

THE NOTARIES SOCIETY

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Stephen Borton Esq
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30 April 2015

Dear Stephen

Revision of The Notaries (Conduct and Discipline) Rules

The draft new Rules have been circulated throughout the Society. I have had a number of comments. The only relevant ones I believe are as follows :-

1. There ought to be machinery within the Rules to allow for Mediation – this comment comes from a Notary who acts as a Mediator and sits as a Deputy District Judge from time to time.
2. Suggested Rule 21.4 :-

“The Registrar may decide to advertise the sanctions against the Notary under this Rule in a newspaper circulating in the area of the Applicants practice or former practice, or in the London Gazette, a publication of a designated Society, or in any other relevant publication as the Registrar thinks fit”.

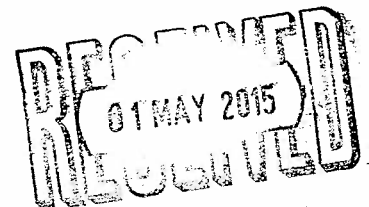
The reasoning behind this follows the Alfred Jealous case which I mentioned at our Council Meeting to you where Alfred Jealous carried on practising, and nobody in his geographical area realised.

In addition, we have a current “Ex-Notary” Trevor West, who appears to be carrying on a Notarial practice without any authority.

3. Some comments from Sally Osborn, and I attach her email to me with details.
4. I am aware, having discussed matters with Jonathan Coutts that the Society of Scrivener Notaries are making suggestions as well.

Yours sincerely
Christopher Vaughan

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Registered at London 93175
Registered office as above



Melanie Masters

From: Christopher Vaughan Secretary [secretary@thenotariessociety.org.uk]
Sent: 15 April 2015 18:16
To: Melanie Masters
Subject: Fwd: Revision of the NOTaries (Conduct and Discipline)Rules 2011

Sent from my iPad

Begin forwarded message:

From: "Sally Osborn" <sosbornnotary@btinternet.com>
Date: 14 April 2015 13:42:14 BST
To: "Christopher Vaughan" <secretary@thenotariessociety.org.uk>
Cc: "Rosemary Dunford" <admin@thenotariessociety.org.uk>, "Barry Holland" <Barry.Holland@aaronandpartners.com>, "Michael Lightowler" <ml@notaryservices.co.uk>
Subject: Revision of the NOTaries (Conduct and Discipline)Rules 2011

Dear Christopher

I set out below my comments on the above I hope I have understood the draft :

Explanatory memorandum

10- even if it is for detection , investigation or prosecution of a crime should it still not be with a court order?

Draft rules:

Definition of Notarial Act what does "carried out by electronic means "mean?

In the definition of Notarial Misconduct under (3) talks about standard of service reasonably to be expected ---how will this be judged ? What is the standard of service reasonably to be expected?

Clause 6 .6 this covers the use of a document by a Nominated notary as I said above I do not think ANY documents should be released unless there is a court order .

It is a very serious allegation to allege a crime has been committed so it should be necessary for a court order to be obtained before document sare used.

Clause 7.3.1 What if a Notary REFUSES to comply with any reasonable action?

How is reasonable action defined? Surely it must be taken as read the Approved Procedure would only suggest something reasonable . The notary could just say and I think you know who I am thinking of that the action required under the Approved Procedure is not reasonable .

Clause 7.3.2 I think it is undermining the Approved procedure to give the notary carte blanche to offer an alternative remedy to that concluded by the Designated Society.

Clause 7.5 I think 2 notaries should deal with each complaint

Clause 21.2.2 What is the monetary sum not exceeding £10,000 for ? It is a lot of money . Can this be defined ? Is it a fine? It does not appear to be for indemnifying the client as this is covered by 21.2.1 nor for costs as these are covered in clause 22.

Kind Regards

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6th July 2015

Christopher Vaughan Esq
Hon Secretary
The Notaries Society
DX 15620
NORTHAMPTON 3

Dear Christopher

REVISION OF THE NOTARIES (CONDUCT AND DISCIPLINE) RULES

Thank you for your letter of 30 April 2015 which was considered by the Master who is grateful for the points made.

In reply:-

1. Mediation – We do not consider that there is a need for mediation provisions as part of the disciplinary apparatus of the rules but we will include a provision for settlement of claims between the parties with the approval of the Court (see new proposed Rule 14). If, however, the Notaries Society wanted to include mediation provisions at the "first-tier" as part of the Approved Procedure, the Master would consider this.

2. Suggested Rule 21.4 – Agreed, with the following modifications:

"The Registrar may decide to advertise ~~the~~ any sanctions against ~~the a~~ a Notary under this Rule in a newspaper circulating in the area of the ~~Applicants~~ notary's practice or former practice or in the London Gazette, a publication of a ~~d~~Designated sSociety, or in any other relevant publication as the Registrar sees fit."

3. Sally Osborn's comments:-

J P Sergeant	S D C Dean	E J Macey-Dare	A Vlachos	<i>Associates:</i>	<i>Consultants:</i>	J G Ouvry
B D Clarke	H J Dellar	C M Morgan	K E W Wallace	F M Godden	P F B Beesley	J P G Randel
L Coley	M J G Fletcher	J Reed	C D Woodroffe	N Gudka	M Dunn	S Z Reisman
R Cottingham	E J C Henderson	N D Urwin			C V Hughes	D Sills



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(i) Definition of Notarial Act – the reference to electronic means is contained in the present Rules and is whereby an electronic version of a document may be verified by way of a notary's electronic signature.

(ii) Definition of Notarial Misconduct – The standard of service reasonably to be expected would be a matter of fact in each case to be determined by the Court.

(iii) Rule 6.6 – power to inspect documents. There will be some cases where the Nominated Notary is under a legal duty to disclose information to the law enforcement and prosecuting authorities (e.g. suspected money laundering activity) and so we do not consider that it will be possible to require the Nominated Notary to seek the permission of the Court in every case, although that will be the norm.

(iv) Rule 7.3.1 – If a notary refuses to abide by the proposal of the Designated Society, the complainant could seek redress from the Legal Ombudsman. We were advised when the 2011 Rules came to be formulated that it would not be possible to give coercive effect to the action proposed at the end of the Approved Procedure. The Approved Procedure stands in place of what would for solicitors be complaints procedures operated within firms. If the notary unreasonably refused to comply with the proposal of the Approved Procedure or did so reasonably but failed to provide an alternative sufficient remedy, it would be for the Legal Ombudsman to take a view. In the event that the notary's behaviour had led to a standard of service which fell seriously below the standard reasonably to be expected of a notary or was part of a persistent failure to provide that standard or there was any wrongdoing, then the matter could be referred to be dealt with under the disciplinary part of the Rules, which is coercive.

(v) Rule 7.3.2 – See (iv) above. Again this is not a new provision.

(vi) Rule 7.5 – Not agreed that two notaries should deal with each first-tier complaint. This would make considering the complaint disproportionately expensive for what is supposed to be a quick and effective way of resolving complaints about the level of service.

(vii) Rule 21.2.2 This is a fine payable to the Contingency Fund but may be used to compensate a client for non-pecuniary loss. This is an existing provision except for the maximum amount of the fine, which has been increased.

I enclose a copy of Edward Gardiner's letter to me of 30 April and my response to that and a copy of the revised Rules.

With good wishes

Yours sincerely,

STEPHEN BORTON
Chief Clerk

Encs.

