LEVERAGE

Legal and technical update: November / December 2018

Note from the editor

Financial Planning and Advice

Another year has flown past and year-end brings with it also the last edition of Leverage for 2018. As usual it is a combined November-December issue to allow you time to finalise all outstanding business and start looking forward to some downtime to spend with loved ones.

It has been a year full of surprises, tragedy, natural disasters, and some economic and political turmoil. With all of this, it is easy to get swept up and focus on doom and gloom. We choose not to focus on things we cannot change. Let us rather reflect on a year where we as an industry and you as the financial adviser continued to touch people's lives positively in much the same way as Momentum did with its solution for victims of violent crime. We are there on our clients' journey to success and make sure that we leave their dependants and beneficiaries financially well, no matter what happens.

In this edition we tackle the issue of practice management, in particular the succession plan.

I trust that you will enjoy the read. If you are travelling, be safe and if you are going on holiday, enjoy it. We will see you again in 2019!

Happy reading!

momentum

Practice Management requirements in terms of legislation

By Sanusha Naidoo , Legal Adviser: Financial Planning

With proper practice management processes and plans in place, the financial planner can deal with the challenges of running a financial planning practice and achieve optimal results. To grow a profitable and sustainable business, the right skill, systems, tools and processes are critical.

The owner can attain his/her goals, for example more time to increase his/her productivity and profits and expanding their and their employees' skill and expertise.

The risk management plan is a spring board to implementing proper practice management, while effectiveness is the foundation of good practice management:

- It is a proactive process to ensure that financial advisory services and products are delivered in the case of any interruptions;
- If the business is well-run and a successor can sustain it, it becomes a saleable asset with capital value;.
- Financial planners should spend time documenting and implementing a plan that works for them, their staff and their clients;
- Creating and updating policies and procedures is key;
- Staff should be appointed, while client communication and training should be implemented.
- The need for a financial planning practice as well as the plan associated with it, should be continually monitored;
- Segmenting the client base is essential for tailor-made financial services;
- Reviews; and
- Operational ability.

Managing a practice according to these requirements is important for good practice management and ensures that the business complies with relevant legislation. However, it is only one element of risk and practice management.

Business continuity is another important factor to consider should the financial planner die or become disabled. When a succession plan is not in place, the IFA will appoint a representative to manage and take care of the practice's clients.

Section 20 of the General Code of Conduct, in particular paragraph (c) under termination of agreement or business, states:

"...where a representative ceases to operate as a representative of a provider, such provider must immediately take, where reasonably necessary or appropriate in consultation with the clients and product suppliers concerned, reasonable steps to notify all affected clients accordingly and ensure that outstanding business is completed or transferred to such provider or another representative of that provider.

With a business succession plan in place, a financial planner can prevent their business from being given to an individual who may not the skill or expertise to take over the client base.

Succession planning

As a business owner, the financial planner knows that he/she has to leave the industry at some point, whether it is as a result of retirement, death, or disability. Therefore, from a practice management point of view, having a succession plan is vital for a financial planner, his/her business, staff and clients.

In addition, a succession plan and strategy reassures clients that when the business is handed over to a successor, management and control will continue uninterrupted. For staff, job security and knowing that a succession plan is in place will ensure that a financial planner leaving will not have an impact on their wellness.

Once a successor has been chosen, he/she must be integrated into the business. As a succession plan is a business strategy, the successor should ideally be someone whose skills, expertise and values are similar to those of the financial planner. This will ensure that clients' financial needs will continue to be met throughout their lifetime. A proper handover of clients to the successor is also ideal, if possible.

The succession plan will ensure proper practice management, which will in turn ensure that clients are treated fairly.

A phase-in approach can also be considered. The owner can fulfil the moral obligation to his/her clients. Retention of the client is then higher after the financial planner leaves the business, as they are assured of ongoing support and service.

A formal agreement should be concluded with the successor. Such an agreement will document the terms and conditions that apply to the succession plan, as well as the payment structure (if any).

