

We are a Financial Planning practice that has developed from the old style insurance company. Because of this we have approximately 4000 clients spread all over Australia.

Under FSR we understand that we have to contact these clients to offer an annual review. If we have a client that we do not care for and do not wish to deal with, what scope is there for us to stop servicing them?

You may recall this was a section of a question to which the first part of the answer was published in the December 11, 2003 edition of Money Management.

How to terminate a client is far from a strange question. Particularly when a bad client can create legal risk to a business. There is no answer in the post FSR Corporations Act on how to terminate a client. Only section 924A deals with this, but only for clients terminating the services of an unlicensed person who provides financial services (some accountants and estate agents should be wary!).

So where do you look to for the client termination rules? These should be a part of your engagement terms, something that should supplement the FSG and clearly set out the expectations of all parties to the financial planning process. One of these 'expectations' should include how the licensee/representative and client relationship is brought to an end. Don't forget, in the post FSR world there are two perspectives; the AFSL holder and the representatives.

Even if you do have clearly defined termination terms, you must take care with how you act. Because the financial planning relationship is a fiduciary one based on trust, it requires you to act at all times in good faith and for the benefit of your client, even when terminating the professional relationship. This means that even if you have clearly defined rules for termination, you must not follow these in all cases, you may have to give the soon-to-be-ex-client more latitude than you otherwise would want to.

Don't have the rules of termination in writing? Maybe these rules can be found elsewhere. Maybe you have told your client that you can terminate without notice to them? Maybe this is implicit in the nature of your business?

Your termination must be reasonable. What is reasonable? We would suggest that in a full financial planning context it would include adequate notice to enable your client the opportunity to engage the services of another professional.

If you are confident that your termination rules will not cause the client to suffer any harm, you should follow the rules that already exist. To deviate from these may itself be considered prejudicial to your client, particularly if they have an expectation as to timing and the form of the notice.

If your engagement terms do not expressly deal with termination, you really should revisit your terms. If no contractual obligation or expectation has been created between yourself and your client and the particular issue of termination is silent, we suggest you consider the following in order to implement such procedure.

Firstly, look at your business and how it operates. Look at the contractual agreements you have in place. Consider your clients' expectations and needs. When considering each of these points consider

whether your client is likely to suffer any loss or damage by you terminating your services in any particular manner. How can you do it so that no loss is suffered.

For instance, if giving your client a month's notice of termination would likely give rise to the client suffering a lack of professional guidance for any period and the potential for loss or damage then it may be that you need to go the extra step and assist them in engaging the services of another financial planning business. How you terminate the relationship will largely turn on the needs of your client.

Secondly, you must consider the role of the representative and the AFSL holder in the termination process. Of necessity both are involved. Who has authority to do it? What is the impact of a unilateral termination of a client by one of them on the other?

Remember that not every client's circumstances and needs are the same. Some will require special treatment depending on their circumstances. If you have fully complied with section 945A of the Act, better known as the "know your client" rule then you should know your client well enough to know how to terminate them.

We also note the 'fairness' requirement of Ethics rule 4 of the FPA's Code of Ethics and Rules of Professional Conduct. This suggests a need to apply fairness to the client termination process as well.

So, how do you stop servicing a client? In short, you must take into consideration the following: 1. Your relationship; 2. What is fair and reasonable to your client?; and 3. What is the industry standard? Once you have considered these issues the process should be one that will not suffer adverse review.

Returning to the original question about the "old-style insurance" practice. We take from this that the business was largely built on the sale of single premium or risk insurance products. If that is all there was to it, you might be able to justify that each of your interactions with the "4,000 clients spread all over Australia" was of a clear one-off nature only. That is, the nature of the business may justify that clients did not expect ongoing services, only the one-off placement of the one financial product (insurance). If this is correct, there is no relationship to terminate.

However, if in an attempt at marketing you have raised the issue of continuing services to at least some of those clients, you may have altered this position and a formal termination is now needed. If you said that you would give at least quarterly reviews, then, in the absence of anything else you may be stuck with a three month notice of intention to terminate. What form should this take? Take direction from a standard in the post-FSR Corporations Act that we will see more and more in the coming years, it should be *clear, concise and effective*. And consistent with a fiduciary relationship.