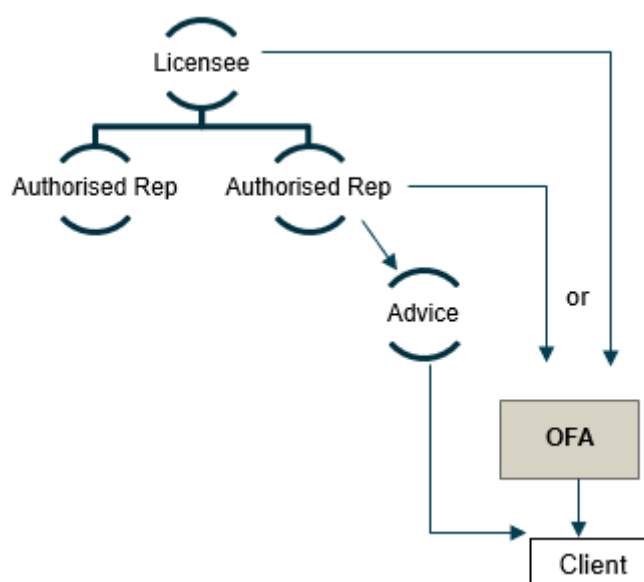


OR

- an AR of a licensee gives personal advice to a person as a retail client; and
- the person enters into an arrangement with the AR or the licensee; and
- under the terms of the arrangement, a fee is to be paid during a period of more than 12 months.



OFA's are called different things in different organisations. For example, some organisations call them ongoing service arrangements. "Ongoing fee arrangement" is the term used in the Act.

The Licensee considers that when a representative of the Licensee enters into an OFA with a retail client, that person does so on behalf of the Licensee (if the Licensee employs them) and on behalf of the CAR (if a CAR employs them). They do not do so in their own capacity, unless they run their business in their individual name and not that of a corporate entity. This is rare.

An OFA can exist without it being reflected in writing. However, it is the Licensee's policy that an OFA to which it (or its AR) is a party, must always be in writing.

The regulatory regime defines OFAs in a way which is broad enough to capture arrangements which are not contracts, as well as ones which are. However, normally, an OFA would itself be a contract or would involve a contract. The concept of "contract" is contained in the law made by the courts. A contract is a legally binding agreement. A contract can exist without it being reflected in writing. The Licensee regards each OFA to which it (or its AR) is a party as a contract or as including a contract.

The Act provides that the rights of a licensee or AR under an OFA may be assigned to another licensee or AR. If the rights under an OFA are assigned, then the licensee or AR to which they are assigned becomes subject to the requirements under the Act for OFAs which would otherwise have been applicable to the licensee or AR which first entered into the OFA.

Under contract law, it is possible for the licensee or AR to transfer its rights (and even, provided certain conditions are met, its obligations) under the contract to another licensee or AR. This is relevant when a licensee or AR seeks to sell a book of clients to another licensee or AR.

### **What is not an OFA?**

An arrangement with a retail client is not an OFA if:

- it is an arrangement for the client to pay in instalments for personal advice provided to the client before the arrangement commenced ;
- the only fee payable under the arrangement is an insurance premium ;
- the fee paid under the arrangement is charged by a product issuer and the fee is for the administration, management or operation of a financial product that the issuer has issued to the client ;
- a fee is for the cost of providing financial product advice and is legally able to be passed on to a member of a regulated superannuation fund .

### **Obligations applicable to an OFA relate to:**

- FDSs
- obtaining express written consent to deduct fees
- termination of the OFA
- prohibitions on charging fees when certain things happen

### **FASEA**

Advisers subject to the FASEA Standards must comply with the Financial Planners and Advisers Code of Ethics 2019. This Code applies to individual advisers rather than to licensees or CARs. It also does not address OFAs specifically. However, the Licensee's OFA measures should be consistent with the requirements of the Code, as the Licensee is obliged to take reasonable steps to ensure that its representatives comply with financial services laws.

### **Resources and monitoring**

The comments of the 2018 Royal Commission do not themselves form part of the law. However, they provide important information about:

- how the law might be interpreted in a way that meets community expectations;
- the kinds of measures that may be necessary to ensure that legal requirements are met.

In particular, the Commission found that systemic problems with OFAs occurred when:

- systems for monitoring whether services were provided under OFAs were inadequate;
- a licensee or AR receiving fees under OFAs failed to satisfy themselves that they had sufficient resources to provide the services under all OFAs.

Some of the Royal Commission's comments drew on work done previously done by ASIC, such as that reflected in Report 499: Financial advice: Fees for no service.

