# Business planning: Answer section

## For barristers or solicitors intending to start a new firm/practice

This section will help you to start the process of planning to establish your new practice. Your business plan will also in due course be a key document to support your application to practise on own account.

Do as much as you can, having read chapter 1 and reviewed the example Business Plans above. The guidance is not intended to be exhaustive. Ultimately, it is up to you to decide what to include and what business plan structure/template to use.

A note on other useful resources:

Some banks offer guidance to business start-ups on their websites. NZLS also provides guidance on Starting a new law firm;[[1]](#footnote-2) this link includes a helpful Ministry of Business Innovation and Employment business plan template. (For more on the practise on own account application process, including NZLS guidance on what your business plan should include and the questions NZLS might ask, go to Applying to practise on own account).[[2]](#footnote-3)

Initial planning: summarise the issues under the following (and any other) aspects of the firm/practice.

1. Strategic
2. Marketing
3. People
4. Finances
5. Administration
6. File management
7. Risk management
8. Trust account management
9. Succession
10. What are the four or five most critical issues for the firm/practice?
11. What policies should be put in place to deal with those issues?
12. What specific, coherent actions will the firm/practice take to deal with these issues?
13. What are the four or five most important things that the firm/practice will *not* do?

## For those intending to practise in an existing firm

1. What strengths/weaknesses do you see in your firm’s business plan?
2. What changes would you suggest to your future partners?
3. Make a note of any additional comments you have on this plan.

## For all candidates

## Scenario – a partnership in a large provincial centre

### Consider

1. What’s going on? What are the four or five most important issues for the firm?
2. What policies should be put in place to deal with those issues?
3. What specific coherent actions do you think the firm should take to implement those policies?
4. What are the most important things that the partners should agree that it will not do?

# Marketing: Answer section

## General

1. What are the benefits of a proactive marketing approach?
2. How much time and money is recommended you spend on your marketing strategy?
3. What is the key difference between marketing and business development?
4. What is cross-selling?
5. What is the key attribute required when engaging with clients?
6. Why are existing clients so important when planning your marketing strategy?
7. What is a common obstacle to cross-selling in-house and how you might overcome it?
8. Why is obtaining client testimonials so important?

## Model answers

### General

1. What are the benefits of a proactive marketing approach?

A proactive marketing approach will ensure you focus your time and money on initiatives that align with your business strategy.

1. How much time and money is recommended you spend on your marketing strategy?

There is no one rule, but generally firms/individuals will tend to spend 2-12% of gross fees and a guide of 10% of your professional time should be dedicated to marketing each month.

1. What is the key difference between marketing and business development?

Marketing refers to the activities used to promote the buying or selling of a product, service or good.

Business development involves activities designed to facilitate growth.

1. What is cross-selling?

Cross-selling is often a missed opportunity within firms. Cross-selling is introducing your client to additional services within your firm. The more touch points you have, the harder it is for the client to take their services to a competitor.

1. What is the key attribute required when engaging with clients?

Listening. Making the effort to really understand your clients’ needs, ie their business,
their world. The more questions you ask, the more likely you will be able to identify the real challenges your client faces.

1. Why are existing clients so important when planning your marketing strategy?

You still need to proactively engage with existing clients and maintaining regular contact should be a key part of your marketing plan. It’s not enough to secure the first transaction and stop proactive engagement. Working with existing clients is easier than targeting new ones. Existing clients know and understand the value you provide and can help to promote your services and become strong referrers. It is easier and cheaper to grow existing clients than securing new clients.

1. What is a common obstacle to cross-selling in-house and how you might overcome it?

Fear is a common obstacle. Fear of losing the client due to poor service provided by a colleague or mismanagement of a matter or transaction. You can overcome this fear by creating rules of engagement. These rules of engagement can be published on your firm’s intranet or client database. Helping your colleagues to understand how your client likes to operate will go a long way to ensuring success.

1. Why is obtaining client testimonials so important?

Because is it an excellent way to demonstrate the quality of your services in an independent manner. Plus prospective clients will believe other users of your services much more readily than they will believe any claim you make about you/your firm.

# The people dimension: Answer section

# B. Motivating and retaining staff

1. What are David’s strengths and weaknesses?
2. What will happen to David if everyone keeps ignoring the problems he is having?
3. Assuming that you, as his supervising partner, decide to do something constructive, what are your options?
4. How would you go about achieving positive outcomes for David and for the firm?

