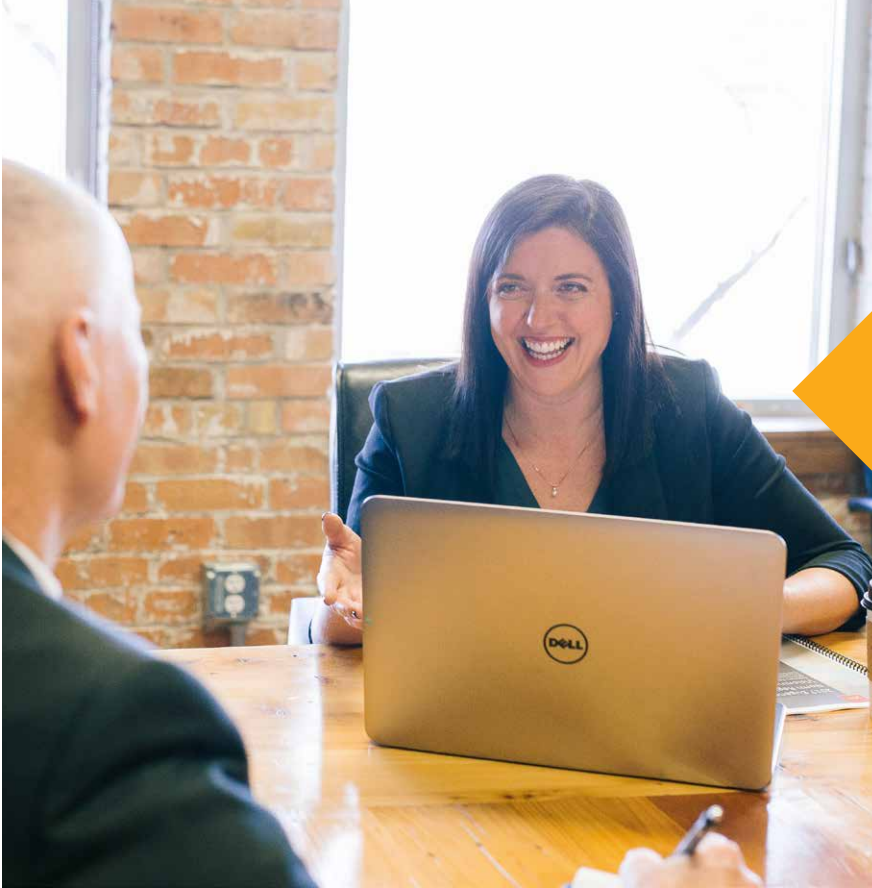
CASE STUDY

Sam learned during her due diligence that Pohutukawa Advice use the same CRM and office software as she does. However, there are some software that differ, such as her online calendar, marketing communication, website, and password manager.

Sam reviews and updates her policies and manuals, and identifies which processes will be performed by Sunil and Violet, and which will be performed by her accountant. She emails them the manuals, and arranges a half day meeting to work through everything with Sunil and Violet. She also books a shorter refresher in six months' time. She'll work through them with her accountant at their next business mentoring meeting.

Sam creates user accounts for each of Sunil and Violet. She creates accounts for them in her password manager, and stores their other user accounts therein.

ACTIVATING THE ARRANGEMENTS



KEY POINTS:

Who will notify the locum adviser to activate the arrangements in your absence?

Have a draft communication ready to send.

Consider using a password manager to ease access to multiple software applications.

Do not send usernames and passwords in the same communication (or via the same medium).

Outline the locum adviser's priorities when the agreement is activated.

Update the FSPR to reflect your FAP's engagement of the locum adviser.

If you need to activate your locum arrangements, consider that you may not be available to do so. Who will notify the locum adviser, and how will it happen? To answer this question, think about who is most likely to find you if something significant happens, such as your spouse. Will that person notify your locum adviser directly, or will they go via an intermediary (such as your lawyer, or accountant)?

It helps to prepare this notification in advance, such as a draft email saved in the person's inbox. You should retain a copy of the draft email as a backup. Review the draft email periodically, update it, and send the new version to your intermediary to replace the existing draft. The draft email should contain:

- The call to activate the locum arrangements;
- A summary of priorities for the first few days;
- A list of relevant software URLs and usernames (but not passwords);
- Contact details of who to contact for help or questions;
- A copy of your locum agreement; and
- A copy of your Business Continuity Plan.