### **Other legal considerations**

OFA's will attract other obligations under law made by the courts in addition to the legislative obligations, in the areas of:

- contract
- negligence
- equity

A licensee must do all things necessary to ensure that financial services are provided efficiently, honestly and fairly. This applies to financial services provided under OFAs.

In ASIC's view, one way of meeting this requirement is by a licensee (and its ARs) meeting their contractual obligations to clients.

The licensee (or AR) must do what it says it is going to do under an OFA.

If it does not, it can be sued for breach of contract, and the Licensee may be in breach of the requirement to do all things necessary to provide financial services efficiently, honestly and fairly.

To the extent an OFA is a contract, certain other statutory provisions may apply. These are that:

- a term in the contract that is unfair will not be enforceable by the Licensee (or AR)
- the financial services to be provided under the contract must be rendered with due care and skill.

Also, the law says that a person must not engage in dishonest conduct in relation to a financial product or a financial service. Committing to providing services to a client under an OFA when the Licensee or AR knows that it is unable to provide these services, is a breach of the law.

The law also prohibits a person from taking payment for financial services when there are reasonable grounds for believing the person will not be able to provide the financial services within a reasonable time.

The law prohibits a person from engaging in misleading and deceptive conduct or making false or misleading representations. Misrepresenting, in an FDS, what services have been provided under an OFA may contravene these provisions.

### **Financial Planning Association (FPA)**

The FPA's Code of Professional Practice applies to:

- FPA members;
- licensees which have pledged their commitment as FPA Professional Partners, and to uphold the Code;
- FPA Professional Practices.

These people and entities are contractually bound to comply with the Code, by virtue of their relationship with the FPA. The Code includes requirements for entering into client engagements. These include OFAs.

A licensee or AR may opt to comply with the FPA Professional Ongoing Fees Code. Compliance with this Code relieves the licensee or AR from having to comply with various statutory requirements applicable to OFAs, provided they meet the requirements set out in the Code.

### **Accounting Professional and Ethical Standards Board**

Advisers who are also accountants are subject to the requirements of:

- APES 230 Financial Planning Services;
- APES 305 Terms of Engagement.

These are both prepared and issued by the Accounting Professional and Ethical Standards Board Limited.

## WHAT IS THE LICENSEE'S APPROACH?

This policy is drafted on the basis that either the Licensee itself or its CAR may enter into an OFA.

The way in which this policy is drafted reflects the Licensee's expectation that an individual AR may not enter into an OFA. Only the employer of an individual AR may be a party to an OFA. The Licensee's individual ARs are all employed by CARs of the Licensee.

### AR's

Where the Licensee's CAR enters into an OFA and receives fees under that OFA, the CAR is responsible for meeting the statutory requirements applicable specifically to OFAs. The CAR is also responsible for meeting any obligations which form part of a contract with the client.

The Licensee requires its CARs to follow this policy and use the associated tools as a way of helping the Licensee to meet its obligations to:

- do all things necessary to ensure that financial services are provided efficiently, honestly and fairly;
- take reasonable steps to ensure that its representatives comply with the financial services laws.

Given that the CAR is the party entering into a contract with the client as part of, or in the form of, an OFA, the Licensee accepts that the CAR should have some freedom to tailor the OFA Template and FDS Template to suit its own business. However, any changes to these standard tools must be approved by the Licensee before the CAR begins using the updated tools.

## PREPARING AN OFA DOCUMENT

The Licensee or CAR ensures that its advisers use the OFA Template to reflect the terms of an OFA.

This may be provided to the client in hard copy or electronically.

The Licensee or CAR ensures that the OFA document provided to a client:

- only includes services the Licensee or CAR will definitely provide ;
- states when or how often each service will be provided;
- does not include an offer of an annual review but, rather, includes an annual review itself.

Do not include services in the OFA which the Licensee or CAR may not provide. For example, it is not acceptable to say, "We may invite you to seminars from time to time."

When it comes to setting out fees in the OFA document, the Licensee or CAR ensures that:

- the benefit the client receives from the services is commensurate with the fees charged by the Licensee or the CAR for the services provided.
- fees are expressed as a fixed dollar amount or as a percentage of funds under advice.
- the OFA document specifies whether or not the fees will be paid by an investment entity (such as a platform provider) from an account held for or on behalf of the client.

## ENTERING INTO THE OFA

Where a licensee or AR becomes responsible for statutory obligations under an OFA by virtue of an assignment from another licensee or AR, refer to the heading "Assigning or acquiring rights under OFAs".