# C. Delegating and Supervising

## What stops you from delegating?

### What are the factors that limit your use of delegation to build the skills of your team?

Tick the box that best describes your point of view.

1. **Factors related to the firm’s culture/management systems**
* There is low incentive to build skill in others – it isn’t worth investing the training time for successful delegation.
* There is too much pressure on personal fee budgets (I’m rewarded for my individual billable hours, not for what I delegate or supervise).
* We don’t measure profit on matters, so there is low incentive to reduce the cost of getting the work done.
* We haven’t hired the right people to delegate to and I don’t have confidence in them.
* We don’t have enough junior or intermediate staff to delegate to.
1. **Factors related to personal belief systems and self-management**
* I believe that it takes longer to explain something than to do the job myself.
* The risk of handing over the work is too great – I think the quality of the result won’t be acceptable and mistakes can be expensive.
* I believe that what I do can’t be systematised and this makes it difficult to instruct someone else.
* I don’t have time to delegate and supervise – I’m always too busy myself.
* I don’t enjoy training and developing others.
* I worry about losing the client relationship, so I prefer to do it all myself.
* I don’t like the other things I might have to do when I delegate client work.
* It is threatening to my ego, status and compensation if I prove legal staff can do my work.
* I have less fun supervising than doing.

# D. Managing performance

## What goes wrong with performance reviews?

### The system

A lack of clear job or performance expectations – ie benchmarks to measure against.

Lack of objective data so that the review is based on subjective opinions.

Inconsistency – “easy” reviewers and “hard” reviewers.

|  |
| --- |
| How can you minimise these problems or avoid them altogether? |

### The reviewer

Manager’s lack of competence or confidence in the face-to-face review.

Manager bias/favouritism – especially with staff who are also “friends” (halos/horns).

Inability of managers to cope with denial (disagreement, anger, tears, resistance).

Procrastination – reviews not being done on time.

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| --- |
| How can you minimise these problems or avoid them altogether? |

### The staff member

Team members who do not want to take any responsibility in the review process – they want to be recipients rather than participants.

Inability of staff to deal with any negative feedback. Unhelpful reactions.

Cynicism from staff because the system is paid lip service.

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| --- |
| How can you minimise these problems or avoid them altogether? |

# E. managing time and stress

## Planning puts you in control

### Plan your day; plan your priorities

Rate yourself out of 5: 1 is low agreement and 5 is high agreement.

|  |  |
| --- | --- |
| 0B0BDo you do these things? | 1B1B1 – 5 |
| 1. Before you leave work at the end of the day, make a list of the jobs that have priority for the following day. This means you can begin work immediately and complete things according to their importance. A and B priorities should not be put off.
 |  |
| 1. Let your secretary and delegatees know when you don’t want to be interrupted. It’s OK to close your door for periods of the day, especially during your best concentration times.
 |  |
| 1. Schedule client meetings, phone calls or responding to emails in blocks of time so that your concentration is not continually interrupted.
 |  |
| 1. Allow yourself some thinking time. Sometimes getting away from the computer and re-organising your thoughts can get you back on track when you are stuck, spending too much time on a job, or feeling overwhelmed.
 |  |
| 1. Re-energise when you need to. (Know what works for you.)
 |  |
| 1. Give yourself a small reward when you have achieved a goal that you set for the day (eg a short break, a walk, a re-energiser, a coffee).
 |  |
| 1. Don’t keep putting off the hard jobs but just make a start. Break the project up into achievable “bites”. By doing something on the file, you find that you get involved in it.
2. OR you talk with a colleague before you begin and get a plan of action.
 |  |
| 1. Utilise the help that is available and don‘t do things that someone else could do more efficiently.
 |  |
| 1. Aim to get things right first time because you know that re-work is time-consuming and de-motivating.
 |  |

Comment on what changes you believe you should make to your time management.

