



Our ref: 7126/HJD/NDT/Notarial

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Office hours: 10am - 4pm Monday - Friday

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Dear Paul

**Application to the Legal Services Board for an alteration to regulatory arrangements
New Rule 21.5 to be added to the Notaries Practice Rules 2014**

On behalf of the Master of the Faculties I am making the above application under Part 3 of Schedule 4 of the Legal Services Act 2007 ('LSA 2007') and the rules made by the Legal Services Board under that part.

A copy of the proposed new Rule 21.5 is annexed. This is the addition to which I referred in my application for changes to rules 18 and 19 last December.

Reason for the proposed alteration in regulatory arrangements

The proposed amendments to the **Notaries Practice Rules 2014** ("NPR2014") make a single addition:

- To add rule 21 by the addition of rule 21.5:

A notary shall not employ within his professional practice a person who is, or has been, a member of a Specified Profession within the meaning of rule 24 and the Schedule to the Notaries (Conduct and Discipline) Rules 2015 without the express written permission of the Registrar where that person has had a finding of professional misconduct made against him by the Relevant Body of the Specified Profession.

(A Specified Profession means a barrister, solicitor, chartered legal executive, licensed conveyancer, overseas lawyer or other Authorised Person).

This change is intended to address a specific mischief in advance of what will be more substantive proposals in relation to notaries employees as part of an entity regulation regime. I am only aware of one case where I was advised (by another Approved Regulator) that a notary had employed an individual who had been disciplined and prohibited by that body. Although our existing supervision rules make the notary wholly responsible for the supervision of his or her office, I am concerned here with the proper protection of the consumer where, effectively, the Master of the Faculties only regulates the notary and has no direct control over the conduct of employees. I should, perhaps, add that in the case in question, there was no indication that the employee was not being adequately supervised by the notary but the Master and I take the view that the proposed new rule would provide an additional level of public protection in advance of any proposals to provide for more direct regulatory control of the employees of a notarial entity.

Compliance with the regulatory objectives

The LSA 2007 requires approved regulators to comply with the following objectives:-

- (a) protecting and promoting the public interest;
- (b) supporting the constitutional principle of the rule of law;
- (c) improving access to justice;
- (d) protecting and promoting the interests of consumers;
- (e) promoting competition in the provision of services;
- (f) encouraging an independent, strong, diverse and effective legal profession;
- (g) increasing public understanding of the citizen's legal rights and duties;
- (h) promoting and maintaining adherence to the professional principles.

In light of the regulatory objectives I have the following comments:-

(a) protecting and promoting the public interest

The addition of Rule 21.5 to the NPR2014 is intended to provide enhanced protection and promotion of the public interest by seeking to ensure that a notary does not employ a legal practitioner who has been found guilty of professional misconduct by another Approved Regulator or its relevant disciplinary body without my permission. This would enable us, in appropriate cases, to ensure that the individual is either not employed or that the notary has adequate supervision and other protections in place to properly protect the public.

(b) supporting the constitutional principle of the rule of law

The proposed rule 21.5 will provide additional support for the rule of law insofar as supporting the findings of other Approved Regulators' disciplinary tribunals is concerned. By adding this

rule, the findings of those tribunals will have an additional, albeit in most cases minimal, impact by providing a mechanism for them to be recognised within our own regulatory regime.

(c) improving access to justice

The changes to the NPR2014 will have a neutral effect on public access to notaries.

(d) protecting and promoting the interests of consumers

As indicated under (a) above, the amended NPR2014 will enhance the protections afforded to the public and consumers of the services of a notary. Whilst it is unlikely that anyone affected by these proposals might become engaged in the reserved legal activity of Notarial Activities, it may well afford additional protections where someone might be brought in to assist a Notary who undertakes conveyancing (Reserved Instrument Activities) or Probate Activities.

(e) promoting competition in the provision of services

It is not anticipated that the new rule will have any effect on this aspect.

(f) encouraging an independent, strong, diverse and effective legal profession

The proposed changes in the NPR2014 are intended to encourage an independent, strong, diverse and effective profession by providing additional safeguards in whom a notary may employ to assist them in their professional practice. It is clearly not appropriate that an individual who has had a substantiated finding of professional misconduct against them and, possibly, been struck off by one disciplinary body to be permitted to work unrestricted as an employee of a professional in a different regulated profession.

(g) increasing public understanding of the citizen's legal rights and duties

The proposed new rules are unlikely to affect public understanding of citizens' legal rights.

(h) promoting and maintaining adherence to the professional principles

The 'professional principles' are:

- (a) that authorised persons should act with independence and integrity;
- (b) that authorised persons should maintain proper standards of work;
- (c) that authorised persons should act in the best interests of their clients;

- (d) that persons who exercise before any court a right of audience, or conduct litigation in relation to proceedings in any court, by virtue of being authorised persons should comply with their duty to the court to act with independence in the interests of justice; and
- (e) that the affairs of clients should be kept confidential.

All the provisions governing the conduct of a notary are underpinned by the general duty to promote and maintain those professional principles which are contained in rules made by the Master of the Faculties, in the general law, and which are common to best notarial practice internationally. The amended NPR2014 will have a positive effect on this objective and, in particular, the first three of the professional principles.

Compliance of the Regulations with the Better Regulation Principles

Section 28 of the Act imposes a duty on an approved regulator, so far as is reasonably practicable, to act in a way:

- (a) which is compatible with the regulatory objectives; and
- (b) which the approved regulator considers most appropriate for the purpose of meeting those objectives.

The approved regulator must have regard to:

- (a) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and
- (b) any other principle appearing to it to represent the best regulatory practice.

The amendment to Rule 21 of the NPR2014 is intended to be a proportionate and targeted response to a particular potential mischief and compatible with the regulatory objectives as outlined above.

The new rules are presented after consultation with the two representative membership societies (The Notaries Society and The Society of Scrivener Notaries) who both provided helpful feedback and suggested only very minor amendments which have been incorporated into the new rule for clarity.

How will the Faculty Office determine whether the Rules have been successful in meeting their objectives?

I am not anticipating any significant changes following the making of the amended NPR2014. As I have noted above, I am only aware of one situation where a notary may have employed a

person in circumstances where, had this rule been in place, my permission might have been required. The potentially low number of instances in which the rule might be needed does not, in my view however, make it any less appropriate nor does it render it disproportionate.

Impact on other approved regulators

The amended rules will have no adverse effect on other approved regulators and they will not give rise to regulatory conflict. On the contrary, the rule will provide additional support and effect for the findings of their respective disciplinary bodies.

Timetable

The amended rules are intended to be made as soon as approval has been given and then signed by the Master.

If you have any questions, please do not hesitate to contact my Senior Clerk, Neil Turpin, in the first instance. I look forward to hearing from you in due course.

Yours sincerely

A handwritten signature in black ink, appearing to read "Howard Della". The signature is written in a cursive style with a large initial 'H' and a long, sweeping tail.

H J DELLAR
Registrar