Otherwise, the process for entering into an OFA with a client is:

1. Provide the client with personal advice via an SOA. As part of this process, assess whether it is in the client's best interests to enter into an OFA with the Licensee or CAR.
2. If it is not in the client's best interests, do not recommend it.
3. If it is in the client's best interests:
  - a) recommend it in the SOA;
  - b) populate the OFA Template with the client's details;
  - c) enter the proposed start date for the OFA in the OFA Template;
  - d) ensure that the services described in the OFA document are services the Licensee or CAR can actually provide at the times set out in the OFA document;
  - e) attach the OFA document to the SOA (and, if applicable, a written consent to deduct advice fees from the client's account under the OFA) for consideration by the client.

Make sure you know who is the appropriate client party to enter into the OFA. For example, it might be:

- an individual;
- a married couple;
- The corporate trustee of an SMSF.

1. If the clients sign and return the OFA document, record the date on which you received the OFA document with the appropriate client signatures. Record the date on which you received the signed OFA document from the client as the date on which the OFA was entered into (which will be the anniversary day), regardless of when the OFA document states you will begin providing services or charging fees under the OFA. (The OFA Template is drafted in a way which supports this approach.)

## PREPARING AN FDS

The Licensee uses, and requires its CARs to use, the FDS Template as the basis of its FDS for each client under an OFA.

The FDS Template is designed to assist the Licensee and its CARs to ensure that the FDS meets the following requirements. However, the Licensee also requires each adviser to ensure that the FDS they are providing to their client meets the following requirements.

The FDS must relate to a period of 12 months that ends on the client's anniversary day, and the upcoming period of 12 months immediately following the client's anniversary day.

The FDS must contain:

- In relation to the previous 12-month period:
  - the amount of each fee paid under the OFA ;
  - information about the services the client was entitled to receive under the OFA ;
  - information about the services the client actually received under the OFA .
- In relation to the upcoming 12-month period:
  - the amount of each fee that will be payable under the OFA, or a reasonable estimate of any fee payable that cannot be determined at the time of preparing the FDS, together with an explanation of how the estimate was calculated;
  - information about the services the client is entitled to receive under the OFA.

- A statement that the client may renew the arrangement by giving the Licensee or CAR notice in writing of the election.
- A statement that the arrangement will terminate, and no further advice will be provided or fee charged under it, if the client does not elect to renew the arrangement. A statement that the client will be taken to have elected not to renew the arrangement if the client does not give the current fee recipient notice in writing of an election to renew before the end of the renewal period.
- A statement that the renewal period is a period of 120 days beginning on the anniversary day.

A commission paid by a third party to the Licensee or CAR should only be paid and included in the FDS if it is paid “with the clear consent of, or at the direction of, the client.” Disclosure of the commission in an SOA is not sufficient to indicate that it has been paid “with the clear consent of, or at the direction of, the client.”

Where the Licensee or CAR receives commissions in respect of a client, and these are not disclosed in the FDS, the FDS must be worded in a way which does not suggest that the fees disclosed in the FDS are the only payments received by the Licensee or CAR.

The FDS must clearly distinguish between the services actually provided and the services the client was entitled to receive.

The FDS does not need to contain:

- any fee charged by a product issuer to the client in respect of a product it has issued to the client, where the fee relates to the administration, management or operation of the financial product
- a fee charged by a superannuation trustee to a member of a regulated superannuation fund in respect of the cost of financial product advice (where the law allows the trustee to pass on this cost).

However, an FDS provided to an SMSF in this circumstance must still disclose the fee charged by the adviser to the fund, even if this cost is passed on to an individual member.

Where the Licensee or CAR has been assigned the rights under the OFA, the FDS must include all the required content outlined above to the extent it applies to the relevant 12-month period, even if some of that 12-month period relates to fees and services of the previous entity.

The FDS must be consumer-friendly, concise and easy to read.

## **PROVIDING AN FDS**

### **Usual process**

For each OFA client, the Licensee or CAR provides an FDS to the client before the end of a period of 60 days beginning on the client’s anniversary day.

### **Process after assignment**

Where the Licensee or CAR has been assigned rights under an OFA by another entity, the Licensee or CAR must immediately obtain records from the previous entity confirming:

- the anniversary day applicable to each client;

- information about the services already provided to the client by the assignor since the most recent anniversary day, and any other information necessary to complete the FDS;
- if relevant, confirm and obtain the client's consent to deduct fees from their account.

The Licensee or CAR must then provide the FDS in accordance with its usual protocol for OFA clients as set out under the heading "Usual process".

### **How does renewal work?**

Renewal of the OFA is sometimes referred to in the industry as "opt-in".

The law requires annual renewal of OFAs. The renewal period for an OFA is a period of 120 days beginning on the anniversary day.

If the client notifies the Licensee (or AR) in writing within the renewal period that they wish to renew the OFA, then the OFA continues.

