

## NOTARIES PRACTICE RULES 2009

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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;
- **“firm”** includes a sole practitioner;
- **“holding company” and “subsidiary company”** have the meanings assigned to them by the Companies Acts 1985 and 1989, 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 partner”** includes a Limited Liability Partnership (LLP) and a body corporate and the members thereof authorised to conduct legal practice as such and the words “partnership” and “professional partnership” shall be construed accordingly.
- **“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, 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 Legal Services Act 2007 and how to make such a complaint.

5A.2 The 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.

**6. Conflicts of Interest**

- 6.1 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.
- 6.2 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.
- 6.3 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:-
  - 6.3.1 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
  - 6.3.2 Both parties are established clients in that they have instructed the notary on previous occasions; or
  - 6.3.3 The consideration does not exceed £10,000 in an individual transaction; and
  - 6.3.4 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

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6.3.5 Both parties consent in writing.

6.4 Relations with third parties;

6.4.1 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.

6.4.2 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.

6.5 Conflicts of Interest (Notarial Acts):

6.5.1 Subject to rules 6.2 and 6.3 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.

6.5.2 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.

**7. 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:

7.1 his own affairs, including matters in which he is personally interested jointly with another person;

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- 7.2 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;
- 7.3 the affairs of a person to whom he is directly and closely related;
- 7.4 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;
- 7.5 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;
- 7.6 the affairs of a trust of which he is a trustee or of an estate where he is a personal representative of the deceased;
- 7.7 the affairs of a body corporate of whose board of directors or governing body he is a member;
- 7.8 the affairs of an employee of the notary;
- 7.9 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.

## 8. Employed Notaries

- 8.1 Save as permitted by rule 8.2 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.
- 8.2 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:
  - 8.2.1 ensure that his independence as a notary is fully recognised in writing in any contract of employment entered into by him,
  - 8.2.2 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.

## 9. Language

- 9.1 Notarial acts shall normally be drawn up in the English language.
- 9.2 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.

- 9.3 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.
- 9.4 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.

## 10. Undertakings

- 10.1 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[~~19~~09.
- 10.2 An undertaking given by a notary shall be in writing or confirmed in writing and signed by the notary giving it.

## 11. 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:

- 11.1 the client's freedom to instruct a qualified person of the client's choice is not thereby unduly restricted;
- 11.2 the notary's good reputation for integrity and professional standards of work is not thereby damaged;
- 11.3 he complies with the British Code of Advertising Practice, the Independent Broadcasting Authority Code of Advertising Standards and Practice and the Direct Mail Regulations 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.

## 12. 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 of London.

## 13. 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:

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

#### 14. **Offering Services other than as a Notary**

14.1 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:

- 14.1.1 that the name of that business has no substantial element in common with the name of any practice of the notary;
- 14.1.2 that the words "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;
- 14.1.3 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.

14.2 Rule 14.1 does not apply to the practice of a qualified legal practitioner.

#### 15. **Fees**

15.1 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 client.

15.2 Subject to rule 15.3, 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.

15.3 A notary who also practises as a qualified legal practitioner either in 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 partnership and accounting arrangements or his employment as the case may be as may be prescribed in rules or orders of the Master.

## 16. Name of a Firm of Notaries

16.1 The name of a firm of notaries shall consist only of:

16.1.1 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;

16.1.2 a firm name in use on 1st January 1989;

16.1.3 the name of a firm of qualified legal practitioners of which a notary is a partner; or

16.1.4 one approved in writing by the Master.

16.2 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 16.1.1 to 16.1.4 of this rule.

## 17. Investment Business

17.1 A notary shall not in connection with investment business 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.

17.2 Notwithstanding any provision in rule 14 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.

17.3 This rule shall have effect in relation to the conduct of investment business within or into any part of the United Kingdom.

17.4 In this rule “appointed representative,” “investment” and “investment business” have the meanings assigned to them by the Financial Services Act 1986.

## 18. Supervision of a Notary’s Office

18.1 A notary shall take reasonable steps to ensure that every office where he practises is and can be seen to be;

18.1.1 open, save exceptionally and for a good reason, during normal office hours for the provision of appropriate notarial services to members

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of the public; and

18.1.2 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.

18.2 In determining whether or not there has been compliance with the requirement as to supervision in rule 18.1, account shall be taken of, inter alia, the arrangements for the principals to see or be apprised of incoming communications,

18.3 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.

18.4 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.

19. **Continuing Professional Education**

19.1 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.

19.2 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.

20. **Duty to Keep Records**

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

20.2 The records so kept shall be sufficient to identify:

20.2.1 the date of the act;

20.2.2 the person at whose request the act was performed;

20.2.3 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;

20.2.4 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;

20.2.5 the nature of the act;

20.2.6 the fee charged.

20.3 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.

20.4 Records of acts not in public form kept in accordance with rule 20.2 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.

20.5 A copy of a notarial act or of the record of a notarial act preserved in accordance with rules 20.3 and 20.4 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.

20.6 Any question as to whether a person has a proper interest in an act for the purposes of rule 20.5 shall be determined by the Master.

## 21. **Inspection of Records**

Records kept pursuant to rule 20 shall be open at any time to inspection by the Master or a person authorised by him.

## 22. **Notaries Ceasing to Practise**

22.1 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 20, shall arrange for such records to be transferred:

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

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

22.1.3 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.

22.2 The provisions of rules 20 and 21 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.

23. **Application to Ecclesiastical Notaries**

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

- 23.1 The requirement of rule 20 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.
- 23.2 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 20.
- 23.3 Rule 22 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**

24. **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.

25. **Repeals and Savings**

- 25.1 Subject to rule 25.2 the Notaries' Practice Rules 2001 are hereby revoked.
- 25.2 Rule 25.1 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 20-23 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 20.5, 20.6, 21, 22 and 23 of these rules shall apply to such records.

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

**1st November 2009**

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