



Decision Notice issued under Part 3 of Schedule 4 to the Legal Services Act 2007

The Master of Faculties' application for approval of amendments to its Notaries Practice Rules, Notaries (Conduct and Discipline) Rules and related documents

The Master of Faculties (MoF) has made an application under the Legal Services Act 2007 (the Act) to change its regulatory arrangements. The main changes relate to MoF's first-tier complaints handling and includes other changes relating to disciplinary matters.

The Legal Services Board (LSB) has approved MoF's amendments to its rules. This Decision Notice sets out the basis for the LSB's approval and the decision taken, including a brief description of the changes.

Introduction

1. The LSB is required by Part 3 of Schedule 4 of the Act to review and approve or reject alterations to the Regulatory Arrangements of the Approved Regulators.
2. The MoF is the Approved Regulator of the reserved legal activity of notarial activities, reserved instrument activities, probate and the administration of oaths. The MoF does not have a representative role. There are two representative bodies that authorised persons regulated by the MoF can be members of—namely, the Notaries Society and the Society of Scrivener Notaries (collectively, the Societies).
3. The MoF is responsible for complaints and disciplinary matters with regard to its authorised persons through a combination of rules that it makes and administers directly and through rules that are made and administered on its behalf by the Societies. This delegated arrangement is permitted under section 112(1)(b) of the Act.
4. When the MoF wishes to make a request for approval to the LSB for changes to its regulatory arrangement under Schedule 4 of Part 3 to the Act, it may therefore be proposing changes to its own directly made rules and/or changes to the Societies' rules.
5. Paragraph 25 of Schedule 4 explains that the LSB must approve a proposed change to the Regulatory Arrangements unless we are "...satisfied that..." the approval would fall within one or more of the criteria specified in sub paragraph 25(3) (and listed in the footnote below¹). If the LSB is not satisfied that one or

¹ The Board may refuse the application only if it is satisfied that—(a) granting the application would be prejudicial to the Regulatory Objectives, (b) granting the application would be contrary to any provision made by or by virtue of the Act or any other enactment or would result in any of the designation requirements ceasing to be satisfied in relation to the AR, (c)

more of the criteria are met, then it must approve the application in whole, or at least the parts of it that can be approved when only part of the application meets the criteria.

6. As provided for by paragraphs 20(1) and 23(3) of Schedule 4 to the Act, the LSB has made rules about how the application to alter the Regulatory Arrangements must be made including the contents of that application. The rules highlight the applicant's obligations under section 28 of the Act to have regard to the Better Regulation Principles. The rules also require that the applicant provides information about the nature and effect of each proposed change and of appropriate consultation undertaken. Sub paragraph 25(3)(f) requires that each proposed alteration has been made or is likely to be made in accordance with the procedures which apply in relation to making of the alteration. This includes the LSB's rules.
7. The LSB will approve Regulatory Arrangements in so far that they appear to achieve their intended outcome and satisfy the sub paragraph 25(3) criteria. Most notably there must be no adverse impact on the Regulatory Objectives overall and the alterations and the process by which they have been produced must be consistent with Better Regulation Principles.
8. We received the MoF's application for approval of amendments to its Notaries Practice Rules, Notaries (Conduct and Discipline) Rules and related documents on 13 December 2010. This is the Decision Notice in relation to that application. In the following paragraphs we explain the alterations we were requested to consider, the concerns that we raised in relation to the approval criteria and how these have been resolved in discussion with the MoF.
9. The chronology for the handling of this application can be found towards the end of this Decision Notice.

Decision

10. The MoF's application is for approval of alterations to its Notaries Practice Rules, Notaries (Conduct and Discipline) Rules and the complaints procedures for its representative arms. In summary, the purposes of the application is to ensure that MoF's complaints handling arrangements are compliant with section 112 of the Act and our guidance on first-tier complaints handling.² It also includes other changes relating to disciplinary matters.
11. Overall, we are content with MoF's assessment that the proposed alterations will facilitate and promote the Regulatory Objectives of the Act. In addition, we are

granting the application would be contrary to the public interest, (d) the alteration would enable the AR to authorise persons to carry on activities which are reserved legal activities in relation to which it is not a relevant AR, (e) the alteration would enable the AR to license persons under Part 5 to carry on activities which are reserved legal activities in relation to which it is not a licensing authority, or (f) the alteration has been or is likely to be made otherwise than in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration.

² First Tier Complaints Handling Guidance, May 2010,

http://www.legalservicesboard.org.uk/Projects/pdf/10_05_24_lsb_signposting_requirement_and_guidance_Decision_document.pdf.

content that the proposed alterations comply with the complaints handling requirements of the Act.

12. We are satisfied that the application has met our requirements, and having considered the application in the context of the Schedule 4 sub paragraph 25(3) criteria, we have no grounds for refusing the application made in whole or in part and are therefore granting the application.
13. In considering the application, there were several areas which we sought clarification from the MoF. These areas are discussed below.

Disciplinary matters and notification of members

14. The proposed alterations to the Notaries (Conduct and Discipline) Rules provide for:
 - the failure to observe the Notaries Practice Rules to be made a disciplinary offence;
 - the MoF to instigate disciplinary proceedings against a notary when in receipt of evidence of misconduct even in the absence of a complaint; and
 - an increase in the maximum financial penalty which can be ordered as a result of disciplinary findings.
15. As these were significant changes, for example, the maximum financial penalty is increasing from £500 to £10,000, we sought details from the MoF on the consultation that it had taken when it was developing these alterations.
16. The MoF advised that the alterations to the Notaries (Conduct and Discipline) Rules have been debated by the Master's Advisory Board, which is comprised of representatives from the Societies. In addition, the Societies were formally consulted and no comment was received with regard to the maximum financial penalty.
17. The MoF regards its consultation with the Societies, in their representative capacities, to be a fair consultation process to take account of the interests of the authorised persons. As the two types of authorised persons' (notaries and scrivener notaries) views have been consulted, and given the number of the authorised persons, we regarded this as an adequate consultation on this set of rules. However, it might not be adequate for consultations in future about other forms of rule change.
18. We also sought confirmation that the MoF will notify its authorised persons of the changes to the rules on its website (soon after the alterations are approved) and with its practising certificate fee letters in October 2011. In addition, the MoF advised that the Societies will be able to assist in publicising the new arrangements in their regular newsletters and at continuing professional education events. We are satisfied that this will provide sufficient opportunities for authorised persons to become aware of the new rules.

Complaints handling arrangements

19. With regard to the complaints handling arrangements, the proposed alterations affect the following:

- the MoF's Notaries Practice Rules which will require notaries to provide clients with a prescribed form of complaints information, which complies with our 'signposting requirements'. This rule set out how notaries (authorised persons) must act while providing reserved legal activities.
 - the MoF's Notaries (Conduct and Discipline) Rules which will establish a revised 'first-tier' complaints procedure for handling complaints. This rule, among other arrangements, set out how complaints against authorised persons will be dealt with.
 - the Notaries Society's Complaints Procedure (which is part of the MoF's regulatory arrangements) which will be authorised under the Conduct and Discipline Rules as part of the first-tier complaints handling process. This rule sets out in detail how the Notaries Society will assess a complaint made against an authorised person who is a member of the Notaries Society.
 - the MoF's proposed prescribed form of complaints information, which authorised persons are required to provide to their clients, that informs them how to make a complaint if they are dissatisfied with the authorised persons' service.
20. The original application included the Scrivener Notaries Complaints Procedure, However, during the LSB's consideration of the application, the MoF decided to withdraw this element because of the concerns raised.
21. Instead, the complaints regarding scrivener notaries will be dealt with by rule 3.5 in the Notaries (Conduct and Discipline) Rules which provide for a panel to be set up by the MoF to deal with the complaint. We are satisfied that this arrangement is appropriate, as it ensures that there is a process for assessing complaints made against authorised persons who are scrivener notaries.
22. The MoF has advised that it intends to submit a separate rule change application in the future once the issues have been resolved.

Achieving the outcomes of section 112(1)(b) of the Act

23. The MoF has chosen to introduce regulatory arrangements under section 112(1)(b) of the Act—that is, to make provisions for its complaints procedures, with regard to its authorised persons, to be established and maintained by another person, with regard to authorised persons who are members of the Notaries Society
24. The original proposed changes would not have required authorised persons to be bound by the decisions made by the Societies. We were concerned that this would not provide consumers effective safeguards in that the decision could not be enforced against the authorised person.
25. The MoF has accepted this view and amended its proposed rules to provide that where the authorised person does not accept the decision made by the Notaries Society (for authorised persons who are members of the Notaries Society) or the MoF's panel (for authorised persons who are not members of the Notaries Society), that the authorised person should offer a reasonable alternative remedy. Furthermore, the proposed rules would strongly counsel the authorised

person against not accepting the decision that is made by the Notaries Society or the MoF's Panel.