You should not send relevant passwords in the same communication as URLs and usernames. Ideally, send passwords via a separate medium, such as by text message.

Rather than communicating an array of software URLs, usernames and passwords, consider using a password manager for your business. (Using a password manager is like putting your passwords in a safe that only you can access. Read more at CERT NZ.) That way, you need only share one URL, username and password with your locum adviser.

Generally, your locum adviser's first priority will be to reschedule your appointments to fit with their availability. Your priority summary will include specifying the relative importance of different appointments, such as new client meetings, client review meetings, and solving client problems.

The FSPR will need to be updated to show that your FAP has engaged the locum adviser to give financial advice on its behalf. You will need someone who can make this change on the FSPR if you are unable to. If the engagement is for more than three continual months, the FMA will need to be notified. If your FAP has a Class 1 licence, the primary financial adviser may need to be disengaged, because there can only be one financial adviser engaged under a Class 1 licence. (Note that if a financial adviser is not engaged by a FAP for more than three months, the Registrar may commence proceedings to deregister them.)



CASE STUDY

Following a significant health event, Sam's spouse will notify her accountant. Sam's accountant will then contact Sunil and Violet to activate the adviser agreement.

Sam drafted a notification email, including her priorities, her accountant's contact details, and the URL and their usernames for the password manager. She attached her policy manuals, and will attach the agreement after it is completed and signed. She does not need to include the passwords, because Sunil and Violet can use a link on the password manager to reset their own passwords. She sends the completed draft to her accountant.

CLIENT IMPACTS, PRODUCT PROVIDERS AND OUTSOURCE PROVIDERS



KEY POINTS:

How will you notify your clients if the locum arrangements are activated?

Product providers with whom you have agencies, and key outsource providers, should know your locum arrangements.

Who will notify your product providers if the locum arrangements are activated, and how will they do it?

Who will notify your key outsource providers and how will they do it?

If the locum agreement is activated, it is important to notify your clients and inform them of the arrangements. It will also be important to notify the product providers with whom you have agencies, and your key outsource providers.

Consider all the ways clients may find your FAP and contact you, such as your office, website, Facebook page, telephone, text message and email. You will need a way to automatically transfer client calls and email directly to your locum adviser. Consider call forwarding, and automatic forwarding of your emails and website requests. (Do you have separate phone numbers and email addresses for personal and business communication, or would your locum adviser also receive all your personal messages?)

Alternatively, do your advertisements need to be updated? How will you update each location or medium? These methods of contact will need to update your clients on the change in service, alternative contact details, your updated complaints process, and any other pertinent information.

You could have a draft webpage ready to go live, and prepare an alternative voicemail message and out of office notification. If your office will be closed, you will need signage posted. When the locum arrangements are activated, these drafts will need to go live. Who will do this and how?

You should also have a draft message ready to send to all clients proactively with the same information. This could be by email, text message, or other medium. If the locum arrangements are activated, who will send this message to clients, and how will they do it?

Remember that you may need to update some of your disclosure information. For example, your complaints process may change if your locum agreement is activated. This affects your publicly available disclosure, your complaints disclosure, and possibly your disclosure when you make recommendations. The information disclosed when the nature and scope of service are agreed, and when recommendations are made, may need to change for your locum adviser. For example, if your locum adviser has any reliability events to disclose, or if your compensation arrangements create any conflicts of interest.

The product providers with whom you have agencies will also be contacted by your locum adviser to make changes to your clients' products. How will these providers know that your locum adviser has authority to act on behalf of your FAP?

When you find a locum adviser and reach agreement, you should notify your product providers who your locum adviser is, and how the product provider will be notified when the arrangements are activated. There may be restrictions in your product provider agreements, so you will have to work with your product providers to finalise these details.

Your key outsource providers will also need to be notified, such as your accountant, lawyer, bank, compliance adviser, business mentor, professional indemnity insurer, disputes resolution scheme, etc. Who will notify them and how? It will help to have a templated email prepared and saved in drafts for the person who will notify them. It will need to be somebody that the outsource provider trusts – they are unlikely to trust an unexpected email from an unexpected source.



CASE STUDY

Sam prepares two campaigns in her marketing communication software that Sunil and Violet will be able to send to all her clients. These campaigns will introduce Sunil and Violet, and their role – one for testing her locum arrangements (a two-day absence), and the other for activating her locum arrangements.