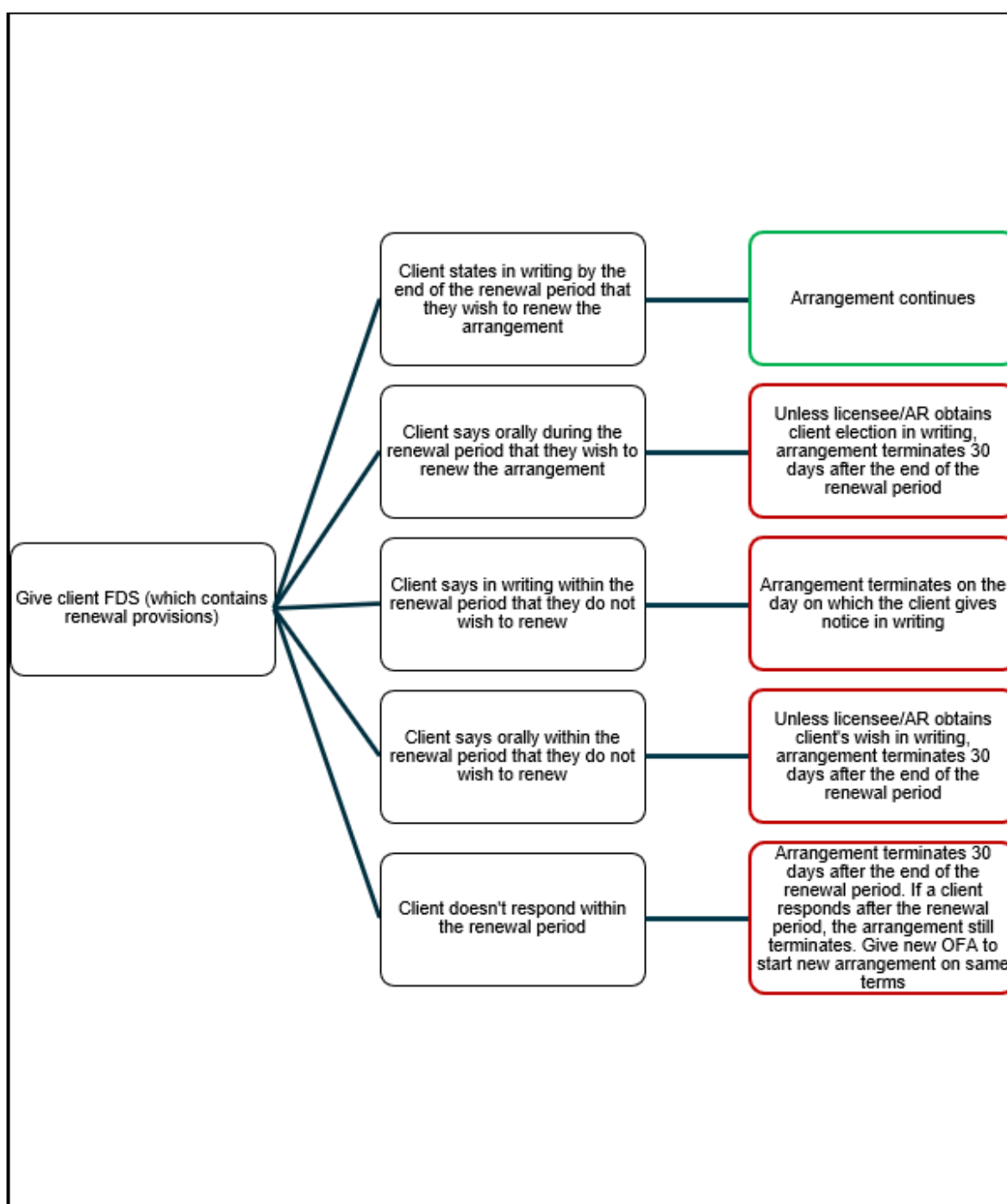
If the client notifies the Licensee (or AR) in writing within the renewal period that they do not wish to renew the OFA, then the OFA terminates within a further 30 days after the end of the renewal period.

If the client does not notify the Licensee (or AR) in writing within the renewal period that the client wishes to renew the OFA, then the OFA terminates within a further 30 days after the end of the renewal period.

Your clients may renew an ongoing fee arrangement electronically, so long as it is done in writing. For example, the client may:

- reply to you via email or SMS confirming that they wish to renew their ongoing fee arrangement, or
- click a check box on a webpage in response to a statement such as: 'By ticking the box, you elect to renew the ongoing fee arrangement'.





Despite all the possible responses of the client outlined above, if a client states at any time (whether orally or in writing) that they wish to terminate the OFA, the OFA terminates at the time nominated by the client – whether this is immediately or at a future time.