26. As these provisions are also included in the Notaries (Conduct and Discipline) Rules, should an authorised person decide not to accept the decision, then the authorised person may face a separate disciplinary action by the MoF. We consider that with these provisions would meet section 112(1)(b) of the Act.
27. The original proposed changes also provided for the MoF to approve a list of remedies that the Societies could use in their decisions in considering a complaint. We were concerned that it would contravene section 157(1) of the Act—the regulatory arrangements of an Approved Regulator must not include any provision relating to redress. Following discussions with the MoF, the MoF has agreed to remove the list of remedies from its proposed rules.

Making complaints

28. Following discussions, the MoF has clarified its proposed rules to state that reasonable adjustments would be made for clients wanting to make oral complaints. The proposed rules also clarify that the eight weeks deadline to resolve the complaint starts from the time a client notifies the approved person that s/he is dissatisfied with the approved person's service.
29. In addition, the MoF has revised its proposed rules to ensure that the complaints handling procedures continue to be assessed and a resolution offered regardless of whether there is a misconduct issue to be considered under the Notaries (Conduct and Discipline) Rules.

Chronology

- The LSB received an application from the MoF for approval of amendments to its Notaries Practice Rules, Notaries (Conduct and Discipline) Rules and related documents on 13 December 2010.
- The 28-day initial decision period for considering the application ended on 7 January 2011.
- On 6 January 2011, the LSB issued an Extension Notice to extend the initial 28-day decision period until 28 February 2011.
- On 17 February 2011, the LSB issued a second Extension Notice to extend the decision period until 11 March 2011.
- This Decision Notice will be issued to the MoF on 11 March 2011
- This Decision Notice will be published on the LSB's website on 14 March 2011.

Chris Kenny, Chief Executive
Acting under delegated authority granted by the Board of the Legal Services Board

11 March 2011

NOTARIES (CONDUCT AND DISCIPLINE) RULES 20[--]

WE CHARLES RICHARD GEORGE One of Her Majesty's Counsel Commissary or Master of the Faculties of the Most Reverend Father in God Rowan Douglas by Divine Providence Lord Archbishop of Canterbury Primate of All England and Metropolitan in exercise of the powers conferred by section 4 of the Public Notaries Act 1843 and section 57 of the Courts and Legal Services Act 1990 and of all other powers Us enabling hereby make the following Rules:

PART I: PRELIMINARY

1. *Citation and Commencement*

1.1 These rules may be cited as the Notaries (Conduct and Discipline) Rules 20[--]

1.2 The rules come into force on the [--] day of [--] 20[--]

2. *Interpretation*

2.1 In these rules:-

'1993 Rules' means the Public Notaries (Conduct and Discipline) Rules 1993.

'2009 Rules' means the Notaries (Conduct and Discipline) Rules 2009.

'Approved Procedure' means a complaints resolution procedure approved under rule 3 of these rules, rule 3 of the 1993 Rules, or rule 3 of the 2009 Rules.

'Commissary' and **'Deputy Commissary'** have the meanings assigned by the Notarial Appeals and Hearings Rules 2000.

'Client' includes any person who has instructed a notary to carry out a reserved legal activity within the meaning of section 12 of the Legal Services Act 2007 and any person who has placed legitimate reliance on a Notarial Act.

'Competent Complainant' means:-

(i) A Nominated Notary,

- (ii) The Incorporated Company of Scriveners or a member of that Company nominated by it, or
- (iii) A Client where the complaint relates to Notarial Misconduct arising from notarial acts or other professional services performed by the notary in question.

‘The Court’ means the Court of Faculties.

‘The Contingency Fund’ means the fund referred to in the Notarial Contingency Fund Rules 1981.

‘Designated Society’ means the Incorporated Company of Scriveners, the Notaries Society, the Society of Scrivener Notaries and such other bodies as the Master may from time to time designate for the purposes of these rules.

‘Firm’ has the meaning assigned in rule 2 of the Notaries Practice Rules 2009.

‘The Master’ means the Master of the Faculties.

‘Nominated Notary’ means a notary appointed by the Registrar under rule 4 of these rules.

‘Notarial Act’ has the meaning given in rule 2 of the Notaries Practice Rules 2009.

‘Notarial Misconduct’ means:-

- (i) Fraudulent conduct,
- (ii) Practising as a notary public without a valid Practising Certificate or in breach of a condition or limitation imposed on a Practising Certificate, or
- (iii) Other serious misconduct which may include failure to observe the requirements of these rules or of the Notaries Practice Rules 2009 or falling seriously below the standard of service reasonably to be expected of a public notary.

‘Panel’ means not less than four notaries each of whom has held a Notarial Practising Certificate for a minimum of ten years.

‘The Registrar’ means the Registrar of the Court of Faculties.

‘Scrivener Notary’ means a notary who holds the qualifications to practise as a scrivener notary from time to time prescribed by the Incorporated Company of Scriveners of London or who did hold such qualifications before being struck off the Roll of Notaries or suspended from practice by an order of the Court and a notary who does not hold such qualifications but is employed by or is otherwise professionally associated with a Scrivener Notary or a firm of Scrivener Notaries.

‘Specified Profession’ and **‘Relevant Body’** have the meanings specified in rule 10

‘The First Schedule’, ‘the Second Schedule’ and ‘the Appendix’ mean respectively the First Schedule, the Second Schedule and the Appendix to these rules.

- 2.2 References in these rules to a “notary” are references to a notary enrolled on the Roll of Notaries maintained by the Court.
- 2.3 The Interpretation Act 1978 applies to these rules as it applies to an Act of Parliament.

PART II: COMPLAINTS

3. *Complaints Resolution Procedures*

- 3.1 The Master may from time to time approve by written notice a complaints resolution procedure produced by a Designated Society and may at any time by written notice withdraw approval of any procedure.
- 3.2 An Approved Procedure may include provision:-
 - 3.2.1 for the informal resolution of disputes between members of the public and notaries concerning notarial acts done by a notary or the conduct of a notary’s practice,
 - 3.2.2 for the informal resolution of disputes between members of the public and notaries concerning the charges made by notaries for notarial services,
 - 3.2.3 for dealing with complaints referred to a Designated Society by the Registrar about the conduct or practice of a notary who is a member of that Designated Society,

and for such other matters as the Master may from time to time specify.

- 3.3 Where a dispute with or complaint against a notary is dealt with in accordance with an Approved Procedure it shall be a duty of the notary to cooperate with the Designated Society in the operation of the procedure.
 - 3.3.1 A notary shall comply with any reasonable action proposed by the Designated Society at the conclusion of the Approved Procedure.
 - 3.3.2 A notary shall offer the client an alternative remedy which is reasonable in the circumstances of the complaint if he does not

accept on reasonable grounds the conclusion of the Designated Society.

- 3.3.3 An apology, an offer of treatment or other redress shall not of itself amount to an admission of Notarial Misconduct.
- 3.4 A notary shall give the Office of Legal Complaints all such assistance requested by that Office in connection with the investigation, consideration or determination of complaints under the ombudsman scheme established under section 115 of the Legal Services Act 2007 as he is reasonably able to give.
- 3.5 Where a dispute with or complaint against a notary is received by the Registrar and there is no Approved Procedure available to deal with the complaint, the Registrar shall refer the matter to a member of a Panel of notaries appointed for this purpose by the Registrar to carry out the functions set out in Rule 3.2.
- 3.5.1 the notary carrying out these functions shall be entitled to a fixed fee to be specified by the Master from time to time which shall be payable by the notary complained against,
- 3.5.2 the notary carrying out these functions may not be appointed a Nominated Notary under Rule 4 in relation to the same dispute or complaint.

4. *Nominated Notaries*

A Nominated Notary appointed by the Registrar under these rules shall be a notary (but not a Scrivener Notary) who holds a Notarial Practising Certificate and has held such a Certificate for not less than five years.

5. *Functions of Nominated Notaries*

- 5.1 A Nominated Notary may be appointed by the Registrar to investigate an allegation of Notarial Misconduct referred to him by the Registrar and, if he thinks fit, to prepare and prosecute disciplinary proceedings against a notary in the Court in accordance with the provisions of these rules and to carry out such other functions as may be provided in these rules.
- 5.2 A Nominated Notary appointed under this rule shall be independent of and not personally acquainted with the notary who is the subject of the allegations of Notarial Misconduct to be investigated.
- 5.3 If the Registrar is unable to identify a Nominated Notary who fulfils the requirements in Rule 5.2 the Master shall appoint an independent person, who

may or may not be a notary, to act in place of a Nominated Notary for the purposes of Rule 5.1, and that person shall carry out all functions conferred on a Nominated Notary by these rules.