Sam prepares two similar draft emails to send to her product providers, mortgage aggregator and key outsource providers. She includes these in the draft activation email that she sends to her accountant. Her accountant would email these messages.

Sam prepares a page for her website that introduces Sunil and Violet, updates her complaints process, and outlines key parts of her locum arrangements. Her accountant would publish this webpage.

Sam's spouse can forward her telephone calls, and has the appropriate details saved. Sam's accountant has access to enable forwarding her email to Sunil and Violet.

MONITORING AND OVERSIGHT



KEY POINTS:

Who will oversee business activities in your absence?

Who will check that the locum adviser is complying with all legal and regulatory obligations, and your standards?

Do these people have the knowledge and skills required to oversee your business effectively, and do they have access to information?

How will the financial advice provider ensure that product providers are satisfied with the locum adviser's performance?

Keep your locum adviser informed of whether and when you might return to work.

As the director of a FAP, you are liable for its activities. You cannot outsource your regulatory responsibilities. You are also responsible for the business meeting its goals and satisfying its clients. As a shareholder, business success is also in your best interests.

If a locum adviser is running the business in your absence, to whom are they accountable? Who will oversee the business and the locum adviser's activities? If that person is your spouse or another shareholder, do they have the knowledge and skills necessary to oversee the business? Do they have access to the information required to ensure the business is functioning well?

Who will check business compliance in your absence? Do you have a compliance adviser? Will they take on more duties in your absence? Are these arrangements agreed and in place? If you don't work with a compliance adviser, who will check that the advice your locum adviser provides complies with all legal and regulatory obligations, and your standards? Who will provide corrective feedback to the locum adviser and check that improvements are implemented?

Remember that you remain responsible for all financial advice provided under your licence. The longer the arrangements are active, the more likely product providers

with whom you have agency agreements may monitor the situation to ensure their clients are cared for appropriately. How will the FAP ensure that product providers are satisfied with the locum adviser's performance? What happens if a product provider is dissatisfied with the locum adviser's performance? What actions can they take under the agency agreement? How can you ensure that your business and your clients are not impacted negatively? You may not be able to answer all these questions, but you should consider the risks.

While your locum adviser is active, ensure you keep them informed about your status and progress. What are the chances that you will return to work, and approximately when? What are the risks to your returning? If you are not able to keep your locum adviser informed, who will do so?