## HOW DOES CONSENT WORK?

### Obtaining and renewing consent

The law requires a fee recipient to obtain written consent before they can deduct fees, or arrange for fees to be deducted, under an ongoing fee arrangement from a client's account. This consent expires after 150 days from the day of the anniversary day, and must be renewed for each year of the arrangement.

If payment is being debited from a credit card or a 'basic deposit product', such as a bank account, consent is not required.

If the account provider is separate from the fee recipient, for example, a platform provider, a copy of the client's consent must be provided to the third party prior to, or as part of, arranging for the fees to be deducted from that account.

If the account is held jointly, you must obtain written consent for each account holder.

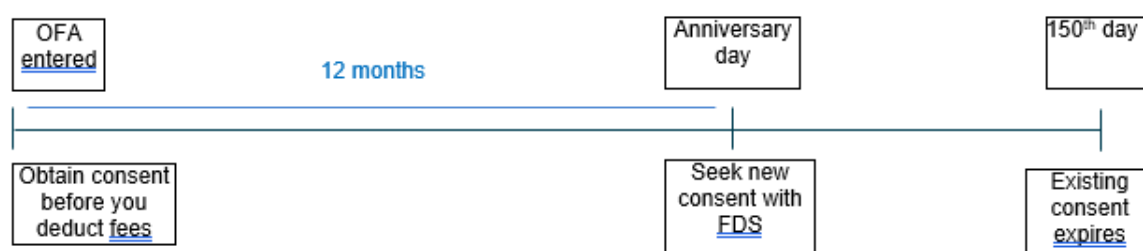
### When consent is withdrawn or expires

If a client withdraws or varies their consent, within 10 business days you must:

- give written confirmation to the client that notice was received; and
- if the consent was provided to a third party, give the account provider a copy of the notice.

If the consent expires, you must give written notice to the account provider that the consent has expired within 10 business days of the expiry.

If you receive a fee when consent has not been provided, or after consent has expired or been withdrawn, you must repay the amount received within 10 business days.



## WHAT HAPPENS WHEN AN OFA TERMINATES?

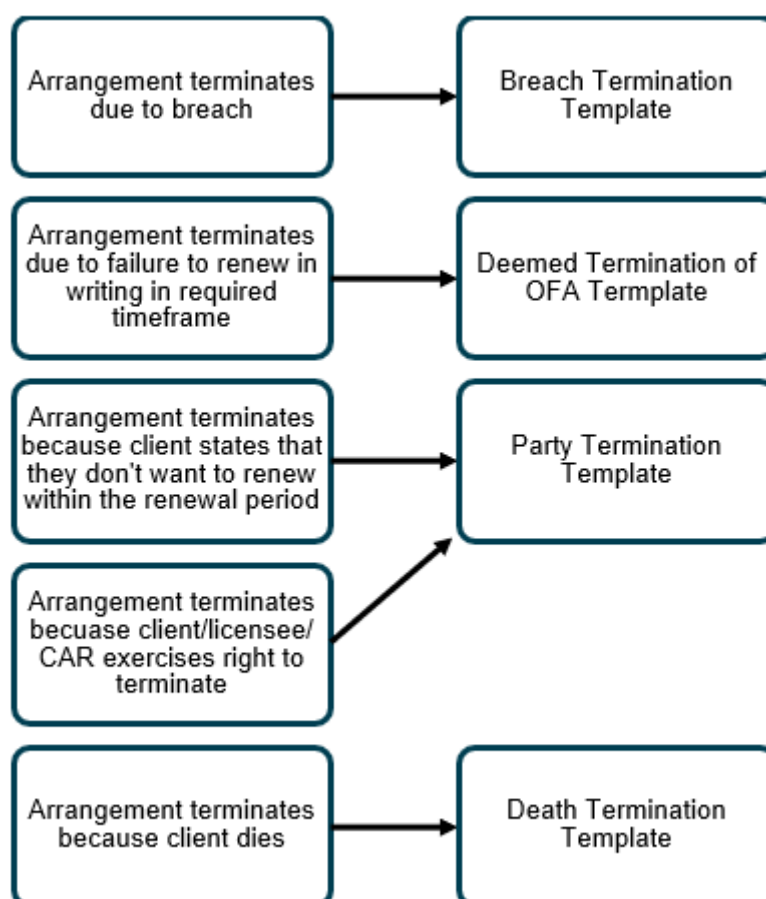
An OFA may terminate:

- automatically, pursuant to statutory provisions relating to breaches of FDS and consent provisions ;
- due to the client's actions or lack of actions after being given an FDS ;
- because the client exercises their right to terminate the OFA ;
- because the Licensee (or CAR) exercises a right to terminate, to which it is entitled under the terms of the OFA ;
- because the Licensee or CAR and the client agree to terminate ;

- because the Licensee or CAR becomes aware that the client has died.

