



A GUIDE TO LOCUM ARRANGEMENTS

2ND EDITION





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2nd Edition 2019, Guidance & Ethics Committee

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REGULATORY GUIDE FOR IN-HOUSE SOLICITORS EMPLOYED IN THE CORPORATE & PUBLIC SECTORS

Regulation Department, September 2017

w <https://www.lawsociety.ie/Solicitors/Representation/Committees/In-House-and-Public-Sector/>

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A GUIDE FOR IN-HOUSE SOLICITORS EMPLOYED IN THE CORPORATE AND PUBLIC SECTORS

In House & Public Sector Committee May 2018

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This booklet will guide you through the regulatory requirements upon locum solicitors and firms seeking to instruct a locum and will outline for you the assistance provided to members of the Law Society.

The term locum is generally used to describe both the self-employed locum solicitor and also other solicitors who opt to take only short-term contracts, but as employed rather than self-employed solicitors.

Locum solicitors are employed to meet various situations in firms such as the following:

- Solicitor on maternity leave
- Solicitor ill or incapacitated
- Solicitor's holidays
- To add capacity to handle a particularly heavy workload in the firm
- To clear a backlog
- To deal with problem files

The locum position is a temporary one, although the locum may be covering the absence of a sole practitioner.

1.1 Planning for emergencies

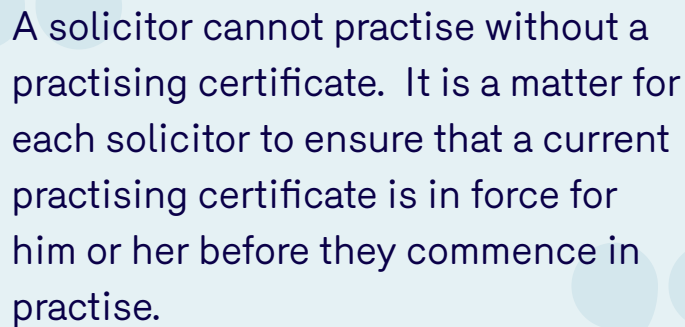
All sole practitioners/principles planning prudently for the future of their practice should have in place a plan for emergencies. The use of a locum solicitor may be an essential part of such a plan. Please see the practice note "Planning for Emergencies In a Sole Practitioners/ Principals' Firm" which is available to download on the Law Society website at <http://www.lawsociety.ie/Solicitors/Practising/Practice-Notes/Planning-for-Emergencies-in-a-Sole-PractitionersPrincipals-Firm/>



2 | ADVANTAGES OF LOCUM ARRANGEMENTS

A locum arrangement can be tailored, by the principal or partners of a firm, to meet the particular needs of the firm at a particular time, rather than committing the firm to the expense of an additional permanent employee.

Likewise the locum solicitor may not require a full time position and a locum arrangement may offer them the flexibility and the continuation of legal experience that they need.



A solicitor cannot practise without a practising certificate. It is a matter for each solicitor to ensure that a current practising certificate is in force for him or her before they commence in practise.

Practising Certificates

A solicitor cannot practise without a practising certificate. It is a matter for each solicitor to ensure that a current practising certificate is in force for him or her before they commence in practise. A practising certificate cannot be taken out for a period limited to the months of a locum contract - it must be taken out for the remainder of the year during which the application is made. Details of the pro-rata breakdown on annual practising certificates are available from pc@lawsociety.ie or can be accessed on the Law Society website at https://www.lawsociety.ie/globalassets/documents/pc_membership/pc-forms/2017pc-proratafees-website.pdf

The firm employing the locum may agree to fund the practising certificate fee. If not, it is a matter for the locum to apply for and pay for the certificate. The practising certificate fee may then be an expense, which will be reflected in the locum's fees/hourly rates, or, if an employee, salary. The fee payable is a necessary expense and therefore is an allowable expense for income tax purposes. The manner in which the practising certificate fee is to be paid should be agreed between the locum and firm in writing before commencing work.

On the conclusion of a locum contract if the solicitor knows that he/she will not take up another position during the course of that practice year then a repayment can be sought from the Law Society of the practising certificate fee for the remainder of that year. This repayment can be sought by surrendering the practising certificate and confirming to the Society in writing that the solicitor concerned will not practice for the remainder of that practice year.



It is important to note that the practising certificate fee must be paid prior to commencing in practice before any locum fee/salary is received.

However, it is important to note that the practising certificate fee must be paid prior to commencing in practice before any locum fee/salary is received. This may present cash flow difficulties. If so, a loan may have to be taken out to fund the practising certificate fee. The PC and PII Finance Scheme is a partnership with Bank of Ireland, which provides financial assistance to solicitors in order to fund practising certificates, professional indemnity insurance, pension contributions or income tax returns. Details are available from the Law Society's website www.lawsociety.ie/memberbenefits, in the Member Services Directory or from the Personal Secretary to the Director of Finance and Administration; Tel: 672 4901

Professional Indemnity Insurance

A locum should ensure that the employing firm has professional indemnity insurance in place.