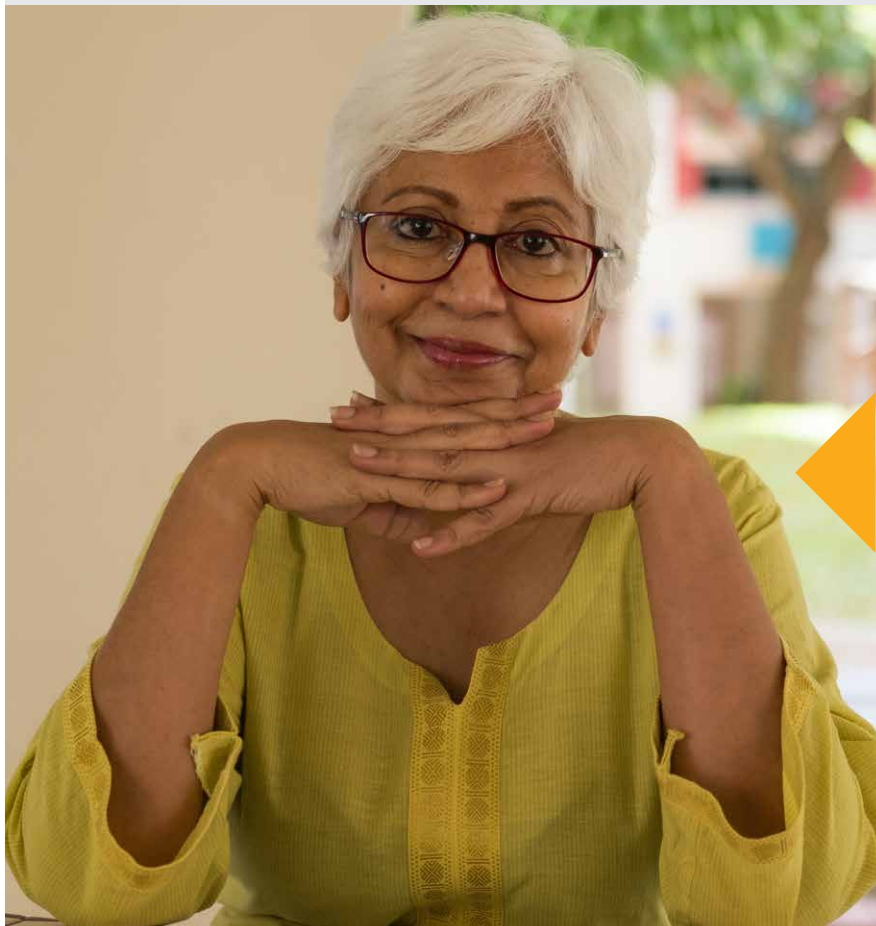


CASE STUDY

Sam and her accountant arrange to meet with her compliance adviser to agree how to divide oversight and compliance (other than what Sunil and Violet will perform). They will also discuss the other details agreed with Sunil and Violet.

Sam reviews her provider agreements. She makes a note to discuss her completed locum agreement with her mortgage aggregator and product providers.

RETURNING TO THE BUSINESS



KEY POINTS:

Meet with the locum adviser and the person overseeing your business to unwind the arrangements.

Arrange return of physical assets and remove access to software and systems.

Notify clients, product providers and outsource providers.

You may need retraining in governance, compliance and operations.

Make final payments and terminate completed agreements.

Ensure you still have viable arrangements in case you need them again.

It is important to work through the details of how you will return to the business, because you will need to gradually unwind all the arrangements you activated. Advantageously, you should be able to work together with your locum adviser on the handover. Your agreement with the locum adviser should cover transition expectations.

Arrange a meeting with your locum adviser, and the person overseeing the business. How have things functioned without you? What problems do you need to address? What work is in progress that you will take over and continue? This meeting is also an opportunity to debrief your arrangements – what worked well, and what can you improve?

Notify your clients. Update your contact media (if you changed it), such as office signage, website, Facebook page, voicemail message, email out of office notification, etc. Update your outsource providers and product providers. If necessary, notify the FMA and update the FSPR.

Depending upon how long you have been away, you may need the locum adviser to train you in your systems and processes and provide you with all relevant updates. Read your policies and process documents. Refamiliarise yourself with

your governance, risk and compliance practices. What developments, including regulatory and with your clients, have occurred in your absence?.

Arrange return of any physical assets and hardware, such as keys and laptops. Once the handover is complete, you should remove the locum adviser's access to your software and systems. This will involve deleting accounts or changing passwords. Also arrange delivery (or destruction) of any paper records of advice to the FAP's clients, or of any other confidential business matters.

Make any final payments to your locum adviser, and tidy your accounting records. (If you engaged a longer-term replacement, you must work through appropriate processes to terminate the contract or employment contract, including appropriate changes for the IRD).

Remember that you may need to reactivate the locum arrangements again, and it could happen at any time. Review the locum agreement, adjust it for the things you learned, and agree it with your locum adviser. Are all the preparations in place to activate the arrangements again (including all the areas covered in this guide)?



CASE STUDY

Sam writes a checklist of things she will need to do when she returns to the business. She drafts a campaign in her marketing communication software to notify her clients of her return. Sam also writes a checklist of things she will discuss with Sunil and Violet during the debrief meeting.

PREPARATION



KEY POINTS:

Ensure you have your clients' consent to share their personal information with your locum adviser if the agreement is activated.

Arrange for someone to have authority to make payments for your business. Consider another director (permanent, alternate, or contingent).

Discuss your locum arrangements with your product providers and key outsource providers.

Consider notifying the FMA.

As well as working through all the details in the previous section, there are other preparations to make. These include client consents, decision making authorities, and notifying providers.

You must obtain the prior consent of every client to share their personal information with your locum adviser. It is usually easiest to include privacy permission in your client agreement, scope of service agreement, or terms of engagement. Explain to your client that you have arrangements in place for another financial adviser to look after their interests if you are unable to do so. Many FAPs are updating their terms of engagement with all their clients to include appropriate privacy permissions, including consent to share their personal information with the FMA and their compliance adviser, as well as their locum adviser.

