



Decision notice

The Master of the Faculties application for approval of changes to the regulatory arrangements relating to its Conduct and Discipline Rules

The Legal Services Board (LSB) has granted an application from the Master of the Faculties for approval of amendments to its Conduct and Discipline Rules.

This decision notice sets out the basis for the LSB granting the application and the decision taken, including a brief description of the changes.

The LSB is required by Part 3 of Schedule 4 to the Legal Services Act 2007 (the Act) to review and grant or refuse applications by approved regulators to make alterations to their regulatory arrangements. The Master of the Faculties is an approved regulator.

This decision notice sets out the decision taken, including a brief description of the changes. The notes at the end of this notice explain the statutory basis for the decision. The chronology for the LSB's handling of this application is also set out at the end of this decision notice.

Purpose of notice

To grant an application from the Master of the Faculties approving alterations to its regulatory arrangements in respect of its Conduct and Discipline Rules.

Main changes being made by the Master of the Faculties

Makes provision for limiting the costs of disciplinary cases by introducing a table of costs to be applied.

Introduces a single disciplinary regime for all notaries rather than having separate regimes for Scrivener and non-Scrivener notaries.

Consolidates the Notaries (Conduct and Discipline) Rules 2011 with the Appeals and Hearings Rules 2000.

Why the LSB is granting the application in full

Having fully assessed the application against the refusal criteria in the Act, the LSB sees no reason to refuse this application. This decision notice does, however, record that the LSB does not consider it to be good regulatory practice for the Master of the Faculties to include the option of a criminal standard of proof in certain types of disciplinary cases.

Proposed changes

1. The proposed changes are to the Master of the Faculties Conduct and Discipline Rules. The alterations:
 - Make provision for limiting the costs of disciplinary cases by introducing a table of costs to be applied. This is in order to enable the Court of Faculties, which is the tribunal of the Archbishop of Canterbury, to manage more effectively the costs of proceedings, with the aim of ensuring it has a cost effective disciplinary regime. The Explanatory Memorandum which accompanied the application explained that this is in the light of a recent case where the costs were very high and had the effect of depleting the Master of the Faculties Contingency Fund and doubling the annual contribution to be made to it by each notary. A table of costs will be applied by the judge, save in exceptional cases.
 - Introduce a single disciplinary regime for all notaries rather than having separate regimes for Scrivener and non-Scrivener notaries. This is to simplify the disciplinary process by removing the separate regime which existed for Scrivener notaries and to provide a single process for the whole of the profession.
 - Consolidate the Notaries (Conduct and Discipline) Rules 2011 with the Appeals and Hearings Rules 2000. This is a further simplification of the rules by combining two sets of rules.

Key issues considered in the assessment of the application

2. The LSB broadly welcomes the Master of the Faculties proposals to both simplify the regulatory framework and to establish a system for better managing disciplinary costs.
3. Three main issues arose in the assessment of the application. The LSB sought to understand how the table of costs would operate; and how the use of the criminal standard of proof (in particular circumstances) would work in practice. The LSB also addressed the Master of the Faculties redress proposals. The outcome of our enquiries and assessment is presented below.

Table of costs

4. The LSB wanted to know more about how the proposed table of costs would operate and be implemented. The Faculty Office confirmed that a Fees and Costs Order will set out/detail the table of costs that can be awarded to and recovered by the parties to a disciplinary case in the Court of Faculties. There is also provision in appropriate cases, for the Commissary (the designated official appointed by the Archbishop of Canterbury

for the purposes of the Conduct and Discipline Rules) in appropriate cases, to make summary determinations of costs. The Order, once made, will be published on the Master of the Faculties website alongside its Conduct and Discipline Rules. The Master of the Faculties will also review the fees from time to time. The Faculty Office also explained that the Fees and Costs Order, which will carry the table of costs, is presently out for consultation with the two notary representative societies and will be submitted to the LSB later this year as an application seeking approval to alterations to regulatory arrangements.