Prior to engaging a locum, employers should ensure that they are covered for the legal services a locum provides on their behalf and in the name of the practice. The firm's insurers should be advised that the locum solicitor has joined the practice and the firm should obtain written confirmation of cover for the locum. The insurance provider may seek a CV style document from the insured in relation to the locum's professional experience. The locum should seek written evidence of cover being in place confirming that the firm's insurers are on notice of the locum's engagement.

Tax

It is important to be clear, having regard to the nature (rather than the description) of the contract between the parties, whether the locum is being retained as a self-employed contractor under a contract for services or an employee under a contract of service. These matters should be agreed in writing so as to avoid confusion and dispute.



Prior to engaging a locum, employers should ensure that they are covered for the legal services a locum provides on their behalf and in the name of the practice. The firm's insurers should be advised that the locum solicitor has joined the practice and the firm should obtain written confirmation of cover for the locum

The self-employed locum

If the locum is self-employed (rather than an employee) he/she should be registered as such with the Revenue Commissioners. The necessary annual tax returns should be made. These matters are solely the responsibility of the locum. As a matter of prudence, when the locum receives fees, the relevant proportion of the fees should be set aside to meet his/her annual tax bill and VAT payments.

The locum should inform himself/herself about any expenses, which are legitimate deductions for income tax purposes.

The locum should engage all appropriate professional tax and accountancy advices with regard to all liabilities and obligations arising from his/her self-employment and should refer to revenue.ie and the Law Society's website, Career's Section.

The PAYE locum

If the locum is an employee, their employer will deduct tax on a PAYE basis in the normal way.

A prospective employer may only offer the position on a sub-contract basis and not on a PAYE basis. The employer's position may be that they want to avoid paying the employer's PRSI contribution. They may also wish to avoid the administration involved in having an additional employee. If a locum Solicitor does not adhere and adopt all regulatory requirements to become registered with the Revenue Commissioners as a self-employed person then the solicitor should not accept this position under these terms.

As above solicitors who are contemplating locum arrangements and PAYE or self-employed arrangements should take all prudent advices from their tax and accountancy advisors and refer to revenue.ie and socialprotection.ie in respect of the social insurance contributions and entitlements.

Notifying the Law Society

As soon as they enter into each new contract, the locum shall, notify the Registrar of Solicitors at the Law Society, notifying the Society within 14 days of the date of the change of employment in a firm and the date that the solicitor is joining another firm. The name and address of the new employer should also be provided.

4 | CONTRACT OF ENGAGEMENT

Employers should take the same, precautions when filling a locum position as they would for any other position.

The employer should satisfy himself/herself as follows:

- That the solicitor is competent
- That the solicitor has adequate past experience to do the job
- That the solicitor has adequate computer skills to operate the firm's systems
- That proper references are checked out
- That the solicitor will uphold the culture and ethos of the firm, always subject to the provisions of equality legislation

As with any contract, it is important that all the terms of the locum's contract are agreed and recorded in writing to facilitate proof of the agreement.

The expectations of both parties must be realistic. If the expectations of both parties are not the same, it is inevitable that the locum arrangement will disappoint both sides.

The work

The locum should be informed about the areas of practice in which he or she will be required to deal with files.

Both parties should be clear about the role of the locum. The principal should agree with the locum what work needs/should be done, the level to which it is expected the locum will progress/work the files to, the level of authority the locum will have in the firm, the support services that might be available to the locum, the reporting structures that are to be followed, the case management and recording system to be utilised, the handling and managing of clients' monies, the use of firm equipment and property, the agreed working hours, the firm's policy in respect of internet and mobile phone usage etc.

If the principal in a sole practice is to be absent, will the role include a general supervisory role in relation to the running of the practice. Will the locum be required to authorise money transfers by EFT and/or cheque payments. What arrangements are in place with regard to same for both the firm and the locum's protection.



It is a matter for the locum to negotiate their charges or salary on a contract-by-contract basis. Before negotiating, the locum should ascertain from recruitment agencies or public sector pay scales, the going rate for a solicitor of their qualification and experience, and use that as a guide.

The pay

Employing a locum is an expense for a firm however if files and clients' are dealt with in an efficient and effective manner the engagement can prove to be beneficial for all parties.

It is a matter for the locum to negotiate their charges or salary on a contract-by-contract basis. Before negotiating, the locum should ascertain from recruitment agencies or public sector pay scales, the going rate for a solicitor of their qualification and experience, and use that as a guide. If the locum takes on extra responsibilities due to the sole practitioner being absent, this may be a point on which to negotiate an increased salary.