Once an OFA terminates, the Licensee (or CAR) must immediately cease charging fees to the client under the OFA. The Licensee or CAR is also relieved of having to provide any services under the OFA which are contingent on the fee being paid.

The Licensee or CAR will confirm the termination of an OFA via an email using one of four different tools according to the diagram below.



### Termination due to a breach

Where termination occurs pursuant to a breach, it is the responsibility of the Compliance Manager to ensure that the fees are switched off immediately.

The new OFA should be entered into following the process set out under heading “Entering into the OFA” above, but excluding the provision of personal advice and the provision of the SOA.

If the client signs and returns the OFA document, then the Licensee or CAR may resume charging fees from the time it receives the new signed OFA document.

### Termination for other reasons

When termination occurs due to one of the last five bullet points above, it is the responsibility of the adviser responsible for servicing the relevant client to ensure that the fees are switched off immediately.

The new OFA should be entered into following the process set out under heading “Entering into the OFA” above, but excluding the provision of personal advice and the provision of the SOA.

If the client signs and returns the OFA, then the Licensee or CAR may resume charging fees from the time it receives the signed OFA document.

## **CHARGING FEES**

The Licensee or CAR will not deduct fees, or arrange for fees to be deducted, from a client account without the client providing their express written consent for that to occur.

The Licensee or CAR ensures that no fees are charged to a client once it becomes aware that the OFA with the client has terminated (whether for reason of breach or another reason).

The Licensee or CAR’s systems for charging fees to clients enable the Licensee or CAR to cease charging fees to a client immediately upon the Licensee or CAR identifying that the OFA has terminated.

Where fees are charged by a third party investment entity deducting fees from the client’s account, the Licensee or CAR’s systems and the third party’s systems, as well as the communications framework between them, allow for fees to be switched off immediately upon the Licensee or CAR identifying that the OFA has terminated.

See “What happens when an OFA terminates?” and “What happens when we stuff up?” for more information about the requirements to switch off fees.

When charging fees to the trustee of an SMSF (whether under an OFA or otherwise), the Licensee or CAR will take into account the trustee’s obligation to comply with the sole purpose test.

## **SCHEDULING AND RESOURCING**

The Licensee (or CAR) may use an IT solution to achieve this.

Each time the Licensee or CAR enters into a new OFA with a client, it ensures that the commitments under that OFA are entered into the plan described above.

If the Licensee or CAR has been assigned the rights under OFAs by another entity (such as through the purchase of a business or a book of clients), then it must ensure that the commitments under those OFAs are entered into the plan described above. Refer to “Assigning or acquiring rights under OFAs”.

This plan (or a summary of it, prepared by the Compliance Manager) is reviewed at each quarterly compliance committee meeting. OFAs and the plan (or summary of it) appear as standing agenda items on the agenda for each quarterly compliance committee meeting.

If the Licensee’s or CAR’s assessment of resources for OFAs reveals that the Licensee or CAR has inadequate resources to provide the services under all OFAs, it will implement measures to address this, including:

- appointing more staff (such as administrative staff or advisers);
- upskilling existing staff;
- making use of outsourced services such as paraplanning;
- terminating some OFAs and, for those clients, moving to a “pay as you go” advice model;
- terminating some OFAs and referring those clients to another financial advice business;
- assigning the rights under some OFAs to another licensee or CAR (which will make the new licensee or AR responsible for meeting OFA obligations under the statutory regime);

When an adviser leaves the Licensee or CAR, the Licensee or CAR will ensure that the clients who were receiving services from that adviser under OFAs are allocated another adviser who will take over providing services under each OFA as soon as the old adviser finishes.

The Licensee or CAR, when assessing OFA resources, has regard to the policies and procedures of the Licensee in relation to adequacy of human resources.

## MONITORING

The Licensee’s file audit process includes assessment of whether the adviser is ensuring that the Licensee or CAR (as applicable) is meeting its obligations under any of the OFAs in place for each file being reviewed. This assessment will consider whether the file indicates that the Licensee or CAR has met:

- specific statutory requirements applicable to the OFA in relation to FDSs, consent, termination and fees;
- its obligations to provide services under the OFA.

### **What if the services cannot be provided because the client does not cooperate?**

The Licensee or CAR will make reasonable attempts to provide each service under each OFA.