- 5.4 Where a Nominated Notary investigates an allegation of Notarial Misconduct referred to him by the Registrar but such investigation does not lead to the issue of disciplinary proceedings in the Court the Nominated Notary shall be entitled to be paid such fixed fee as may have been previously authorised by the Registrar or such fee as the Registrar may determine should be paid for work properly done after considering a bill and other representations submitted by the Nominated Notary and such fee shall be paid by the Registrar out of the Contingency Fund.

6. *Referral of Allegations by Registrar*

- 6.1 Where the Registrar receives evidence or an allegation concerning the conduct or practice of a notary which in his opinion does not amount to an allegation of Notarial Misconduct or where the precise nature of the allegation is unclear he shall refer the matter to a Designated Society or a notary appointed under Rule 3.5, to be dealt with in accordance with an Approved Procedure.
- 6.2 Where the Registrar receives evidence or an allegation concerning the conduct or practice of a notary (other than a Scrivener Notary) which appears to him to amount to an allegation of Notarial Misconduct he shall appoint a Nominated Notary to investigate the allegation pursuant to rule 5 of these rules.
- 6.3 Where the Registrar receives evidence or an allegation concerning the conduct or practice of a Scrivener Notary which appears to him to amount to an allegation of Notarial Misconduct he shall refer the allegation to the Incorporated Company of Scriveners.
- 6.4 Upon the referral of such an allegation to the Incorporated Company of Scriveners it shall be investigated by that Company under arrangements made by it and approved by the Master and if it thinks fit the Incorporated Company of Scriveners or a member of the Company nominated by it shall prepare and prosecute disciplinary proceedings in the Court against the Scrivener Notary in question in accordance with the provisions of these rules and the Incorporated Company of Scriveners or the member so nominated shall be regarded as a Nominated Notary for the purposes of rule 9.5 of these rules.
- 6.5 Where the Registrar receives evidence concerning a notary which amounts to *prima facie* evidence of gross misconduct, the Registrar, if he is satisfied that it is required for the protection of the public, may make an interim order to suspend the notary from practice or restrict or limit or impose conditions on the notary's practice pending the conclusion of disciplinary proceedings under Part III of these rules, save that the notary may appeal to the Master against the Registrar's decision within seven days of the issue of that interim order and on such appeal the Master shall have the same power as the Registrar has under

this rule 6.5. The Registrar's power under this rule 6.5 shall not be exercisable after the end of the twenty-one day period specified in paragraph 4 of Part II of the First Schedule. Any interim order made under this rule 6.5 may be discharged or varied by the Commissary on application made to him after the end of that twenty-one day period.

7. *Referral of Allegations by Designated Societies*

Where an allegation against a notary comes to the attention of a Designated Society (whether or not in the course of the operation of an Approved Procedure) and it appears that such allegation amounts to an allegation of Notarial Misconduct the Designated Society shall refer the allegation to the Registrar for consideration in accordance with rule 6.2 or rule 6.3 of these rules as appropriate.

PART III: DISCIPLINARY PROCEDURE

8. *Disciplinary Proceedings in the Court of Faculties*

8.1 A complaint of Notarial Misconduct may be made to the Court by any Competent Complainant.

8.2 Where:

8.2.1 Evidence or an allegation concerning the conduct or practice of a notary has been received by the Registrar and he has not appointed a Nominated Notary to investigate the allegation or referred the allegation to the Incorporated Company of Scriveners (as the case may be) under rule 6.2 or rule 6.3 of these rules within 28 days of receiving the allegation, or

8.2.2 The Registrar has appointed a Nominated Notary or referred the evidence or allegation to the Incorporated Company of Scriveners and the Nominated Notary or the Incorporated Company of Scriveners has determined not to make a complaint of Notarial Misconduct to the Court in respect of the allegation or has not so made a complaint within 112 days of his appointment or the referral of the allegation (as the case may be);

then a complaint of Notarial Misconduct in respect of that allegation may be made to the Court by any notary who holds a Notarial Practising Certificate and such notary shall be deemed to be a Competent Complainant for the purposes of these rules.

- 8.3 Where a complaint against a notary has been made to the Court under rule 8.1 and the notary has been struck off or suspended from legal practice by a Relevant Body, as defined in rule 10, following a finding of misconduct, the Court may of its own initiative, or on the application of the complainant, suspend the notary from practice or make an order restricting or limiting or imposing conditions on the notary's practice pending the determination of the complaint, provided that the Court first considers any representations which the notary wishes to make about any such suspension or order.
- 8.4 The procedure set out in Part II of the First Schedule shall apply to all complaints of Notarial Misconduct made to the Court.
- 8.5 The forms set out in the Appendix with such variations or additions thereto as the Master may from time to time approve shall be used in all proceedings before the Court to which these rules relate.

9. *Disciplinary Sanctions*

- 9.1 Where the Court after hearing a complaint of Notarial Misconduct against a notary finds that it has been proved it may:
- 9.1.1 Order that the notary be struck off the Roll of Notaries,
 - 9.1.2 Order that the notary be suspended from practice as a notary for a specified period or until certain conditions have been met or indefinitely,
 - 9.1.3 Impose conditions as to the future scope or conduct of the notarial practice of the notary or conditions relating to the monitoring or supervision of his practice and direct that his Practising Certificate be endorsed or the endorsement on his Solicitor's Practising Certificate be marked accordingly,
 - 9.1.4 Impose conditions as to the training that the notary must complete or further examination or examinations that he must pass before he may continue or resume practice as a notary, or
 - 9.1.5 Order that the notary be admonished.
- 9.2 In addition to imposing any of the penalties listed in sub-rule 9.1 above the Court may order that unless the notary:-
- 9.2.1 Indemnifies any Client of the notary whom the Court finds to have suffered actual loss as a result of the Notarial Misconduct in question and;
 - 9.2.2 Pays a monetary sum not exceeding £10,000 (or such higher sum as the Master may from time to time specify for the purpose of these rules) such sum to be paid to whomsoever the Court may direct,

the notary shall be struck off the Roll of Notaries.

- 9.3 Subject to rule 9.5 it shall be within the discretion of the Court to order:
- 9.3.1 That the costs of either party to the complaint be paid by the other party,
 - 9.3.2 That the costs of the Court be paid by either party or by both parties (whether in equal or unequal shares),
 - 9.3.3 That the costs of either party or of the court shall be paid from the Contingency Fund, and;
 - 9.3.4 That a party against whom an order for Costs is made shall, instead of paying those costs to the other party or the Court, pay them into the Contingency Fund.
- 9.4 Any order for costs may be in a fixed sum assessed by the Court as representing or being a contribution towards the reasonable costs of the party concerned or may be for costs to be taxed.
- 9.5 The Court shall not make any order for costs against a Nominated Notary who shall in all cases be entitled to an order for costs in his favour such costs to be paid from the Contingency Fund.
- 9.6 Where an order is made for costs to be taxed the costs shall be taxed by the Registrar on such basis and in accordance with such scale applicable in the High Court or the County Court as the Court may direct.

10. *Specified Professions and Relevant Bodies*

- 10.1 For the purposes of these rules a 'Specified Profession' means a profession specified in the Second Schedule and in respect of a Specified Profession 'Relevant Body' means the disciplinary body named for that profession in the Second Schedule.
- 10.2 The Master may by order add to or amend the Second Schedule.
- 10.3 It shall be the duty of any notary who is also a member of a Specified Profession and against whom a complaint has been made to the Relevant Body, and where such complaint has been found by that body to be substantiated, to report such finding forthwith to the Registrar (whether or not a penalty is imposed by the Relevant Body and without regard to the nature of such penalty).
- 10.4 Where it comes to the attention of the Registrar that a Relevant Body has found a complaint against a notary (other than a Scrivener Notary) to be substantiated, the Registrar shall appoint a Nominated Notary to investigate

the matter and if he thinks fit to prepare and prosecute disciplinary proceedings as if he were acting under rule 5.

- 10.5 Where it comes to the attention of the Registrar that a Relevant Body has found a complaint against a Scrivener Notary to be substantiated, the Registrar shall refer the matter to the Incorporated Company of Scriveners for investigation in accordance with rule 6.4.
- 10.6 In proceedings under these rules the written decision of a Relevant Body shall be evidence of the facts stated in that decision.