As with all contractual arrangements regarding employment engagements they are governed by the employment legislation and the prospective locum should have regard to same and ensure that they adequate cover and protection is provided for them in any such contract.

Expenses

Issues such as travelling expenses should be clarified.

If the locum contract is not for a fixed term or either of the parties' wishes to have a break clause in their agreement, then provision should be made for a period of notice to be given prior to termination so that both parties are clear about the notice required.

A condition requiring a mediated procedure so that disputes in relation to the nature of the work, work practices, the payment of fees or any other matter can be resolved shall be included in all contracts.

In some circumstances a locum may be negotiating terms with someone other than the solicitor in a sole practitioner firm. This may be because, for instance, the solicitor is ill, perhaps too ill to be involved. A family member or friend may be making the locum arrangement. If this were the case the locum shall require written confirmation from the principal if possible and their lawfully appointed agent/attorney that they are taking responsibility for payment of the locum's fees or salary and for engaging the locum under the contract to perform the agreed services.

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ON THE JOB

Hand-over at the beginning

If the principal of a sole practice is to be absent, it is very important to put appropriate arrangements in place beforehand.

The contract should allow for a hand-over session for the locum prior to commencement so that there is a suitable overlap period, if possible, so that the locum has an opportunity to review the files for which he or she will be responsible, in order to be in a position to deal with queries from the clients as soon as the principal departs.

The locum should be given all relevant information to allow them perform the required duties to include e.g. a contact numbers for the principal, a senior colleague in the locality who is willing to assist with general queries, local bank branch liaison staff member, courts clerk, law searchers, etc and arrangements in relation to swearing of documents before colleagues, petty cash, ordering of stationary, payment of courts fees etc.

Office procedures

The locum should be advised in writing of all office policies and they should be furnished to him/her for reference before commencing the position. Adherence to the office policies should be a condition of the contract of engagement. The procedures must include compliance with up to date requirements in respect of anti-money laundering, data protection and compliance matters.



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Files

The locum should be given a list of files to be progressed. Any urgent files should be highlighted. Files that are to be progressed should have a clear note of instruction, giving the background to the case and should state the current situation. In particular, if there are imminent closings on conveyancing files, any outstanding issues requiring attention before the closing should be highlighted. The locum should as is good practice make note on each file that they work on the work they did on the file, the reasons for so-doing and the outcomes of same. A record of their involvement on any file and/or advices given to clients on all matters should be listed by the locum on their master files list. A copy of same should be given to the principal upon the principal's return or at a review/termination meeting.

Undertakings

Locums should not give undertakings unless they are authorised in writing by the principal.

If the requirement to give an undertaking in the absence of the principal can be foreseen, a specific authorisation dealing with the particular case should be given. The principal should approve the wording of the undertaking and, if possible, the principal should sign the undertaking. Many lending institutions will, in any event, call for evidence of authority to give the undertaking.

If the locum is signing, they should always sign clearly “per pro” the firm so that there is no confusion. When a locum is signing, the letter of authority will also clarify for the recipient of the undertaking that the locum is signing on behalf of the firm only and not on their own behalf. The locum solicitor should be indemnified in relation to any loss that may be suffered by the locum in relation to these matters. This should be specifically addressed in the terms of the contract of engagement.

As the undertaking is given on behalf of the firm, it is the principal or partners in the firm who must comply.

All undertakings should be given on the firm’s notepaper and recorded in the firm’s records.

However, it should be noted that, if a difficulty subsequently arose with regard to an undertaking given by a locum and the matter was the subject of a complaint to the Law Society, the conduct of both the principal and the locum solicitor might be investigated. In those circumstances the locum would be expected by the Law Society to co-operate with the investigation.

Conflict of interest

Because a locum moves from firm to firm, possibly within a small locality, they may find themselves in a position where they have confidential information relating to one file which would put them in a conflict situation if acting on the opposite side of the file in another firm. Locums should be alert to this possibility and, if a conflict arises, should immediately cease to handle that file and ensure that other arrangements are made for the client.

If the principal or partners are present, the locum should inform them of the situation but may not be in a position to reveal details to explain why there is a conflict. This is a matter that must be left to the professional judgement of the locum.

Hand-over at the end

It is important that there is a good hand-over procedure at the end of the contract so that all the information that the locum has gained in relation to files during the locum period is passed on within the firm. It is important that there is a report on all the files showing the work that the locum has done. For instance, there may be important dates to be diarised forward. A hand-over procedure is particularly important if the principal in a sole practice has been absent.



9 | PROBLEMS IN THE PRACTICE

If a matter comes to the locum's attention that should be reported to the firm's insurers, the principal should be notified immediately.