## Identify strategies you can use for managing stress

|  |  |  |
| --- | --- | --- |
|  | **SHORT TERM/IMMEDIATE****(Can do now)** | **LONG TERM****(Need to learn, develop, make commitment to)** |
| **Physical health and symptoms strategies** |  |  |
| **Cognitive strategies****(thinking patterns, belief systems)** |  |  |
| **Work relationships/team/interpersonal strategies** |  |  |

# managing the business: Answer section

Notes:

# Financial management: Answer section

## Taxation

1. Consider each of the following taxes and levies in relation to legal practice. In the spaces provided describe in broad terms the basis of calculation of the tax or levy and the timing of payment.

|  |
| --- |
| a. GST |
| b. ACC levies |
| c. Resident withholding tax |
| d. Non-resident withholding tax |
| e. PAYE |

1. In relation to the payment of income tax by way of the provisional tax payment scheme:

|  |
| --- |
| a. What is the difference between the payment of income tax under this scheme and payment by PAYE? |
| b. How do you calculate the amount of each provisional tax payment? |
| c. What are the dates for provisional tax payments? |
| d. What is “Use of money interest” and when is it payable? |
| e. What are the relevant prescribed interest rates?  |

## Cost of Production answer sheet

1. Open the cost of production spreadsheet and enter the raw data from the sample firm.
2. Once completed, save a copy of the completed spreadsheet and include it in your submitted pre-course work.

Having entered the raw data, the results of the firm are displayed under the following headings:



*Charge Rate* is the hourly rate each solicitor must charge for the chargeable hours they generate in order for the firm to reach its profit targets. This should be used as a guide only, so if you are able to charge more, then do so. There is a link between the hourly rate and the chargeable hours in that if your hours are high, the rates will calculate as being low and vice versa.

The green highlighted *Cost of Production* shows the hourly cost of each of the
fee-earners in the firm. This is the rate at which they cannot charge below if they are to be contributing to the profit of the firm.

This cost of production figure applies even for fixed fee work as it applies to the time taken to complete a matter, not how you charge for the matter. For example, say Susan spent three hours on a matter with a fixed fee of $1,300, her cost of production would be 3 x $278 = $834. The total profit on the matter $466. If she had underquoted the matter and spent 5 hours on the matter the cost of production would be 5 x $278 = $1,390 and she would be losing $90.

The *Profit Budget* shows the fees each fee-earner has to generate in order for the firm to meet its budget

The *Breakeven Budget* shows the fees each fee-earner has to generate in order for the firm to break even.

1. Of all the fee-earners, who has the *highest* margin (the difference between their cost of production and their charge rate)?

1. Of all the fee-earners, who has the *lowest* margin (the difference between their cost of production and their charge rate)?

1. In the property team, the conveyancing fee for a standard sale of a residential property is $1,200. The time taken to complete the conveyance for each fee-earner is:

Susan: 1.5 hours

Andrew: 1.0 hour

Ingrid: 3.0 hours

What is the total cost of providing the conveyance?

What is the profit from the conveyance?

# Professional conduct and client care: answer section

## Study problem 1

1. Were there any conflicts of interest?

Assuming there were:

1. Who is/are the conflict(s) between?
2. When did the conflict(s) arise?
3. What would the prudent course of action have been at the relevant time(s)?
4. Is/are the conflict(s) “curable”, and if so how?
5. Are there any other professional breaches?

## Study problem 2

1. Has Alfie breached any rules?
2. How might the complaint have been avoided?
3. What steps would you advise Alfie to take now?

## Study problem 3

1. What are the professional issues arising from this scenario?
2. Identify the relevant professional rules.
3. Does any or all of this situation require a report to the NZLS?
4. What might have prevented this situation arising in the first place?

## Study problem 4

Consider Terry’s conduct of the case and:

1. Whether and in what way Terry should have acted differently.
2. What professional obligations have been breached, and to whom they were owed.

# Managing clients’ instructions: Answer section

## Hi Tech Limited

What steps would you have taken on receiving Alfred Grigg’s letter?

# RISK MANAGEMENT: answer section

## Workshop preparation 1

For the purposes of assessment you need to do the minimum as follows:

Add at least three specific risks to the list that are, or could become, relevant to you in the context of your intention to practise on your own account or in a firm.

From the list and your additions, identify three high risks and three low risks for your practice, whether due to the likelihood or consequence of the risk occurring.