11. Application for Review

- 11.1 Where as a result of an Order made under these rules or the 1993 Rules or the 2009 Rules a notary:

11.1.1 has been struck off the Roll of Notaries other than pursuant to proceedings under rule 10 of the 1993 Rules, under rule 10 of the 2009 Rules, or under rule 10 of these rules, and a period of not less than twelve months has elapsed since the date of striking off,

11.1.2 has been suspended from practice for a period exceeding twelve months or for an indefinite period and a period of not less than twelve months has elapsed since the date of the suspension,

11.1.3 has had conditions imposed as to the future scope or conduct of his notarial practice, or conditions relating to the monitoring or supervision of his practice, or

11.1.4 has been struck off the Roll of Notaries pursuant to proceedings under rule 10 of the 1993 Rules, or under rule 10 of the 2009 Rules, or under rule 10 of these rules, and has since been restored to the Roll of Solicitors, or, where relevant, the equivalent record of practitioners maintained by a Specified Profession,

the notary may apply to the Court to review the Order.

- 11.2 In the case of an application under rule 11.1.1, rule 11.1.2 or rule 11.1.4 above it shall be for the notary to prove to the satisfaction of the Court that circumstances have changed since the Order was made and that it is not contrary to the public interest or the interest of the notarial profession that the order be reviewed and, in the case of a petition under rule 11.1.3, it shall be for the notary to prove to the satisfaction of the Court that as a result of a change in circumstances the conditions imposed are no longer necessary or desirable in the public interest.
- 11.3 The procedure set out in Part III of the First Schedule shall apply to an application brought under this rule.

- 11.4 On receiving an application brought under this rule by a notary other than a Scrivener Notary the Registrar shall appoint a Nominated Notary to act as respondent to the application and on receiving an application brought under this rule by a Scrivener Notary the Registrar shall appoint the Incorporated Company of Scriveners to act as respondent to the application.
- 11.5 Except in exceptional circumstances the costs of the respondent to an application brought under this rule and of the Court shall be paid by the applicant regardless of the outcome; in all other respects the provisions of rule 9.3 shall apply mutatis mutandis.
- 11.6 Upon hearing an application brought under this rule the Court may:
- 11.6.1 In the case of an application under rule 11.1.1 or 11.1.4 order that the notary be restored to the Roll of Notaries either immediately or on some specified future date;
 - 11.6.2 In the case of an application under rule 11.1.2 order that the suspension be lifted either immediately or on some specified future date;
 - 11.6.3 In the case of an application under rule 11.1.3 order that the conditions imposed be lifted or that different conditions be imposed;
 - 11.6.4 Impose such conditions upon any order or require such undertakings to be given by the petitioner as it thinks fit, or
 - 11.6.5 dismiss the application.

12. *First Schedule and Appendix*

- 12.1 The provisions of Part I of the First Schedule shall apply to all proceedings under these rules.
- 12.2 It shall be within the discretion of the Registrar to grant to a party to proceedings before the Court such extension to any of the time limits contained in the First Schedule as appears to him to be reasonable.
- 12.3 Forms 3, 5, 6, and 8 set out in the Appendix shall be issued by the Registrar under the seal of the Court but any omission to affix the seal of the Court shall not invalidate a form or any proceedings to which it relates.

13. *Revocation, Savings and Consequential Amendments*

- 13.1 Subject to rule 13.2 the 2009 Rules are hereby revoked.
- 13.2 Where any proceedings before the Court had been commenced under the 2009 Rules prior to the coming into force of these rules the 2009 Rules shall continue to have effect in respect of those proceedings.

- 13.3 In rule 3.3 of the Notaries (Prevention of Money Laundering) Rules 2007 “Public Notaries (Conduct and Discipline) Rules 2009” is omitted and “Notaries (Conduct and Discipline) Rules 20[–]” substituted therefor.

THE FIRST SCHEDULE

PART I: PRELIMINARY

1. References in this Schedule to forms are to the forms set out in the Appendix, references in Part II to the complainant and the respondent are to the person bringing a complaint and the notary against whom a complaint is brought respectively and references in Part III to the applicant and the respondent are to the notary applying for review and the person or body appointed to act as respondent to the application respectively.
2. Any notice or document required by this Schedule to be delivered to the Registrar shall be delivered to him at the Court of Faculties, 1 The Sanctuary, Westminster, London SW1P 3JT and shall be deemed to be delivered on the day on which it is actually received by the Registrar.
3. Any notice or document required by this Schedule to be served by the Registrar may be served by sending it by ordinary first class post or document exchange to such address as may have been specified by the party concerned as his address for service or if no such address has been specified for a notary to the address appearing for him on the Roll of Notaries, and any notice or document so sent shall be deemed to have been served on the second working day after dispatch by post or document exchange.
4. The hearing of a complaint or application under these rules shall take place at such venue as the Commissary may direct and each party shall be entitled to be present and to be represented by a notary, a solicitor or counsel.

PART II: PROCEEDINGS UNDER RULE 8

1. A complaint of Notarial Misconduct shall be made by a written complaint in form 1 and shall be supported by an affidavit in form 2.
2. The written complaint and affidavit in support shall be delivered to the Registrar.
3. On receiving a written complaint and affidavit in support the Registrar shall issue the complaint and serve a copy of each document together with notice of proceedings in form 3 on the respondent.
4. Within twenty-one days of service of the notice of proceedings on him the respondent shall deliver to the Registrar an answer to the complaint in form 4 and on receipt of an answer the Registrar shall serve a copy on the complainant.
5. Within forty-two days of service of the notice of proceedings on him the respondent shall, if he intends to contest the proceedings, deliver to the Registrar an affidavit in reply to the complaint and on receipt of such affidavit the Registrar shall send a copy to the complainant.
6. If the respondent fails to deliver an answer within the time prescribed by paragraph 4 the Registrar shall appoint a date for the hearing of the complaint and give notice to both parties in form 5.
7. If the respondent delivers an answer within the time prescribed the Registrar shall refer the papers to the Commissary who shall make such directions for the future conduct of the complaint as he thinks fit including directions:-
 - 7.1 for the filing and service of further evidence including the affidavit evidence of witnesses,
 - 7.2 for the preparation and disclosure of lists of documents and for the inspection of such documents,
 - 7.3 for a preliminary hearing to consider any point of law or procedure which may be raised by the proceedings or to consider the making of further directions,
 - 7.4 for the hearing of the complaint and the attendance of witnesses at the hearing,

and the Registrar shall serve a copy of the Commissary's directions and notice of any hearing (which shall be in form 5) on each party.

- 8.1 If a party to the complaint requires the deponent to any affidavit filed to attend at the hearing of the complaint he shall give notice to the Registrar and to the other party not less than fourteen days before the date appointed for the hearing.
- 8.2 If a deponent who has been so required to attend the hearing does not attend the onus shall be on the party seeking to rely on the affidavit evidence of that witness to show why the affidavit should be accepted in evidence.
- 9.1 The procedure adopted at the hearing shall take such form as the Court thinks fit in all the circumstances of the case but shall ensure that both parties are given an opportunity to state their case to the Court and to cross-examine any witnesses giving evidence in person at the hearing.
- 9.2 Subject to the provisions of paragraph 8 the complaint shall be decided on the basis of the affidavits filed.
- 9.3 At any time prior to the conclusion of a hearing the Court may, if it thinks it expedient to do so, adjourn the hearing and give such further directions as it thinks fit.
10. After hearing the complaint the Court may give its decision at the hearing or reserve judgment and the Registrar shall give notice to the parties of the Court's Order in form 6.
- 11.1 If the complainant wishes to apply to the Court for an order suspending the respondent from practice or restricting or limiting or imposing conditions on the respondent's practice pending the determination of the complaint he shall make the application in form 7, and shall lodge an affidavit in support of the application.
- 11.2 Subject to paragraph 11.8, on receiving an application in form 7 and affidavit in support the Registrar shall serve a copy of each document on the respondent and appoint a date for the hearing of the application (which shall be not less than ten days after the date on which the documents are served on the respondent) and shall give notice to the parties in form 8.

- 11.3 If the respondent wishes to oppose the application he shall, within fourteen days of its service upon him, deliver to the Registrar an affidavit in response and the Registrar shall serve a copy of the response on the complainant.
- 11.4 When the application has been determined by the Court the Registrar shall give notice to the parties of the Court's order in form 6.
- 11.5 Unless the Court orders otherwise the costs of the parties to the application shall be reserved to the hearing of the substantive complaint.
- 11.6 An application under this paragraph shall be heard by the Commissary or a Deputy Commissary alone and when the application has been heard by the Commissary or a Deputy Commissary the Commissary or (as the case may be) the Deputy Commissary in question shall not sit on the hearing of the substantive complaint.
- 11.7 At the hearing of an application under this paragraph the Court may, if it considers it appropriate to do so, give directions under paragraph 7 for the hearing of the substantive complaint.
- 11.8 Where it appears to him to be necessary for the protection of the public the Commissary or Deputy Commissary to whom an application under this paragraph is referred may direct such modifications to the procedure as he thinks fit including the making of an interim order to suspend the respondent from practice or restrict or limit or impose conditions on the respondent's practice pending the hearing of the application pursuant to paragraph 11.2.

