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**Risk management for sole practitioners**

**Protecting your practice in emergencies**

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## Protecting your practice in emergencies

Have you ever wondered what would happen to your practice if you became mentally or physically incapable, or died suddenly? If the worst did occur, and you had not protected your practice, there is the possibility that your family or estate would be faced with the large expense of a Law Society intervention and a great deal of worry for those who were left to sort out your affairs. Making contingency plans should be seen in the context of proper business planning and as such should be an integral part of managing your practice.

The following recommendations may help sole practitioners and should be read in conjunction with Principles 3.10, 3.14 Annex 3c and Chapter 24 of the Guide to the Professional Conduct of Solicitors 1999 (8<sup>th</sup> edition) – (the Guide)

## Mental or physical incapacity and sudden emergencies

- a) **First steps** - it is important to make immediate arrangements to appoint a solicitor manager who will be able to run the practice in the event that you become mentally or physically incapable, or due to other circumstances are unable to continue operating your practice, even if this is for a short duration. The solicitor concerned must **be a** solicitor qualified to supervise in accordance with Rule 13 of the Solicitors Practice Rules. This means the solicitor must have held a practising certificate for at least 36 months within the previous 10 years and have completed a minimum of 12 hours training in management skills.

The easiest way to effect the appointment is by executing an **Enduring Power of Attorney (EPA)**. By giving the attorney general powers to act on your behalf you will enable your appointed solicitor manager to take over your practice. However, if your attorney has reason to believe that you are becoming, or have become, mentally incapable, he or she will have to register the EPA with the Public Guardianship Office before continuing to manage your practice as the Power of Attorney will lapse temporarily.

The Sole Practitioners Group feels on balance that the best arrangements are those which are the simplest. Provided that you have chosen your attorney very carefully, by allowing him or her total discretion to make whatever decisions are necessary for the good of the practice depending on the circumstances prevailing at the time, it will be easier for you to complete the statutory prescribed form. You may make more than one EPA, and you may wish to do so in order that different matters, such as personal savings accounts, are covered. If you wish to restrict your attorney's powers, instructions can be given in the EPA, but take care with the drafting. Incomplete or ambiguous instructions can lead to the EPA being refused by those asked to accept the attorney's authority (eg banks or other financial institutions) or being rejected by the Public Guardianship Office if the EPA has to be registered.

If you wish, you can stipulate that the EPA should not come into effect until you become mentally incapable of managing your practice, or when your attorney believes you are becoming mentally incapable, in which case, as stated above, the EPA will have to be registered with the Public Guardianship Office before it can be operated. This provision will not, however, cover sudden emergencies.

It is sensible to include a charging clause in the EPA (if appropriate).