|  |  |
| --- | --- |
| Risk list (Illustrative not exhaustive of the risks in legal practice)To what extent are you or will you be at risk that: ...:  | Priority: HighMediumLow |
| Success of practice strategy or business plan is too exposed to, or dependent on, one client, practice area or person |  |
| Sustaining a general practice strategy is beyond the scope of practice capability and puts clients at risk  |  |
| Practice strategy or arrangements fail to take adequate account of the potential impacts of competition, trends, disruptions and innovations in the market for legal services  |  |
| Marketing and business development activities are misdirected or fail to produce a demonstrable return on investment or time spent |  |
| Pricing or costs structure impacts adversely on competitiveness and/or profitability (ie services overpriced or underpriced, paying too much or too little for resources)  |  |
| Practice experiences cash flow problems whether due to misjudgment of need for working capital, burning through cash too quickly, unexpected expenses, lack of financial controls or billing and collection problems  |  |
| Profitability is eroded by inefficiency due to poorly designed systems, or time or rework that cannot be charged to the client |  |
| Practice is not a desirable employer, has trouble recruiting and retaining staff or makes poor hiring decisions that cost the practice money or put clients at risk  |  |
| Quality of work and performance of the practice is undermined by workplace culture, conflict, lack of staff engagement, or poor wellbeing  |  |
| Technology is misaligned to practice strategy, needs and user capability |  |
| Practice is not sufficiently resilient and lacks adequate capability or contingency plans to recover quickly from business interruptions or disasters  |  |
| Supply chain has weak links, suppliers of goods and services are unreliable or create practice risks  |  |
| Uninsured losses cause harm to the practice  |  |
| Practice suffers a compliance breach, standards complaint or negligence claim that could have been prevented easily with better controls or safeguards  |  |
| Practice suffers reputational damage arising from adverse publicity due to taint by association with a disreputable client, or conduct of a rogue principal or employee or client with an unsatisfactory experience with the practice  |  |
| Practice has unnecessary or unacceptable risk exposure due to lack of a sufficiently robust approach to risk management, that is not doing enough to identify and “MEAT” priority risks (MEAT meaning Mitigate, Eliminate, Assume, Transfer)  |  |
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## Workshop preparation 2

In the space below write brief notes or jot bullet points about two of the following three questions:

What might you say to others such as a prospective client, underwriter or business partner, to demonstrate that you are a “good risk”? For example, describe your overall approach to managing risk and risk appetite, provide examples of controls and safeguards and how you monitor your risk performance.

If you were to join a firm, what questions you might ask as part of your due diligence to satisfy yourself that the firm is a good risk and takes risk management seriously?

What are the key “takeaways” for you from this topic? Is there anything in particular you have learned or that has made an impact on your thinking or made you resolve to take risk management seriously? Any topics you intend to learn more about or any questions you hope the workshop session will cover?

# Practising in a firm: Answer section

## Have you done your homework?

It is surprising the number of prospective partners who have failed to read, let alone understand, the document that will form the basis of their relationship with their partners (whether that be a Partnership Agreement or a Shareholders Agreement). This document sets the framework for:

a partner’s admission to the partnership;

their remuneration;

the possible termination of the partnership;

their relationship with the other partners; and

expected involvement in leadership and decision-making.

### A. If your firm has a Partnership/Shareholders Agreement:

1. What is the equity structure of the partnership?
2. What are the capital contributions required of partners? If there is a capital contribution, on what basis is it to be repaid?
3. What is the remuneration/profit distribution model?
4. On what basis does or can a partner increase their profit share, or advance to equity?
5. What is the governance structure of the firm?
6. On what basis may other partners terminate your partnership?
7. What are the notice requirements for termination?
8. What voting rights do partners have?

### B. If your firm does not have a Partnership/Shareholder Agreement:

Consider what you would expect to see in an agreement, using the questions on previous pages. Use your answers as the basis for preparing an *outline of your own agreement* below:

## 2. Scenario – a partnership in a large provincial centre

Q: Identify issues arising out of the case study that you would like to discuss in the workshop session.

**Questions about partnership to discuss with the invited local practitioners:**

# Practising alone: Answer section

## For solicitors only

### Workshop preparation

1. List those issues you think a new practitioner would have to address in order to survive the first three months.
2. Make a note of any question you would like to ask an experienced practitioner who practises alone or with one other partner.

## For barristers sole only

### Workshop preparation

1. List those issues you think a new barrister would have to address in order to survive the first three months.
2. List five questions you would like to ask or issues you would like to discuss with an experienced barrister.

# in-house practice

## Self-directed distance learning component

1. Optional reading for those who are interested in learning about the in-house practice types. Read chapter 11 of the book.

## Workshop preparation

1. There is no workshop preparation for this module.

# ANSWER SECTION: Trust account Observation report

**Name: Course dates:**

## Question set 1

 What is the size of the firm? Approximately the number of partners, solicitors, legal executives and support staff.

 What staff are involved in the trust accounting record keeping?

 Does the firm have a procedures manual in respect of the trust account and/or the general running of the office? If so, how is this maintained?