PART III: APPLICATION FOR REVIEW UNDER RULE 11

1. An application under rule 11 of these rules shall be made in form 9 and shall be accompanied by an affidavit or affidavits setting out in full the grounds of the application and the evidence in support.
2. Upon receiving an application and affidavits in support the Registrar shall issue the application and serve a copy of each document on the Nominated Notary (or, as the case may be, the Incorporated Company of Scriveners) appointed as respondent under rule 11.4 and the Registrar shall also serve on both parties notice of hearing of the application in form 10.
3. Where the Order which the applicant is seeking to review was made as a result of a complaint brought by a person who was a Competent Complainant as a person who had been a Client of the notary the Registrar shall also send copies of the above documents and notice and any affidavit delivered under paragraph 4 to the

complainant who shall be entitled to attend the hearing and (if the Court so permits) to address the Court.

4. The function of the respondent shall be to ensure that the applicant is put to proof of his case and to bring to the attention of the Court all such facts and matters as the respondent thinks should be before the Court and if the respondent wishes to present to the Court an affidavit or affidavits in reply to the application he shall deliver the same to the Registrar not less than twenty-eight days before the date of the hearing and the Registrar shall forthwith serve copies on the applicant.
5. At the hearing the Court shall consider all documents and evidence which were before the Court before making the order which the applicant is seeking to review and shall consider the affidavits filed in support of and any affidavits filed in answer to the application and the applicant may give evidence in person. The Court shall also consider representations made to it by the parties.
6. After hearing the petition the Court may give its decision at the hearing or reserve judgment and the Registrar shall give notice to the parties of the Court's Order in form 6.

THE SECOND SCHEDULE

Specified Profession	Relevant Body
Solicitor of the Senior Courts of England and Wales	The Solicitors Disciplinary Tribunal
Barrister in England and Wales	A Panel or Disciplinary Tribunal operated by the Bar Standards Board
Legal Executive	The Investigating Committee or the Disciplinary Tribunal of the Institute of Legal Executives
Licensed Conveyancer	The Investigating Committee established under section 24 of the Administration of

Justice Act 1985 or the Discipline and Appeals Committee established under section 25(1) of that Act

Avocat or other legal practitioner in a country outside England and Wales

The body responsible for exercising disciplinary regulation over the avocat or other legal practitioner in the country in question

APPENDIX

Form 1: Written Complaint

IN THE COURT OF FACULTIES

In the Matter of [AB] a notary and

In the matter of the Notaries (Conduct and Discipline) Rules 20[--]

To the Registrar

I, the undersigned [CD] of [address] do hereby make complaint that the said [AB] of [address] has been guilty of Notarial Misconduct within the meaning of the said rules in that he/she has ...(insert summary of allegation(s) of misconduct).

.....

Details of my complaint are contained in the affidavit which accompanies this written complaint.

DATED this day of 20...

Signed

Address for service

Form 2: Affidavit in support of Written Complaint

IN THE COURT OF FACULTIES

In the matter of [AB] a notary and

In the matter of the Notaries (Conduct and Discipline) Rules 20[--]

I [CD] of [address] make oath and say as follows:-

1. I am a Competent Complainant within the meaning of the said rules as [specify how the deponent is a Competent Complainant].
2. I make this affidavit in support of my written complaint against the above named [AB] a notary of [address]
3. [Here state the facts concisely in numbered paragraphs and show the complainant's means of knowledge.]

Form 3: Notice of Proceedings

IN THE COURT OF FACULTIES

In the matter of [AB] a notary and

In the matter of the Notaries (Conduct and Discipline) Rules 20[--]

TO: [AB] a notary of [address]

TAKE NOTICE that a written complaint has been received by the Court alleging that you have been guilty of Notarial Misconduct. A copy of the complaint and the affidavit supporting it are attached to this notice.

You are required:-

1. Within twenty-one days of service of this notice upon you to deliver to me an answer to the complaint in the form prescribed by the above rules, and
2. If you intend to contest these proceedings, to deliver to me within forty-two days of service of this notice upon you a affidavit in reply to the complaint.

If you fail to comply with these requirements I will proceed to appoint a date for the hearing of the complaint.

All communications should be addressed to "The Registrar, The Court of Faculties, 1 The Sanctuary, Westminster, London SW1P 3JT".

DATED this day of 20...

Form 4: Answer to Complaint

IN THE COURT OF FACULTIES

In the matter of [AB] a notary and

In the matter of the Notaries (Conduct and Discipline) Rules 20[--]

To the Registrar

I, [AB] in answer to the complaint of [CD], say that:-

1. I intend to contest the complaint OR I do not intend to contest the complaint [and I consent to being struck off the Roll of Notaries] [delete as applicable]
2. My address for service is

DATED this day of 20...

Form 5: Notice of Hearing

IN THE COURT OF FACULTIES

In the matter of [AB] a notary and

In the matter of the Notaries (Conduct and Discipline) Rules 20[--]

To the above named respondent [AB] of [address] and to the complainant [CD] of [address]

TAKE NOTICE that this complaint will be heard by the Court on day the day of at [time of day] at when you are required to attend.

If you do not attend the hearing may proceed in your absence.

DATED this day of 20...

Signed

Registrar

Form 6: Order

IN THE COURT OF FACULTIES

In the matter of [AB] a notary and

In the matter of the Notaries (Conduct and Discipline) Rules 20[--]

To the above named [respondent/petitioner] [AB] of [address] and to the [complainant/respondent] [CD] of [address]

The Court having heard this [complaint] [application] on the day of 200..

THE COURT ORDERS as follows:-

DATED this day of 20...

Signed

Registrar

Form 7: Application for Suspension etc pending determination of Complaint

IN THE COURT OF FACULTIES

In the Matter of [AB] a notary and

In the matter of the Notaries (Conduct and Discipline) Rules 20[--]

To the Registrar

I, the undersigned complainant [CD] of [address] apply to the Court for an order that pending the determination of this complaint [the said respondent [AB] of [address] be suspended from practice as a notary] *OR* [the practice of the said respondent [AB] of [address] be restricted or limited as follows: *[specify restrictions or limitations]*] *OR* [the following conditions be imposed on the practice of the said respondent [AB] of [address]: *[specify conditions]*]

The grounds of this application are contained in the accompanying affidavit.

DATED this day of 20...

Signed

Address for service

Form 8: Notice of Hearing of Application

IN THE COURT OF FACULTIES

In the matter of [AB] a notary and

In the matter of the Notaries (Conduct and Discipline) Rules 20[--]

To the above named respondent [AB] of [address] and to the complainant [CD] of [address]

TAKE NOTICE that the complainant's application that the respondent be suspended from practice as a notary or that the practice of the respondent be restricted or limited or that conditions be imposed on the practice of the respondent will be heard by the Court on day the day of at [time of day] at when you are required to attend.

The Court may also give directions for the hearing of the substantive complaint.

If you do not attend the hearing may proceed in your absence.

DATED this day of 20...

Signed

Registrar

Form 9 Application under Rule 11

IN THE COURT OF FACULTIES

In the matter of [AB] a notary and

In the matter of the Notaries (Conduct and Discipline) Rules 20[--]

To the Registrar

I [AB] of [address for service] apply to the Court as follows:-

1. By an Order of the Court made on [date] it was ordered that [set out the terms of the Order other than terms as to costs]
2. I now apply that the said Order be reviewed pursuant to rule 11 of the said rules.
3. The grounds of this application and the evidence in support of it are fully set out in the accompanying affidavit[s]

DATED this day of 20...

Signed

Petitioner

Form 10 Notice of Hearing of Petition under Rule 11

IN THE COURT OF FACULTIES

In the matter of [AB] a notary and

In the matter of the Notaries (Conduct and Discipline) Rules 20[--]

To the above named applicant [AB] of [address] and to [CD] of [address] appointed to act as respondent to this application.

TAKE NOTICE that this application will be heard by the Court on day the day of 20... at [time of day] at when you are required to attend. If you do not attend the hearing may proceed in your absence.

DATED this day of 20...

Signed

Registrar

.....