From time to time, it may not be possible to provide a service under an OFA because the client is not cooperating to the extent necessary for that to occur. For example, the client may:

- not respond to emails or telephone calls attempting to schedule an annual review meeting;
- fail to provide information necessary for the relevant adviser to conduct the annual review in a way which meets the best interests duty;
- state that they do not wish to have their annual review.

In these circumstances, the Licensee or CAR will:

- refund the proportion of the client’s fees paid to date which are attributable to the service which it is not possible to provide;
- refrain from charging the next fee under the OFA until the Licensee or CAR has communicated with the client;
- ask the client whether they wish to terminate the OFA;
- where the client is not contactable at all, terminate the OFA.

## WHAT HAPPENS WHEN WE STUFF UP?

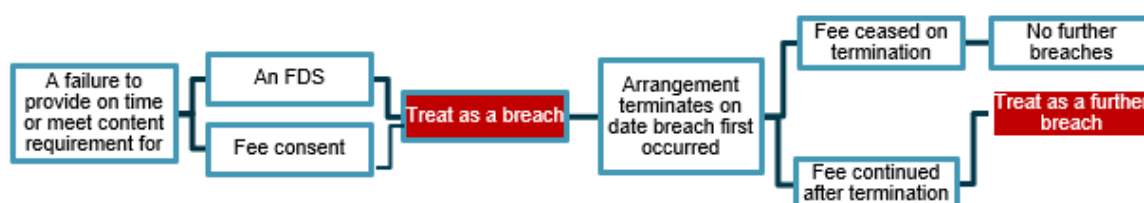
The Licensee requires any representative who becomes aware that the requirements of this policy have not been met, to report the incident to the Compliance Manager.

This is important as it allows the Licensee to meet obligations for it or its AR to stop charging fees to the client when particular statutory provisions are breached. In other words, a representative reporting an incident to the Compliance Manager can help prevent the Licensee or AR from committing further breaches of the law.

The Compliance Manager will:

- determine whether the incident amounts to a breach of a statutory provision which triggers automatic termination of an OFA;
- where the incident amounts to a breach of a statutory provision which triggers automatic termination of an OFA, immediately stop the Licensee or CAR from charging fees under the OFA ;
- follow the Licensee’s standard procedure for handling incidents and breaches

To assist with incident and breach handling, the Compliance Manager follows the flowchart set out below.



The Compliance Manager may also consider the information under “How does the law apply to our business?”

As part of this process, the Compliance Manager should also consider:

- whether the client is really a retail client;
- whether the legislative timeframes have really been breached.

If the client meets a wholesale client eligibility test then the statutory requirements applicable to OFAs do not apply - unless the client was required to be treated as a retail client for particular types of advice (such as in relation to superannuation or general insurance products or had previously been treated as a retail client for a product or service) in which case the requirements do apply.

This might mean that the incident in question does not amount to a breach of the financial services laws. However, the Compliance Manager will then need to determine:

- depending on the nature of the incident, what remedial action (if any) is necessary to ensure that the Licensee meets its obligation to do all things necessary to provide financial services efficiently, honestly and fairly;
- whether to treat the client as retail or wholesale going forward.

If a client pays a fee after failure of the Licensee or CAR to comply with the FDS requirements, this does not change the fact that the OFA is automatically terminated. It also does not, of itself, mean that a new OFA has commenced – although, from a legal perspective, payment of a fee together with other indicators that the client wants to enter into a new OFA may give rise to a new OFA.

It is a contravention of the law for the Licensee or CAR to charge a fee to a client under an OFA after the OFA terminates. If, despite not being charged a fee after termination, a client nevertheless pays a fee or fees after termination, the Licensee or CAR will refund that fee or fees.

To accommodate the possibility that the client wishes to continue an OFA with the Licensee or CAR despite the breaches, the Compliance Manager will follow the process outlined under “Automatic Termination” above.

## ASSIGNING OR ACQUIRING RIGHTS UNDER OFA’s

A CAR of the Licensee will neither assign its rights under OFAs nor acquire rights under an OFA from another entity without first obtaining the consent of the Licensee.

Before providing consent to a CAR to assign its rights under OFAs or itself assigning its rights under OFAs, the Licensee will obtain legal advice which addresses, among other things, the liability of the Licensee under those OFAs once the rights under them are assigned.

Before providing consent to a CAR to acquire rights under OFAs from another entity (which act will cause the statutory obligations under the OFA to rest with the CAR) or itself acquiring such rights (which will cause the statutory obligations under the OFA to rest with the Licensee), the Licensee will:

- obtain legal advice in relation to the acquisition which addresses, among other things, the Licensee’s liability for any problems which might arise from the time before the Licensee or its CAR takes over the rights under the OFAs;
- conduct due diligence (and document this) in relation to the OFAs and the clients who are party to them, including assessing:
  - how the Licensee or CAR would manage the FDS and fee consent obligations applicable to the clients;
  - the extent of resources required to:
  - provide the services under the new OFAs ;
  - meet compliance requirements in relation to the new OFAs;
  - how easy it would be for the Licensee or CAR to plan scheduling and resourcing and monitor compliance and service provision given the format of the new OFA documents.