On a few rare occasions locums have contacted the Law Society to say that they have discovered that the employing solicitor is engaged in serious misconduct. This is the correct course of action for a locum in such circumstances. If this would involve disclosure of a client's affairs, the client's consent to do so should be obtained.

FINDING EMPLOYMENT AS A LOCUM OR RECRUITING A LOCUM | 7

Career Support

Law Society Career Support service is a key resource for solicitors who find themselves out of work or otherwise faced with any kind of career challenge. Contact Career Support in Blackhall Place at 01 8815776 if you need assistance with any of the following:

- Drafting CVs
- One-to-One Career Consultation
- Returner Initiative
- The CV Register
- 55+ Options Initiative - assisting solicitors aged in their late 50's and beyond.
- Information about Training and Development Options

The CV Register is particularly useful for solicitors interested in locum opportunities. It allows you to post your CV online with information about the type of opportunities of interest to you. The CV Register is checked regularly by employers who are looking to hire.

Career Support assistance is provided through consultations, booklets and videos. Their helpline can be contacted by telephone at 01 8815776 and by email at careers@lawsociety.ie.

Small Practice Support

Employers seeking to hire for both locum and permanent roles can get support from the Small Practice Support team in the form of information about general availability, regulatory matters, etc. You can contact the Practitioner Support Administrator of the Small Practice Support team by telephone at 01 672 4937 and by email at careers@lawsociety.ie.

Legal Vacancies

Both employers and job seekers interested in locum opportunities are facilitated by Legal Vacancies. This facility which is resident on the Law Society website is Ireland's premier source of information about legal work. It is visited over 700,000 times every year and has over two million page views annually. The site can be accessed at: www.legalvacancies.ie.

Gazette Advertisements

A solicitor seeking a locum position or an employer seeking to recruit can advertise in the Society's Gazette. Members of the Gazette team can advise on options available and costs involved by telephone at 01 674 4828.

8 | MEMBER SERVICES

The Law Society strives to ensure that a wide range of support services are available to the solicitors' profession.

Some of these services are listed below and further details are also available in the Member Services directory or on www.lawsociety.ie/memberbenefits.

Guidance & Ethics Helpline

The Guidance & Ethics Committee operate the Guidance & Ethics Helpline. Solicitors who are concerned about their own position in any matter of practice or conduct contact the Secretary to the Committee at the Law Society. You will be assisted and will be informed about any relevant published material, including practice notes. You will then be in a position to make an informed professional judgement on the particular matter. Queries are directed to the Secretary of the Guidance & Ethics Committee at 01 879 8700 or through gecommittee@lawsociety.ie.

Member Benefits

The Society provides a wide range of support services for its members. The Society has a firm commitment to providing its members with more added benefits for their membership, more advice, more value for money. The benefits of membership include being on the mailing list for the Society's publications including the Gazette, Law Directory and general practice updates. Members can access the members' area of the Law Society website <https://www.lawsociety.ie/Solicitors/Representation/Member-Benefits/>. Members can also attend seminars and conferences and can vote in elections and at general meetings.



The Society provides a wide range of support services for its members. The benefits of membership include being on the mailing list for the Society's publications including the Gazette, Law Directory and general practice updates.

A comprehensive list of member services is available in the Member Services directory which is circulated annually and also available to download from the website address listed above. Some of the contents include:

- Details of Member Benefits including financial schemes and relevant contacts within the Society

- Available services in the department of Career and Practitioner Support
- An outline of the Education and Training within the Society
- Information and Guidance for the Profession
- Information on available Professional and Personal Support
- An outline of facilities within the Society

The Society has a firm commitment to providing its members with more added benefits for their membership, more advice, more value for money.

For further information please log onto the members' area of the Law Society website www.lawsociety.ie or contact the Society's Member Services Executive, Ph; 01 879 8700.

Law Society Website – Members' Area

The members' area of the Law Society website is an invaluable source of professional information. Access is restricted to members of the Society through the use of the member's solicitor number and surname.

This section lists the services and functions of the Society and details the various individuals within the Society responsible for them.

All practice notes published in the Gazette since 1986 have been reproduced on the site and members can search for individual notes by committee, date or title.

A number of precedent documents have also been published – these can be downloaded and printed in Word or PDF format.

The "Latest News" section sets out checklists of fees, tax bands and allowances, in addition to general legal information. This section also comprises a number of options, including news from the Society's committees and news from other jurisdictions.

Law Society Retirement Trust Scheme

Self-employed Law Society members under the age of 75, or those who are employed in non-pensionable employment can apply to join the scheme. This scheme offers members an easily accessible option and further details regarding benefits of the scheme are available at <https://www.lawsociety.ie/Solicitors/Representation/Member-Benefits/> in the Member Services directory and from justASK@mercerc.com. The Solicitors Retirement Committee regularly monitors the scheme and it operates within a robust governance structure.

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