You will need someone with authority to make payments for your business. If you have an office manager or personal assistant, you might give them banking authority. If others are making decisions on your behalf, you should have all payments created by one party (e.g., your locum adviser, or your personal assistant) and approved by another party (e.g., your office manager, or the person overseeing your locum adviser). The locum adviser should not be able to pay themselves without independent approval.

You should discuss your locum arrangements with your product providers and your key outsource providers. What requirements do they have if your locum arrangements are activated? Who will notify them of the activation, and how will

they notify them? Is there anything these providers want to know about your locum arrangements? Key outsource providers include your accountant, lawyer, compliance adviser, business mentor, professional indemnity insurer, disputes resolution scheme, etc.



CASE STUDY

Sam already had her compliance adviser review her scope of engagement template, and is confident it includes appropriate privacy consent. During client reviews, her clients have been signing the new agreement, and she is working through the final fifth of her client base.

Sam also checks that her material issues and breaches policy requires her to update her key outsource providers as appropriate when she makes changes to the nature and scope of her business or the manner in which she provides financial advice.

TESTING THE ARRANGEMENTS



KEY POINTS:

Test your locum arrangements at least annually.

Be contactable during the test in case there are issues.

Meet with the locum adviser to debrief after the test.

Improve the arrangements and the agreement as required.

How can you be confident that your locum arrangements work for all parties involved?

If you ever need your locum arrangements, you want to be confident that they will work. For this reason, you should test them periodically as part of testing your Business Continuity Plan. Compliance advisers usually recommend that you test elements of your Business Continuity Plan every six to twelve months, and you should test your locum arrangements at least annually.

Testing your locum arrangements is like a fire drill. You should agree that you will test your arrangements, how long the test will last, what the test will entail, and approximately when the test will occur. However, the exact timing of the test should not be known to your locum adviser, or the other parties involved.

Generally, you should run a test for one or two days. You will test activating the arrangements, how the locum adviser will step in, and how they will run the business in the immediate term. You will need to be contactable during the test, in case something doesn't work as expected.

A few days after the test, meet with the locum adviser and discuss how well the arrangements worked. What problems occurred? What should you do differently? Do you need to make any changes to your locum agreement? Remember to implement the changes! Also debrief with other parties to the test, including the person who activated the test.

You also need confidence that the locum arrangements work for other parties involved (such as your bank, lawyer, product providers and compliance adviser). You may also need to test these periodically.



CASE STUDY

Sam, Sunil and Violet agree that they will test the arrangements within six months of Sam training them in her systems. She will be contactable during the test, and they will meet for lunch to debrief a week after the test. (Sam is conscious that she has a holiday booked in six months' time, and notes that she will test the arrangements two months before that.)



POTENTIAL PROBLEMS



KEY POINTS:

What are the risks to your locum arrangements, and how will you mitigate them?

Consider whether and how you will minimise the risk that the locum adviser will solicit your clients.

Agree in advance how you will handle situations where a client chooses your locum adviser as their primary financial adviser.

What will you do if the locum agreement is terminated while it is active?

Ensure you have someone who can make important governance decisions in your absence.

As with all parts of business, it is important to manage risks. Consider what could go wrong in your locum arrangements, and how each problem could be resolved. Potential problems include clients wanting to switch to the locum adviser, or the locum adviser seeking to end the locum arrangement while it is active.

If the locum adviser has their own licensed FAP, or their primary vocation is working for another FAP, they may be incentivized to grow their client base. You may want to consider having a non-solicitation clause in your locum agreement. You may want to implement additional compliance controls to ensure that the locum adviser is acting in the best interest of you clients and your FAP, not their own.

In any case, there may be clients who decide they want your locum adviser to be their primary financial adviser. What process will you follow to deal with that? If there is a revenue stream to purchase, will you agree a valuation methodology in your locum agreement?

It is also possible that the locum arrangements will end while they are active, and the locum adviser is acting for your business. Perhaps the term of the agreement expires. Perhaps the locum adviser retires, relocates or otherwise ceases to be a qualified financial adviser. Perhaps the locum adviser has their own emergency or

health event. Perhaps the FAP no longer wants to engage the locum adviser. While this is a remote possibility within a remote possibility, what would your FAP do? To some extent you can mitigate this risk by choosing your locum adviser carefully and performing robust due diligence, but a residual risk remains.