MASTER

NOTARIES PRACTICE RULES 2009

WE CHARLES RICHARD GEORGE One of Her Majesty's Counsel Commissary or Master of the Faculties of the Most Reverend Father in God Rowan Douglas by Divine Providence Lord Archbishop of Canterbury Primate of All England and Metropolitan in exercise of the powers conferred by section 4 of the Public Notaries Act 1843 and section 57 of the Courts and Legal Services Act 1990 and of all other powers Us enabling hereby make the following Rules:

PART I: PRELIMINARY

1. Citation and Commencement

- 1.1 These rules may be cited as the Notaries Practice Rules 2009.
- 1.2 These rules shall come into force on 1st December 2009.

2. Interpretation

In these rules:-

- **“approved regulator”** has the meaning given to it in section 20 of the Legal Services Act 2007;
- **“arrangement”** means any express or tacit agreement between a notary and another person, whether contractually binding or not;
- **“client”** includes any person who has instructed a notary to carry out a reserved legal activity within the meaning of section 12 of the Legal Services Act 2007 and any person who has placed legitimate reliance on a Notarial Act
- **“firm”** includes a sole practitioner and a professional partnership;
- **“holding company”** and **“subsidiary company”** have the meanings assigned to them by the Companies Act 2006, and two companies are “associated” where they are subsidiary companies of the same holding company;
- **“the Master”** means the Master of the Faculties;

- “**notarial act**” means any act that has validity by virtue only of its preparation, performance, authentication, attestation or verification by a notary, and includes any such act carried out by electronic means;
- “**notary**” includes a firm of notaries;
- “**performance**” includes execution, completion and carrying out;
- “**person**” includes a body corporate or unincorporated association or group of persons;
- “**professional partnership**” includes a limited liability partnership and any other body corporate, the members of which are authorised to conduct legal practice as such;
- “**qualified legal practitioner**” means
 - (i) a person qualified to provide legal services to the public in England and Wales, or
 - (ii) a person qualified to provide legal services to the public under the laws of any other jurisdiction who practises as such in England and Wales;
- “**the Registrar**” means the Registrar of the Court of Faculties;

for the purposes of these rules a notary’s practice includes the preparation and performance of notarial acts and any other service undertaken as a notary whether or not such service may only be undertaken by a notary; and

for the avoidance of doubt the Interpretation Act 1978 applies to these rules as it applies to an Act of Parliament.

PART II: PRACTICE AS A NOTARY

3. Oath of Office

A notary shall exercise the office of public notary in accordance with the Oath or Declaration made by him at the time of the grant of his Notarial Faculty, as set out in section 7 of the Public Notaries Act 1843 and shall offer appropriate notarial services to any person lawfully and reasonably requiring the same.

4. Bankruptcy

A notary who is bankrupt may not, until he is discharged from bankruptcy, practise as a notary on his own behalf or as the sole member of a professional partnership, but may practise as the employee of another notary.

5. Obtaining Instructions

A notary shall not directly or indirectly obtain or attempt to obtain instructions for professional work or permit another person to do so on his behalf, or do anything in the course of practising as a notary, in any manner which compromises or impairs or is likely to compromise or impair any of the following:

- 5.1 the notary's independence or integrity;
- 5.2 a person's freedom to instruct a notary of his choice;
- 5.3 the notary's ability to act in the best interests of the client;
- 5.4 the good repute of the notary or of the notarial profession;
- 5.5 the notary's proper standard of work;
- 5.6 the notary's duty of care to persons in all jurisdictions who may place legitimate reliance on his notarial acts.

5A. Duty to inform instructing person of right to complain

- 5A.1 When a notary accepts instructions for professional work he must provide the instructing person with a copy of a form of words prescribed by the Master from time to time which explains that the instructing person has a right to make a complaint under the Conduct and Discipline Rules 20[--] and the Legal Services Act 2007 and how to make such a complaint.
- 5A.2 The form of words prescribed under 5A.1 above (the "prescribed form of words") may be provided to the instructing person electronically.
- 5A.3 If at the time of this rule coming into force a notary is acting under pre-existing instructions for professional work he must provide the person who instructed him with the prescribed form of words at the next available opportunity.

5.7 Conflicts of Interest (General)

In the conduct of his practice a notary shall not favour the interests of one client over those of another and shall not favour his own interests or those of any other person over those of his clients.

5.8 Conflicts of Interest (Conveyancing Transactions)

- 5.8.1 A notary conducting a conveyancing transaction in the capacity of a solicitor, or a licensed conveyancer, or member of another professional body with an approved regulator, is subject to the rules and any guidance relating to (a) conflicts of interest and (b) relations with third parties laid down by the approved regulator of that professional body, and should comply with such rules and have regard to any such

guidance accordingly.

5.8.2 A notary conducting a conveyancing transaction in the capacity of a notary must not act for both seller and buyer in a transaction relating to property situated in England and Wales unless:-

5.8.2.1 The notary, whether or not the transaction is between parties at arm's length, is satisfied that no conflict of interest exists or is likely to arise during the course of the transaction; and

5.8.2.2 Both parties are established clients in that they have instructed the notary on previous occasions; or

5.8.2.3 The consideration does not exceed £10,000 in an individual transaction; and

5.8.2.4 Both clients are informed of the advantages of separate representation before they give their written consent to the notary acting for both of them; and

5.8.2.5 Both parties consent in writing.

5.9 Relations with third parties:

5.9.1 A notary shall not communicate directly by any means whatsoever with any other party to a conveyancing transaction where that party is represented by a lawyer except:-

- (a) to obtain information about the name and address (including e-mail address) of that lawyer; or
- (b) with the consent of that lawyer; or
- (c) after notifying the lawyer of the intention to contact the party direct because the other party's lawyer has refused or without good reason failed to pass on messages or to reply to communications, or
- (d) in exceptional circumstances where it is impracticable to contact that party's lawyer provided that any communication under (a) to (d) of this rule shall be in writing.

5.9.2 A notary who is dealing with any unrepresented party to a conveyancing transaction must not take unfair advantage of that party, and where it is necessary for practical reasons to communicate orally with an unrepresented party the notary should immediately thereafter make a written note of the communication and should as soon as possible confirm the substance of it in writing to the unrepresented party.

5.10 **Conflicts of Interest (notarial activities other than conveyancing)**

transactions):

5.10.1 In respect of notarial activities other than conveyancing transactions, a notary may act for both parties to a transaction but only if:

- (a) each party has consented in writing to the notary so acting, and
- (b) the notary is satisfied that there is no conflict of interest between the parties.

5.10.2 For the avoidance of doubt a notary does not act for both parties to a transaction merely by preparing or authenticating a notarial act in his capacity as a public certifying officer even though that act may concern two or more parties.

6. Duty to Act Impartially in respect of Notarial Acts

A notary must act impartially and in particular must not perform any notarial act which involves or may affect:

- 6.1 his own affairs, including matters in which he is personally interested jointly with another person;
- 6.2 the affairs of his spouse or partner or a person to whom the notary is engaged to be married (for the purpose of this sub-rule, “partner” means a person with whom the notary cohabits or with whom he has a sexual relationship and includes a partner of the same sex);
- 6.3 the affairs of a person to whom he is directly and closely related;
- 6.4 the affairs of a person with whom he is in a professional partnership or by whom he is employed or from whom he receives a benefit by being provided with office accommodation or other facilities for his notarial practice;
- 6.5 the affairs of a person who has appointed the notary to be his attorney which concern a matter within the scope of the power of attorney granted;
- 6.6 the affairs of a trust of which he is a trustee or of an estate where he is a personal representative of the deceased;
- 6.7 the affairs of a body corporate of whose board of directors or governing body he is a member;
- 6.8 the affairs of an employee of the notary;
- 6.9 the affairs of a partnership of which he is a member or of a company in which the notary holds shares either exceeding five percent of the issued share capital or having a market value exceeding such figure as

the Master may from time to time specify.

7. Employed Notaries

7.1 Save as permitted by rule 7.2 a notary who is the employee of a non-notary shall not perform any notarial act as part of his employment or do or perform any notarial act for his employer or his employer's holding, associated or subsidiary company.

7.2 A notary may act for a person who is also the client of the qualified legal practitioner or firm of qualified legal practitioners by which he is employed but he shall take all proper and reasonable steps in the exercise of his notarial practice to maintain his independence of his employer and in particular he shall:

7.2.1 ensure that his independence as a notary is fully recognised in writing in any contract of employment entered into by him,

7.2.2 annually send to his employer a written statement of professional independence in a form approved by the Master from time to time, and shall declare in his application for a notarial practising certificate that he has complied with this rule.

8. Language

8.1 Notarial acts shall normally be drawn up in the English language.

8.2 A notary may upon request or in appropriate circumstances prepare a notarial act in a language other than English if he has sufficient knowledge of the language concerned.