If the Licensee or CAR is acquiring under a new set of OFAs through an assignment, then before the assignment comes into effect, the Licensee or CAR will set up and document a project for transitioning the new OFAs and associated clients across to its business, including updating the plan required under “Scheduling and resourcing” above.

## WHAT RECORD KEEPING OBLIGATIONS DO WE HAVE?

The Licensee will ensure that records are kept as follows.



| Record                    | Length of time            |
|---------------------------|---------------------------|
| Copy of each OFA document | Indefinitely <sup>i</sup> |

|  |   |
|--|---|
| Copy of each FDS   | Six years from date FDS given <sup>ii</sup>                                   |
| Copy of each consent   | Six years from date consent given <sup>iii</sup>                              |
| Records relating to personal advice given under OFA, including copies of SOAs, ROAs and information demonstrating that best interests obligations were met | Seven years from the date the advice was provided to the client <sup>iv</sup> |
| Correspondence from client and/or file notes of conversations in which client indicates whether they wish to renew, not to renew, or to terminate OFA      | Indefinitely <sup>v</sup>   |
| Emails confirming termination  | Indefinitely <sup>vi</sup>  |
| Scheduling and resourcing plan and (if applicable) the summary of this   | Six years from date document was last updated <sup>vii</sup>                  |
| Record of what OFA services have been provided to each client and whether the Licensee or CAR is on track to meet OFA obligations for that client          | Six years from date record last updated <sup>viii</sup>                       |
| Quarterly assessment of OFAs terminated and fees switched off  | Six years from date record last updated <sup>ix</sup>                         |
| Due diligence documentation  | Six years from date document was last updated <sup>x</sup>                    |
| Project for transitioning new OFAs   | Six years from date document was last updated <sup>xi</sup>                   |



## REFERENCES

### Related policies and tools

|  |  |
|--|--|
|  <b>Key Policies</b>                | Breach Reporting, Risk Management.   |
|  <b>Tools (including templates)</b> | Compliance Diary & Checklist, Breach Termination Template, Death Termination Template, Deemed Termination of OFA Template, FDS Template, OFA Template, Party Termination Template. |

### Regulatory and legal references

|                                |  |
|--------------------------------|--|
| <b>Legislation</b>             | <i>Corporations Act 2001</i> – Chapter 7; <i>ASIC Act 2001</i>   |
| <b>Regulations</b>             | Corporations Regulations 2001 – Chapter 7  |
| <b>Legislative Instruments</b> | ASIC Corporations (Ongoing Fees Code) Instrument 2016/1129; FASEA Code of Ethics; ASIC Corporations (Consent to Deductions—Ongoing Fee Arrangements) Instrument 2021/124   |
| <b>Regulatory guidance</b>     | ASIC’s RG 104, RG 245, ASIC INFO 232, ASIC Report 499  |
| <b>Other</b>                   | <p>FPA Professional Ongoing Fees Code</p> <p>FPA Code of Professional Practice</p> <p>Final Report – Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry</p> <p>Interim Report – Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry</p> <p>APES 230 Financial Planning Services</p> |

<sup>i</sup> This allows for the fact that a client could bring action based on advice given under the OFA for six years after a cause of action arises (for example, the client suffers an investment loss as a result of following the advice given).

<sup>ii</sup> Actions for contravention of the Act can generally be made within six years of the date of the contravention.

<sup>iii</sup> Actions for contravention of the Act can generally be made within six years of the date of the contravention.

<sup>iv</sup> ASIC Class Order [CO 14/923] and the licence conditions.

<sup>v</sup> This allows for the fact that a client could bring action based on advice given under the OFA for six years after a cause of action arises (for example, the client suffers an investment loss as a result of following the advice given). It will be important to be able to establish when the OFA ceased.

<sup>vi</sup> This allows for the fact that a client could bring action based on advice given under the OFA for six years after a cause of action arises (for example, the client suffers an investment loss as a result of following the advice given). It will be important to be able to establish when the OFA ceased.

<sup>vii</sup> Actions for contravention of the Act can generally be made within six years of the date of the contravention.

<sup>viii</sup> Actions for contravention of the Act can generally be made within six years of the date of the contravention.

<sup>ix</sup> Actions for contravention of the Act can generally be made within six years of the date of the contravention.

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