It is important that you have an appropriately skilled and trusted person overseeing the governance of your FAP in your absence – someone who can make the most important business decisions on your behalf.



CASE STUDY

Sunil and Violet agree to a non-solicitation clause in the locum agreement. The parties agree a multiple of trail commission that Sunil and Violet will pay if any customer wants to change their servicing adviser to Pohutukawa Advice. (They agree a multiple slightly above the market rate, to disincentivise solicitation.)

The parties agreed a termination notice period that is the same as the upper limit that the arrangements can be active. This reduces the risk that the agreement will end while the arrangements are active.

REVIEWING THE ARRANGEMENTS



KEY POINTS:

Review your locum agreement when required and at least annually.

Perform a due diligence review on the locum adviser.

Has your business changed so that the locum arrangements need to change?

Remember to revise and execute the agreement.

You should review your locum agreement periodically – when material changes to the parties would affect the arrangements, and at least annually.

As part of your annual review, perform a due diligence review on the locum adviser. Are they still an active financial adviser, who meets all regulatory obligations? Have they changed employer or business? Have any material complaints or disciplinary actions been brought against them? Do they continue to meet the regulatory fit and proper requirements?

Has your business changed in a way that may affect your locum arrangements? For example, have you changed the product range on which you give financial advice? Have you introduced new product provider agency relationships, or changed any material agency relationships? Have you made any material changes to technology or software?

At the conclusion of this review, do your locum arrangements remain suitable? Is the locum adviser still suitable? Do you need to modify the agreement? Remember to implement the changes and ensure relevant parties sign the updated agreement.

CASE STUDY



Sam adds Sunil and Violet to her list of key outsource providers. Her outsourcing policy requires her to perform due diligence on her key outsource providers annually. She has a template she follows for these due diligence reviews.

Sam also checks that her material issues and breaches policy requires her to update her key outsource providers as appropriate when she makes changes to the nature and scope of her business or the manner in which she provides financial advice.

LONG TERM ABSENCE

Locum arrangements are designed to cover your business temporarily. If you have a key person in your business, you should also consider scenarios where that person is unavailable for a long period. What should be done, and who should do it?

GOVERNANCE DECISIONS



KEY POINTS:

Who can make key business decisions in your stead?

Who can make payments from your bank account?

Have an Enduring Power of Attorney for your personal property.

Consider another director for the business (permanent, alternate or contingent).

A Deed of Delegations can define who can make what types of decisions.

If you are not available to make decisions, who can make decisions in your stead? Do you have arrangements for another director if you are incapable? There may be at least two levels of delegation to arrange, one for daily operations, and a second for conflicted approvals and governance. Daily operations include paying general business expenses, and you might give your locum adviser authority to do that. Conflicted approvals include paying the locum adviser's invoices, and an independent party should approve these payments. Governance decisions include all matters affecting the business broadly.

A Deed of Delegation can cover these matters effectively, so long as you have mental capacity. What types of decisions can your locum adviser make? Are there any other parties who can make decisions in your absence, and what types of decisions can they make (e.g., other directors, your lawyer, or your Enduring Power of Attorney)? Who can sign legal documents for the FAP, and who can enter business contracts?

If your business is a company, remaining directors can arrange payment authorities and make other key business decisions without you. However, if you are the sole director, or if you run your business as a sole trader (without a company structure), there is significant risk if you are suddenly incapable. It is best that you prepare in advance. If you have no arrangements in place, the situation will be very complex, and take time to resolve. That time could be devastating for your business.

Talk to your legal adviser about how to prepare your business to mitigate this risk. You should have an Enduring Power of Attorney to make decisions over your personal property. (By making your Power of Attorney enduring, the appointment will survive your loss of mental capacity. It can even be expressed as only taking effect if you lose mental capacity.) If your business is a company, subject to the wording you use, this means your Enduring Power of Attorney can make shareholder decisions, including appointing a replacement director. If you run your business as a sole trader without a company structure, your Enduring Power of Attorney can make all business decisions for you if you lose mental capacity.

Powers of Attorney are automatically revoked when the donor dies. If you are the sole director and shareholder, your shares in the company are transferred to your estate, to be distributed according to your will. The new shareholders (either the executors of your estate or the beneficiaries of your estate, if they receive the shares) will then have the power to appoint a new director (or directors). If you are a sole trader, your business assets and liabilities are transferred to your estate, and your executor distributes them according to your will.