Standard of Proof

5. The LSB asked the Faculty Office to clarify the meaning of proposed Rule 19 - Standard of Proof - which states that “Where the allegation made against the notary involves directly or by implication a finding of fraud, dishonesty or criminal activity on the part of the notary, the Court [of Faculties] must be satisfied on the evidence beyond reasonable doubt”. The Faculty Office clarified that this new rule stems from comments and a ruling made by the Commissary in relation to a specific case, where it was decided that a “sliding scale” of proof should be applied. In most cases it would be the civil standard of proof that is applied; however, where the Commissary rules that on the facts the case relates to fraud, dishonesty or criminal activities, then a criminal standard of proof could be applied. The Faculty Office added that if a case is not clear, then the standard of proof to be applied would be decided by the Commissary as a preliminary matter at the substantive hearing or in directions at an earlier stage in proceedings.
6. While not a reason in itself to refuse the application, the LSB considers that introducing a criminal standard, albeit not in all cases, into the Master of the Faculties regulatory arrangements is not consistent with the LSB’s policy position on standard of proof. The LSB said in its assessment report of regulatory sanctions and appeals processes of the approved regulators, published in March 2014¹, that it “considers that the most appropriate standard of proof is the civil standard and that this should be introduced across all regulators, tribunal and appellate bodies”. The trend in recent case law, including in disciplinary cases relating to allegations of dishonesty, indicates that the civil standard of proof is being applied more widely in disciplinary cases across various regulated sectors.
7. In making its decision, the LSB took into account that there is only one Commissary and his deputy who will make decisions, and historically there have been few cases. Nonetheless, the LSB does not consider that it is good regulatory practice to adopt a criminal standard of proof. The LSB was further concerned that in proposing the regulatory arrangements, the Faculty Office did not appear to have been aware of recent (non-notarial) cases and changes in the field of disciplinary law which could have been relevant to the drafting of Rule 19. How the Master of the Faculties develops its

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http://www.legalservicesboard.org.uk/projects/thematic_review/pdf/20140306_LSB_Assessment_Of_Current_Arrangements_For_Sanctions_And_Appeals.pdf

regulatory arrangements and uses evidence to do so will be considered through the LSB's Regulatory Standards work.

Redress

8. Proposed Rule 7.3 (Complaints and Resolution Procedures), and Rule 14.3 (Agreed Statements) both refer to redress. Section 157 of the Act specifies that "the regulatory arrangements of an approved regulator must not include any provision relating to redress". The LSB considered whether the words on redress used in the proposed rules would be contrary to section 157. The LSB concluded that section 157 has not been breached as rules 7.3 and 14.3 do not provide sufficiently detailed provision relating to redress in respect of acts or omissions of authorised persons.

Decision

9. The LSB has considered the Master of the Faculties application against the criteria in paragraph 25(3) of Schedule 4 to the Legal Services Act 2007 (the Act). It considers that there is no reason to refuse this application; accordingly, the application is granted.
10. The Annex to this decision notice contains the new rules approved by the LSB.

Chronology

- The LSB confirmed receipt of an application from the Master of the Faculties on 6 July 2015.
- The 28 day initial decision period for considering the application ended on 2 August 2015.
- An extension notice was issued on 31 July 2015 to allow more time to consider one of the issues that arose in the LSB's assessment.
- This decision notice is effective from 21 August 2015.
- The decision notice will be published on our website on 24 August 2015.

Richard Moriarty, Chief Executive

**Acting under delegated authority granted by the Board of the Legal Services Board
21 August 2015**

Notes:

1. The LSB is required by Part 3 of Schedule 4 to the Act to review and grant or refuse applications by approved regulators to make alterations to their regulatory arrangements.
2. Paragraph 25(3) of Schedule 4 to the Act explains that the LSB may refuse an application setting out a proposed change to the regulatory arrangements 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 this Act or any other enactment or would result in any of the designation requirements ceasing to be satisfied in relation to the approved regulator
 - (c) granting the application would be contrary to the public interest
 - (d) the alteration would enable the approved regulator to authorise persons to carry on activities which are reserved legal activities in relation to which it is not a relevant approved regulator
 - (e) the alteration would enable the approved regulator to license persons under Part 5 [of the Act] 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.
3. The designation requirements referred to in paragraph 2(b) above are set out in paragraph 25(4) of Schedule 4 to the Act and are
 - (a) a requirement that the approved regulator has appropriate internal governance arrangements in place
 - (b) a requirement that the applicant is competent, and has sufficient resources to perform the role of approved regulator in relation to the reserved legal activities in respect of which it is designated, and
 - (c) the requirements set out in paragraphs 13(2)(c) to (e) of Schedule 4, namely that the regulatory arrangements are appropriate, comply with the requirements in respect of resolution of regulatory conflict (imposed by sections 52 and 54 of the Act) and comply with the requirements in relation to the handling of complaints (imposed by sections 112 and 145 of the Act).
4. In accordance with paragraphs 20(1) and 23(3) of Schedule 4 to the Act, the LSB has made rules² about the manner and form in which applications to alter regulatory arrangements must be made. Amongst other things, the rules highlight the applicant's obligations under section 28 of the Act to have regard to the Better Regulation Principles. They also require applicants to provide information about each proposed change and details of the consultation undertaken.
5. If the LSB is not satisfied that one or more of the criteria for refusal are met, then it must approve the application in whole, or the parts of it that can be approved.