8.3 A notary may not authenticate by means of a notarial act a document drawn up in a language other than English unless he has satisfied himself as to its meaning but this does not prevent a notary from authenticating the execution or signature of a document in any language.

8.4 A notary may not certify the accuracy of a translation that has been made by someone other than himself unless he has knowledge of the language sufficient to satisfy himself as to the accuracy of the translation but this does not prevent a notary from attesting a translator's affidavit or authenticating a verification.

9. Undertakings

9.1 Any notary giving an undertaking, whether oral or in writing, shall be personally liable for that undertaking, and the implementation of any such undertaking is required as a matter of conduct. Save in

exceptional cases a failure by a notary to honour an undertaking will constitute notarial misconduct for the purposes of the Public Notaries (Conduct and Discipline) Rules) 20[--].

- 9.2 An undertaking given by a notary shall be in writing or confirmed in writing and signed by the notary giving it.

10. **Publicity**

A notary may advertise his practice and seek to obtain directly or indirectly clients and business in any manner and through any medium whether informative or promotional with the exception of unsolicited telephone calls or unsolicited visits to persons or organisations, as long as:

- 10.1 the client's freedom to instruct a qualified person of the client's choice is not thereby unduly restricted;
- 10.2 the notary's good reputation for integrity and professional standards of work is not thereby damaged;
- 10.3 he complies with the UK Code of Non-Broadcast Advertising, Sales Promotion and Direct Marketing, the Independent Broadcasting Authority Code of Advertising Standards and Practice and the Direct Marketing Code of Practice in force from time to time,

but nothing in this Rule shall be construed as authorising the use of the word "notaries" or any word designating or indicating notarial services in any publicity for activities which are not of a notarial nature.

11. **Scrivener Notaries**

No notary shall describe himself professionally as a Scrivener or a Scrivener notary unless he holds the qualifications to practise as a Scrivener notary from time to time prescribed by the Incorporated Company of Scriveners.

12. **Introductions and Referrals**

When a notary enters into an arrangement with another person for the introduction of clients to the notary or by the notary to the other person he must ensure:

- 12.1 that the client is informed in writing of the arrangement and of any commission or other benefit the notary may be receiving or pay;
- 12.2 that he either obtains the client's written agreement as to the destination of the commission or accounts to the client for the commission;
- 12.3 that he remains able to advise the client independently in accordance with these rules and continues to do so regardless of his own interests.

13. Offering Services other than as a Notary

13.1 Where a notary by himself or with any other person operates, actively participates in or controls any business, other than a notary's practice, the notary shall ensure:

13.1.1 that the name of that business has no substantial element in common with the name of any practice of the notary;

13.1.2 that the words "notary", "notaries," "attorney(s)" or "lawyer(s)" or any words designating or indicating a notarial or legal practice are not used in connection with the notary's involvement with that business;

13.1.3 that any client referred by any practice of the notary to the business is informed in writing that, as a customer of that business, he does not enjoy any protection attaching to the client of a notary, and that where that business shares premises or reception staff with any practice of the notary, every customer of the business is informed in writing that, as a customer of that business, he does not enjoy the protection attaching to the client of a notary.

13.2 Rule 13.1 does not apply to the practice of a qualified legal practitioner.

14. Fees

14.1 A notary may charge a professional fee for all notarial work undertaken by him, and the basis upon which that fee will be calculated or the fee to be charged for the work done, shall be made known in advance to any new instructing person.

14.2 Subject to rule 14.3, a notary shall not share or agree to share his professional fees with any person not entitled to act as a notary; provided that this rule shall not prohibit the payment of any allowance or allowances, sum or sums of money, that are or shall be agreed to be made or paid to the widows or children of any deceased notary or notaries, by any surviving partner or partners of such deceased notary or notaries.

14.3 A notary who also practises as a qualified legal practitioner either in a professional partnership or as an employee may share professional fees with his professional partners or employer who are also so qualified provided that a notary who shares fees by virtue of this paragraph shall keep accounts which enable the income and expenditure arising from his practice as a notary to be distinguished from the income and expenditure arising from his practice or employment as a qualified legal practitioner and shall furnish the Faculty Office with such additional information as to his professional partnership and accounting arrangements or his employment as the case may be as may

be prescribed in rules or orders of the Master.

15. Name of a Firm of Notaries

- 15.1 The name of a firm of notaries shall consist only of:
- 15.1.1 the name or names of one or more present or former principals together with, if desired, conventional references to the firm and to such persons;
 - 15.1.2 a firm name in use on 1st January 1989;
 - 15.1.3 the name of a firm of qualified legal practitioners of which a notary is a partner; or
 - 15.1.4 one approved in writing by the Master.
- 15.2 Any notary starting to use an internet domain as a name after the date of commencement of these Rules shall comply with one or more of the requirements in 15.1.1 to 15.1.4 of this rule.

16. Investment Business

- 16.1 A notary shall not in connection with any regulated activity have any arrangement with another person under which the notary could be constrained to recommend to clients or effect for them (or refrain from so doing) transactions in some investments but not others, with some persons but not others, or through the agency of some persons but not others; or to introduce or refer clients or other persons with whom he deals to some persons but not others, nor shall a notary be an appointed representative.
- 16.2 Notwithstanding any provision in rule 13 a notary shall not by himself or with any other person set up, operate, actively participate in or control any separate business which is an appointed representative.
- 16.3 This rule shall have effect in relation to the conduct of regulated activity within or into any part of the United Kingdom.
- 16.4 In this rule “appointed representative” and “regulated activity” have the meanings assigned to them by the Financial Services and Markets Act 2000.

17. Supervision of a Notary’s Office

- 17.1 A notary shall take reasonable steps to ensure that every office where he practises is and can be seen to be;
- 17.1.1 open, save exceptionally and for a good reason, during normal office hours for the provision of appropriate notarial services to members of the public, and

17.1.2 properly supervised.

In particular a notary shall ensure that he or another notary holding a Practising Certificate shall spend sufficient time at such office to ensure adequate control of the staff employed there and afford requisite facilities for consultation with clients. Such notary may be a principal, employee or consultant of the firm or a locum tenens.

17.2 In determining whether or not there has been compliance with the requirement as to supervision in rule 17.1, account shall be taken of, inter alia, the arrangements for the principals to see or be apprised of incoming communications,

17.3 Where the operation or supervision of a notary's office in accordance with this rule is prevented by illness, accident or other sufficient or unforeseen cause for a prolonged period, suitable alternative arrangements shall be made without delay to ensure compliance.

17.4 In cases where a notary is not in attendance on days when his office is normally open to the public, he shall make adequate arrangements to ensure the provision of notarial services to persons requiring the same.

18. Continuing Professional Education

18.1 After commencing practice and having satisfactorily completed the required period of supervision, a notary shall, within every such successive period as shall be determined by the Master, participate in such programmes, courses or seminars approved by the Master as may be necessary to acquire the number of credit points determined by the Master.

18.2 Upon determination by the Master of the periods and number of credit points, they shall be specified in Guidance published by the Registrar, which shall incorporate such revised determinations as the Master may make from time to time.

19. Duty to Keep Records

19.1 A notary shall keep proper records of his notarial acts in accordance with this rule.

19.2 The records so kept shall be sufficient to identify:

19.2.1 the date of the act;

19.2.2 the person at whose request the act was performed;

19.2.3 the person or persons, if any, intervening in the act and, in the case of a person who intervened in a representative capacity, the name of his principal;

19.2.4 the method of identification of the party or parties intervening in the notarial act, and in the case of a party intervening in a

representative capacity, any evidence produced to the notary of that party's entitlement so to intervene;

19.2.5 the nature of the act;

19.2.6 the fee charged.

19.3 In the case of a notarial act in the public form, the notary shall place an original of the act or a complete photographic copy of the same in a protocol which shall be preserved permanently by the notary.

19.4 Records of acts not in public form kept in accordance with rule 19.2 shall be preserved for a minimum period of twelve years and, for the avoidance of doubt, such preservation may be by means of a suitable digital or other electronic system providing for the storage of documents in an indelible and unalterable format.

19.5 A copy of a notarial act or of the record of a notarial act preserved in accordance with rules 19.3 and 19.4 shall, upon payment of a reasonable fee, be issued upon the application of any person or authority having a proper interest in the act unless prevented by order of a competent court.

19.6 Any question as to whether a person has a proper interest in an act for the purposes of rule 19.5 shall be determined by the Master.

20. **Inspection of Records**

Records kept pursuant to rule 19 shall be open at any time to inspection by the Master or a person authorised by him.