It helps to document your desired approach in an expression of wishes in your will, or other form of direction to your executors about what you want to happen with your business interests. Subject to the wording you use, these wishes or directions will only guide your executors and won't bind them. Ensure that you regularly review and update any expression of wishes in your will and any other form of direction to your executors.

Executing an estate can take a long time, and your business may need someone to act in the interim. If you are the sole director of your company, you could consider appointing an alternate director, or passing a shareholder resolution to appoint a specified director if you are incapable.

Appointing an alternate director means that if you are unable to discharge your duties as a director, the alternate director can step in for the period you are unable. However, an alternate director may have many of the regulatory obligations of the principal director, including being identified on the Companies Office records. Many prospective alternate directors may not be willing to assume these obligations unless it is necessary. Moreover, the alternate director appointment ends if the principal director dies.

Another solution is for the shareholders to pass a revocable resolution to appoint a specified person as director, contingent on the principal director becoming incapable or dying or otherwise ceasing office. In this case, if the director loses capacity or dies, the shareholders have already resolved to appoint the new director, but without the new director being subject to any directors' duties before the appointment takes effect. That person must agree with the arrangement before the shareholders pass the resolution. Outline the arrangement in your Business Continuity Plan. You should review your Business Continuity Plan at least annually,

and this should prompt you to check that the contingent director remains available and suitable, and the appointing resolution remains appropriate.

If you are a sole trader (you run the business in your own name without a company structure), preparation for your death relies ultimately on your will and any other form of direction to your executors. Resolution will be delayed by needing to obtain probate, and this delay could harm your business severely, including negatively impacting on the clients who depend on you.



CASE STUDY

Sam's spouse has Enduring Powers of Attorney for her property and welfare.

Under her locum arrangements and bank software permissions, Sunil and Violet prepare payments, to be approved by her accountant. (Her accountant cannot prepare payments, and Sunil and Violet cannot approve them.)

Sam passes a shareholder resolution to appoint her accountant as a director contingent on her incapacity or death, and outlines this in her Business Continuity Plan. She reviews her Business Continuity Plan every year, and this will prompt her to check that her accountant remains available and suitable.

MEDIUM TERM



KEY POINTS:

Does your financial advice provider have key person insurance or other contingency funds?

When this money becomes available, will your short-term locum adviser continue, or will you need to engage a replacement?

Who will find the replacement, and how will they do it?

Does the replacement have the same duties as the locum adviser, or a broader mandate?

Who will train the replacement, update your advertising, and notify relevant parties?

How long the locum arrangements will be active will depend upon the situation that gave rise to activation. If they continue past the short term, your FAP may need to activate a longer-term solution.

Does your FAP have key business insurance or alternative contingency funds? After what period does this money become available? Medium term could be defined as the point where your key business insurance policy pays out. When the FAP receives money to spend maintaining the business, it necessitates additional decisions.

Without robust arrangements beyond the short term, business value is likely to decline, and likely to continue to decline the longer the key person is out of the business. Who will run the business if the situation extends this far? Will the business seek a different resource?

If the business will hire a replacement for the key person, who has the skills and the authority to make the hiring decision? Who will seek a replacement and how (how will you advertise, who will shortlist and check qualifications and references, who will interview candidates)? For what term will the replacement be engaged? A short-term replacement is likely to be expensive, but your FAP may only need to replace you for a few months.

What happens if you cannot find a replacement? For how long can your short-term locum adviser cover your absence?

If you find a replacement, who will train them in your systems and processes? Who will update your advertising and contact media (website, Facebook page, telephone, email) and how will it be updated? Who will arrange access to software systems and client data? Who will update the FSPR, notify the FMA, update your FAP licence (if necessary), and update your product providers? Who will update your clients, and how will they do it?

Does this replacement have the same job description as your locum adviser, or do they have a different mandate? For example, do they have more responsibilities for running the business, governance, risk and compliance?

Are the product providers with whom you have agencies comfortable with all these arrangements? Will your agency agreements continue?



CASE STUDY

Kanuka Financial Advice has an emergency fund separate from her operating account containing enough money to pay regular expenses, and Sunil and Violet, for a little over three months. The company also has key person insurance, with a 12-week wait.