² Rules for Rule Change Applications – Version 2 (November 2010)

NOTARIES (CONDUCT AND DISCIPLINE) RULES 201[5]

WE CHARLES RICHARD GEORGE One of Her Majesty's Counsel Commissary or Master of the Faculties of the Most Reverend Father in God Justin Portal 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:

ARRANGEMENT OF RULES

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Part III: Complaints Generally

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26. Revocation, Savings and Consequential Amendments

Schedule

Appendix

PART I: PRELIMINARY

1. Citation and Commencement

1.1 These rules may be cited as the Notaries (Conduct and Discipline) Rules 201[-]

1.2 The rules come into force on the 1st day of [...] 201[...]

2. Interpretation

2.1 In these rules:-

- **'1993 Rules'** means the Public Notaries (Conduct and Discipline) Rules 1993.
- **'2000 Rules'** means the Notarial Appeals and Hearings Rules 2000.
- **'2009 Rules'** means the Notaries (Conduct and Discipline) Rules 2009.
- **'2011 Rules'** means the Notaries (Conduct and Discipline) Rules 2011.
- **'2012 Rules'** means the Notaries (Practising Certificate) Rules 2012.

- **'Approved Procedure'** means a complaints resolution procedure approved under Rule 7 of these rules, Rule 3 of the 1993 Rules, Rule 3 of the 2009 Rules or Rule 3 of the 2011 Rules.
- **'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.
- **'Commissary'** and **'Deputy Commissary'** mean respectively the Commissary and Deputy Commissary appointed by the Archbishop of Canterbury under section 3 of the Ecclesiastical Licences Act 1533 to be the Commissary and Deputy Commissary for the purposes of these rules.
- **'Competent Complainant'** means:-
 - (1) A Nominated Notary, or
 - (2) A Client where the complaint relates to Notarial Misconduct arising from notarial acts or other professional services performed by the notary in question.
- **'The Contingency Fund'** means the fund referred to in the Notarial Contingency Fund Rules 1981.
- **'The Court'** means the Court of Faculties.
- **'Designated Society'** means the Notaries Society and the Incorporated Company of Scriveners and such other bodies as the Master may from time to time designate for the purposes of these rules.
- **'Document'** means anything in which information of any description is recorded.
- **'Lay Assessor'** means an Assessor who is not a notary.
- **'The Master'** means the Master of the Faculties.
- **'Nominated Notary'** means a notary appointed by the Registrar under Rule 6 of these rules.

- **‘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 Assessor’** means an Assessor who is a notary.
 - **‘Notarial Misconduct’** means
 - (1) Fraudulent conduct,
 - (2) Practising as a notary without a valid Notarial Practising Certificate or in breach of a condition or limitation imposed on a Notarial Practising Certificate, or
 - (3) serious misconduct which may inter alia include failure to observe the requirements of these rules or of the Notaries Practice Rules 2014 or falling seriously below the standard of service reasonably to be expected of a notary or persistent failure to provide the standard of service reasonably to be expected by a notary.
 - **‘The Registrar’** means the Registrar of the Court of Faculties or an officer of the Court acting with the Registrar's authority.
 - **‘Specified Profession’** and **‘Relevant Body’** have the meanings specified in Rule 24.
 - **‘Statement’** means a written statement (including a witness statement) containing a statement of truth.
 - **‘The Schedule’** and **‘the Appendix’** mean respectively the Schedule and the Appendix to these rules.
- 2.2 References in these rules to a “notary” are references to a public notary enrolled on the Roll of Notaries maintained by the Court.
- 2.3 Reference to any other rules or regulations made by the Master shall include any rules and regulations made in substitution therefor.
- 2.4 References in these rules to forms are to the forms set out in the Appendix, references in Part IV (Disciplinary Procedure) 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 V (Reviews) 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.

- 2.5 The Interpretation Act 1978 applies to these rules as it applies to an Act of Parliament.

PART II: THE COURT AND ITS OFFICERS

3. Permanent officers of the Court

- 3.1 The Commissary shall be the principal judge of the Court for the purposes of these rules.
- 3.2 If for any reason the Commissary is unable or unwilling to perform his functions under these rules in relation to any matter, that matter shall be assigned by the Registrar to a Deputy Commissary.
- 3.3 Where a matter has been assigned under these rules to a Deputy Commissary that Deputy Commissary shall perform all of the functions in relation to that matter which would have been performed by the Commissary.
- 3.4 The Registrar shall act as the clerk of the Court.