21. **Notaries Ceasing to Practise**

21.1 When a notary ceases to practise as such, then he, or failing him his continuing notarial partners or the person having possession or custody of the records maintained by him pursuant to rule 19, shall arrange for such records to be transferred:

21.1.1 to another notary in practice appointed by him or by his continuing notarial partners,

21.1.2 to another notary in practice appointed, with the approval of the Master, by the persons having possession or custody of the records, or

21.1.3 to an archive designated for the purpose under regulations made by the Master from time to time,

and the persons making such transfer shall give written particulars to the Registrar of the date of transfer and the person or archive to which the records were transferred.

21.2 The provisions of rules 19 and 20 shall apply to a notary or archive to which the records of any notary are transferred pursuant to this rule as they apply to the notary himself.

22. Application to Ecclesiastical Notaries

The provisions of this Part shall apply to notaries appointed for ecclesiastical purposes only subject to the following modifications:

- 22.1 The requirement of rule 19 to keep a record of notarial acts shall apply only to such ecclesiastical acts as law or custom requires to be performed in the presence of a public notary and recorded in writing.
- 22.2 Any act or transaction properly recorded in the Act Book of any Archbishop or Bishop, or in the Minute Book of any Cathedral Chapter, shall be deemed to have been properly recorded in accordance with rule 19.
- 22.3 Rule 21 shall not apply to ecclesiastical notaries, but upon a person ceasing for any reason to hold the office in respect of which he was appointed an ecclesiastical notary, any records kept by him pursuant to this Part shall be transferred to the succeeding holder of that office (being an ecclesiastical notary) upon his appointment.

PART IV: MISCELLANEOUS

23. Waivers

The Master shall have power to waive any of the provisions of these rules in any particular case or classes of case for the purpose expressed in such waiver, and to revoke such waiver.

24. Repeals and Savings

- 24.1 Subject to rule 24.2 the Notaries Practice Rules 2001 are hereby revoked.
- 24.2 Rule 24.1 does not absolve any notary from the duty to comply with the Notaries Practice Rules 2001 prior to the coming into force of these rules and records maintained by a notary in accordance with Rules 19-22 of the Notaries Practice Rules 2001 prior to the coming into force of these rules shall continue to be so maintained by him and rules 19.5, 19.6, 20, 21 and 22 of these rules shall apply to such records.

The Right Worshipful Charles R George, Q.C.
Master

1st November 2009

Prescribed words

1. My notarial practice is regulated by the Faculty Office of the Archbishop of Canterbury:

The Faculty Office
1, The Sanctuary
Westminster
London
SW1P 3JT

Telephone 020 7222 5381
Email Faculty.office@thesanctuary.com
Website www.facultyoffice.org.uk

2. If you are dissatisfied about the service you have received please do not hesitate to contact [me/ my firm].

3. If we are unable to resolve the matter you may then complain to [The Notaries Society/ the Society of Scrivener Notaries of which I am a member, who have a Complaints Procedure which is approved by the Faculty Office] [the Faculty Office who will refer the complaint to be considered by one or several independent notaries]. This procedure is free to use and is designed to provide a quick resolution to any dispute.

4. In that case please write (but do not enclose any original documents) with full details of your complaint to [:-

contact details of relevant Approved Procedure] [the Faculty Office].

If you have any difficulty making a complaint in writing, please do not hesitate to call [The Designated Society/The Faculty Office] for assistance.

5. Finally, even if you have your complaint considered under the Complaints Procedure, you may at the end of that procedure or after a period of eight weeks from the date you first notified me that you were dissatisfied, make your complaint to the Legal Ombudsman, if you are not happy with the result:

Legal Ombudsman
Baskerville House, Centenary Square,
Broad Street, Birmingham B1 2ND

Tel : 0300 555 0333

Email: enquiries@legalombudsman.org.uk
Website: www.legalombudsman.org.uk

6. If you decide to make a complaint to the Legal Ombudsman, you must refer your matter to the Legal Ombudsman within six months from the conclusion of the complaint process.

APPROVED COMPLAINTS PROCEDURE

The Notaries Society

Approved Complaints Procedure

1. Purpose

- 1.1 The Notaries Society intends that this procedure will enable the resolution of complaints made against General Notaries who are members of The Notaries Society.

2. Making a complaint

- 2.1 The complaint should be made to the Secretary of The Notaries Society at the following address:-

Christopher Vaughan,

The Secretary,

The Notaries Society,

Old Church Chambers, 23 Sandhill Road,

St James Northampton NN5 5LH.

Email : secretary@thenotariessociety.org.uk

Tel : 01604 758908

- 2.2 The Complainant shall provide the Secretary with full details of the complaint together with copies of any documents or correspondence.

- 2.3 If the Complainant has any difficulty in making the complaint in writing he/she should contact the Secretary for assistance.

3. Action by the Secretary

- 3.1 The Secretary will write to the Complainant asking whether he/she is willing for the complaint to be considered by the President and Vice-President within the Approved Complaints Procedure if that agreement has not already been obtained.

- 3.2 The Secretary will prepare copies of all the papers and deliver them with his own report (if necessary) and a summary to the President and the Vice-President of The Notaries Society

- 3.3 It is anticipated that the parties will cooperate to assist the Secretary in facilitating the Approved Complaints Procedure.

4. Conclusion

- 4.1 The President and Vice President will consult together and will propose a Conclusion which in their judgement is fair to both parties. A written record of the Conclusion will be sent to the Secretary who will then inform both parties and the Faculty Office.
- 4.2 At the same time as informing the parties of the Conclusion the Complainant will be notified of his/her right to complain to the Legal Ombudsman, the timeframe for doing so, and full details of how to contact the Legal Ombudsman. If the Complainant decides to refer the matter to the Legal Ombudsman he/she must do so within six months from the conclusion of the complaint process.
- 4.3 The Conclusion is to be notified to both the Complainant and the Notary no later than 8 weeks after the date of which the Complainant complained. After this period the Complainant may complain to the Legal Ombudsman whether or not a Conclusion has been notified to him/her

5. Effect of conclusion

- 5.1 It is expected that the Notary will implement any remedy (if any) which is recommended at the conclusion. Nothing in this clause prevents the Notary from providing an alternative remedy but the Faculty Office will consider it to be a serious matter of concern if the Notary does not abide by the conclusion without reasonable cause.
- 5.2 Nothing in this procedure prevents a party from pursuing their case with the Faculty Office (in cases involving misconduct), the Legal Ombudsman or the civil courts or as may be appropriate.

6. Additional notes

- 6.1 The Secretary when preparing the documentation provided for in clause 3.2 may ask for further information from either or both parties
- 6.2 The President and the Vice President may ask for further information from either or both of the parties before they can reach a conclusion.
- 6.3 The Complainant is not required to provide further information as specified in 6.1 and 6.2 above but it is anticipated that the Complainant will provide information relevant and necessary for the resolution of the complaint.
- 6.4 If the nature of the complaint indicates that there may have been 'notarial misconduct' the Secretary shall notify the Faculty Office but this in no way prevents the operation of the Approved Complaints Procedure in the resolution of the complaint.
- 6.5 The Notaries Society cannot consider any complaint if it is or becomes the subject of any Court proceedings (other than proceedings in the Court of Faculties).
- 6.6 Original documents and correspondence should **not** be sent to the Secretary unless specifically requested.

- 6.7 The expression 'President and Vice President' shall include such other members of the Council of The Notaries' Society as shall be nominated by either the President or the Vice President to act in their place
- 6.8 The Secretary may depart from these rules only in cases where reasonable to ensure the effective and timely resolution of complaints and will have regard to any guidance issued by the Faculty Office or Legal Services Board when doing so

Christopher Vaughan

Secretary

DATA PROTECTION NOTICE

As Secretary of the Notaries Society I will use any of the information that you give to me to investigate your complaint. I will not use such information for an unconnected purpose without your permission. I will have to reveal your information to the President and Vice-President of the Notaries Society who will be adjudicating on your complaint, and in addition to the Notary about whom you have complained.

I may also have to reveal such information to :-

1. The Faculty Office of the Archbishop of Canterbury who is the Regulator for Notaries; and any other Approved Regulator under the Legal Services Act who in my opinion may have an interest in your complaint; and
2. Law enforcement authorities generally.

To help me maintain a record of the professional details of Notaries I will have to keep any information supplied to me after your complaint has been dealt with by the President and Vice-President under the Approved Complaints Procedure.

If any of the information you have given me is sensitive or personal under the Data Protection Act 1998, by accepting this procedure you have consented to me holding that information.

You can apply to me for a copy of your information (for which I may charge a fee) in order to have any mistakes corrected.