 Do they maintain manual or computerised records? Give details of either. Include the name of the software package. If manual, is the firm active in property law,
ie conveyancing?

## Question set 2

 Describe the procedures for raising and recording receipts in the trust account records.

 Describe and evaluate any separation of duties or responsibilities and the level of supervision (in receipting).

 Identify any deficiencies in the procedures and explain what changes you might suggest to make for improvement.

## Question set 3

 Describe the procedures for raising and authorising **payments**, with emphasis on electronic payments, ie who does what.

Describe what measures and checks are made to establish the validity of a payment and to ensure it goes to the correct payee.

Describe and evaluate any separation of duties or responsibilities and the level of supervision.

Identify any deficiencies in the procedures and explain what changes you might suggest to make for improvement.

## Question set 4

 Describe the procedures for raising and authorising journal entries.

 What checks are made to establish the validity of a journal entry?

 What controls operate to prevent or detect unauthorised journal entries?

 Could someone complete an inter client journal without a principal’s authority?

 When journals are between clients and payments are made that are not implicitly required does the firm always record a narration that records the client’s instructions or authority?

 Identify any deficiencies in the procedures and explain what changes you might suggest to make for improvement.

## Question set 5

Do the reconciliation workpapers include the following:

* Bank reconciliation/Control account summary
* Copy of month-end trust account bank statement
* Details of other reconciling items, eg unbanked receipts – *if applicable*
* List of ledger balances
* Bank reconciliation/Control account summary (IBD account)
* Copy of month-end trust account listing (IBD)
* Copy of month-end bank listing (IBD)
* Details of any controlled bank accounts and/or foreign currency accounts
* Stale balance report
* Journal transaction report for the month
* Firm’s interest in trust ledger for the month.

Are the reconciliations such that someone unfamiliar could understand them?

How often are the bank accounts reconciled?

 Who prepares the reconciliations?

 Who checks the reconciliations?

 Identify any deficiencies in the procedures and explain what changes you might suggest to make for improvement.

## Question set 6

 Does the firm have a firm’s interest in trust ledger (aka float or advance account) in the trust account? (If so, have a look at the entries for the last month and familiarise yourself with what they are.)

 What procedure does this firm have in the event that their firm’s interest in trust ledger/float account is overdrawn?

## Question set 7

 How are fees rendered and in particular paid from client funds held in the trust account?

When fees are taken by deduction, approximately what proportion are taken by explicit client authority and what proportion are taken by authority conferred in client care/terms of engagement?

If fees are taken by deduction pursuant to authority conferred in client care/terms of engagement, does the firm take any steps to bolster such authority, eg advise the client of the fee and their intention to deduct the fee before the fee is deducted?

 What procedures are in place to monitor and complete reporting to clients at least every 12 months for longstanding trust account balances as well as IBD ledger balances?

 Ask whether the firm is confident they are aware of and meeting their various obligations under the AML-CFT regime.

## Question set 8

 Do you consider the separation of duties and level of supervision relative to the size of the firm is adequate in respect of the trust account? (Give your reasons for your answer.)

## Question 9

 Does the firm have file closure or file review procedures?

 Ask the Trust Account Supervisor or one of the partners whether there are any controlled bank accounts in the practice. Controlled bank accounts are client’s bank accounts (not part of the trust account) that a lawyer (or staff member) can operate autonomously. Ask that person (Trust Account Supervisor or one of the Principals) *how they know that there are no undeclared controlled bank accounts in the practice*, ie that they are not aware of.

## Question set 10

 What controls are in place for computer access?

 What back-up and restore procedures are in place?

 What is the level of awareness of cybercrime risks – high, medium or low?

 Do you consider these to be adequate?

## Question set 11

 What review procedures does the trust account supervisor have at the month end before signing of the monthly certificate?

 Is there a month-end checklist in use?

## Question 12

 Overall what do you consider the main strengths are for this particular trust account? State your reasons.

## Question 13

 Overall what do you consider the main weaknesses and risks are for this particular trust account? State your reasons.

# trust accounting – CONTROLS and protections: Answer section

1. https://www.lawsociety.org.nz/professional-practice/practice-briefings/starting-a-new-law-firm/ [↑](#footnote-ref-2)
2. https://www.lawsociety.org.nz/professional-practice/legal-practice/practising-on-own-account-as-a-barrister-and-solicitor/application/ [↑](#footnote-ref-3)