To establish how much the practice is worth, a valuation should be done.

When doing an assessment to determine the capital value of the business these are some of the factors to consider:

- The **financial aspects** of the business: This includes future commissions, income streams, assets under management, and certain key assumptions;
- The **non-financial aspects** of the business: Revenue streams after the sale; the goodwill and ability to retain the clients; and
- The **level of risk** in a business, or the quality of risk management. Commission at risk. This relates to compliance with the relevant legislation and processes implemented to monitor or decrease the risk.

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The agreed method of payment can be stipulated in the agreement. This can be:

- Payable over period of time as agreed and decided upon; or
- A lump sum (natural attrition is a concern).

Many best practice principles, such as the following, exist:

- To execute practice management one should plan, assess, and set goals;
- An action plan to accomplish the goals;
- Employing the right people for the job;
- Employment contracts in place for all employees setting out the terms and conditions (and the confidentiality clause to comply with various legislation), as they are not employed by Momentum, but by the financial planner directly;
- Individuals with the necessary strengths for business to accomplish these goals should be identified;
- A solid understanding of the business and opportunities that exist;
- Determine the value of a professional financial planner;
- The financial planner's skills, knowledge and experience;
- Assess, monitor and measure progress made on the goals set and the results created; and
- The business must be evaluated and the results compared to the original goals to determine the success of the overall strategy.

A practice management system should incorporate sound business processes and FAIS compliance requirements.

- **Solutions** should suit the business and identify opportunities for development within the business;
- A **risk** management plan to identify the specific risks to the business;
- An executable **succession plan**;and
- Service level agreements should be an accepted practice standardfor financial planners and their clients.

Financial planners must be professional and trusted individuals who articulate and live their values in the practice.

Following on this, a relevant quote that applies to practice management in a financial planning business:

"Change is difficult.....Not changing is fatal".

A day in the life of a legal adviser

By Ulanda Weilbach , Legal Adviser: Advice and Financial Planning

A legal adviser often has the opportunity to make a difference in someone else's life. It is therefore quite gratifying to know that one can add value to the lives of our financial planners by providing advice about succession planning.

Quite a while ago, we implemented a succession plan for a financial adviser who was contemplating retirement. The succession plan also provided for disability – both temporary and permanent, while the agreement also made provision for a caretaker to manage the practice for the period of disability.

Two years after signing the agreement with his successor, the financial adviser was diagnosed with cancer. The treatment was so severe that he was unable to manage his practice for a period of nine months. Thanks to his disability benefits as well as the support of his caretaker/successor, his practice was managed with minimal disruption. The financial adviser initially thought he would be able to manage the practice with the assistance of his personal assistant, the FAIS act is clear that one can only provide financial advice if you are registered in terms of the Act. Although she had the knowledge, the personal assistant could not render any financial services the clients required and needed the assistance of the caretaker to execute all financial services.

As part of the agreement we drafted, it was agreed that the caretaker will be paid a percentage of the fees generated by his assistance for the period that the financial planner would be disabled. This was paid monthly until the financial adviser could resume his duties.

When the financial adviser recently passed away from cancer, his successor bought the practice. The family received the value of the business over a period of 12 months. At the time of entering into the agreement, the parties did not wish to take out life cover on each other's lives, because of the cost involved. They opted to determine the value at the time of death, paying said amount over a period of 12 months to the heir of the estate. In this instance, the deceased financial adviser's family received a fair value for the practice that he had built up. At the same time, the clients were taken care of with the least amount of disruption.

The importance of a succession planning agreement cannot be over-emphasised!

About Leverage

Momentum Leverage is prepared by the Momentum Legal Advisers: Financial Planning and Fiduciary Specialists from Momentum Fiduciary Services. For financial advisers, please contact your legal adviser or fiduciary specialist should you have any questions. For clients, please contact your financial adviser should you have any questions.