Sam's accountant knows an experienced recruitment consultant, now connected to Sam and her compliance adviser. If Sam is suddenly unavailable, and likely to be out longer than three months, her accountant will work with the recruitment consultant and her compliance adviser to recruit a financial adviser on a fixed-term contract. The financial adviser's remuneration will be based on the market, and comprise of salary plus a bonus for meeting business targets in the annual plan.

Sunil and Violet agreed to train this financial adviser, and to extend the locum arrangements for up to six months if it takes longer to find a replacement.

Sam's accountant would continue to oversee the business, under the Power of Attorney.

LONG TERM



KEY POINTS:

At what point do you need to consider a long-term solution, such as engaging a full-time replacement or selling the business?

If you engage a replacement, who will manage the hiring process and how will they do it?

If you sell the business, who will arrange the sale and how?

How will the business be handed over to the buyer, and who will manage the details?

What happens if you cannot find a buyer?

There may be a period after which you decide that the best outcome for you and the FAP is to activate long term arrangements. This may be after a specified period, or when it appears that the key person may be unable to return to active work. You could either engage a full-time replacement, or sell the business.

If you plan to engage a full-time replacement, all the matters raised about hiring in the previous section will apply.

If you decide to sell the business, there are similar decisions to make. Who has the skills and the authority to complete the sale? Who will seek a buyer and how? Who will value the business and how? How will you advertise for buyers? Who will negotiate price and terms with potential buyers? Who will arrange the sale?

If you have other shareholders, who will obtain their approval and how? Are there any other stakeholders who must approve the sale? For example, agency agreements with product providers may contain restrictions or requirements on sale.

If your locum adviser might be interested in buying the business, you can resolve many of these questions in advance.

If you find a buyer, what handover will they need? Does the buyer need to be trained in your systems and processes? If so, who will train them, and how?

How will you hand over access to software and physical assets, and who will do it? Who will ensure that your advertising and contact media (website, Facebook page, telephone, email) are updated appropriately? How will your clients be notified and who will do it? Who will update the FSPR, notify the FMA, apply for a variation to your FAP licence, and update your product providers?

What happens if you cannot find a buyer? For how long can your medium-term arrangements keep the business running and maintain its value?



CASE STUDY

Sam and her spouse decided that they will only sell the business if Sam will never return to work. Her accountant will arrange the sale, and Sam's spouse has the final rights to approve a deal.

SUMMARY OF ARRANGEMENTS

This section contains a table for you to summarise how your arrangements will work. Discuss these areas with your locum adviser, and the completed table can form the basis for your locum agreement.

This table does not cover all the operational details of your locum arrangements. It only includes the core areas that should be included in your agreement.

SUBJECT	NOTES
Scope of service of the locum adviser, and under which FAP they will operate	<hr/> <hr/> <hr/>
Product provider accreditations the locum adviser must maintain	<hr/> <hr/> <hr/>
Hours and location of work	<hr/> <hr/> <hr/>
Remuneration and expense arrangements	<hr/> <hr/> <hr/>
Agreement term, and conditions of renewal and termination	<hr/> <hr/> <hr/>
Training required, and whether they will be compensated	<hr/> <hr/> <hr/>

<p>How the locum adviser will be notified and activated</p>	<hr/> <hr/> <hr/>
<p>Who will provide what hardware and software</p>	<hr/> <hr/> <hr/>
<p>Who will update the FSPR to reflect the locum's engagement and notify the FMA (if applicable)</p>	<hr/> <hr/> <hr/>
<p>To whom the locum adviser is accountable, and how that will work</p>	<hr/> <hr/> <hr/>
<p>What needs to happen when you return to work and deactivate the arrangements</p>	<hr/> <hr/> <hr/>
<p>Types of decisions the locum adviser has the authority to make</p>	<hr/> <hr/> <hr/>
<p>How frequently you will test and review the arrangements, and whether this will be compensated</p>	<hr/> <hr/> <hr/>
<p>How you will handle client and business confidentiality, and non-solicitation of clients</p>	<hr/> <hr/> <hr/>
<p>How you will handle clients who want to change to the locum adviser permanently</p>	<hr/> <hr/> <hr/>

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FURTHER INFORMATION

If you need further information about, or help preparing, your locum financial advice arrangements, the contributors to this guide are available in a professional capacity to engage with you.

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Financial Services Council NZ

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