4. Assessors

- 4.1 There shall be established a panel of assessors comprising at least six persons of whom one half shall be notaries who have held a Notarial Practising Certificate for not less than ten consecutive years at the date of their appointment and one half shall be persons of good standing who are not notaries.
- 4.2 The members of the panel shall be appointed by the Master for a term of five years (which may be renewed for further terms of five years on expiry) but an Assessor who is involved in an appeal or hearing shall continue in office until the conclusion of that appeal or hearing notwithstanding the expiry of his term of office.
- 4.3 An Assessor's appointment may be terminated by the Master with the consent of the Commissary for gross misconduct.

5. Composition of the Court

- 5.1 In respect of an appeal or hearing to which these rules apply interlocutory issues shall be dealt with by the Commissary but the matter will be heard by the Commissary sitting with two Assessors chosen by him, one being a Notary Assessor and the other being a Lay Assessor.

- 5.2 Where the Commissary is sitting with Assessors questions of law shall be determined by the Commissary alone but all other issues shall be determined by a majority decision.
- 5.3 Where the Master is required to hear any application, appeal or other matter whether under rules made by him or under his inherent jurisdiction he may direct that the matter shall be heard by the Commissary.
- 5.4 Where the Master has made a direction under Rule 5.3 the Commissary shall determine whether to hear the matter alone or with Assessors.
- 5.5 On assessment of costs the Commissary shall determine whether to make the assessment alone or with Assessors.

6. Nominated Notaries and their functions

- 6.1 A Nominated Notary appointed by the Registrar under these rules shall be a notary who holds a Notarial Practising Certificate and has held such a Certificate for not less than five years.
- 6.2 A Nominated Notary may be appointed by the Registrar to carry out the functions conferred on a Nominated Notary by these rules.
- 6.3 A Nominated Notary appointed under this Rule shall be independent of and not personally acquainted with the notary who is the subject of the allegation of Notarial Misconduct to be investigated.
- 6.4 If the Registrar is unable to identify a Nominated Notary who fulfils the requirements in Rule 6.3 the Master shall appoint an independent person, who need not be a notary, to act in place of a Nominated Notary for the purposes of Rule 6.1, and that person shall carry out all functions conferred on a Nominated Notary by these rules.
- 6.5 Subject to Rule 6.6 on order by the Master a Nominated Notary shall have the power in the course of an investigation to inspect Documents in the power possession or control of or believed to be in the power possession and control of the notary who is the subject of the allegation or evidence of Notarial Misconduct.
- 6.6 A Nominated Notary may not use a Document or Documents or the information contained therein obtained pursuant to the power given by Rule 6.5 for any purpose other than in the investigation of the allegation or evidence and shall not disclose such

Document or Documents or information except to the Court without the leave of the Court unless necessary:

6.6.1 for the prevention or detection of crime,

6.6.2 the investigation of a criminal offence or

6.6.3 the conduct of a prosecution either nationally or internationally

in which case such Document, Documents or information may be disclosed by the Nominated Notary to the law enforcement and prosecuting authorities.

PART III: COMPLAINTS GENERALLY

7. Complaints Resolution Procedures

7.1 The Master may from time to time approve by written notice a complaints resolution procedure produced by a Designated Society or any amendment or variation thereof and may at any time by written notice withdraw approval of any procedure or amendment or variation.

7.2 An Approved Procedure may include provision:-

7.2.1 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,

7.2.2 for the informal resolution of disputes between members of the public and notaries concerning the charges made by notaries for notarial services,

7.2.3 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.

7.3 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.

7.3.1 At the end of the Approved Procedure a notary shall comply with any reasonable action proposed by the Designated Society in its conclusion unless the notary does not accept on reasonable grounds the action

- proposed.
- 7.3.2 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.
- 7.3.3 An apology, an offer of treatment or other redress shall not of itself amount to an admission of Notarial Misconduct.
- 7.4 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.
- 7.5 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 not less than four notaries each of whom has held a Notarial Practising Certificate for a minimum of ten years appointed for this purpose by the Registrar to carry out the functions set out in Rule 7.2.
- 7.5.1 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,
- 7.5.2 the notary carrying out these functions may not be appointed a Nominated Notary under Rule 8.2 in relation to the same dispute or complaint.

8. Handling of Allegations

- 8.1 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 to a notary appointed under Rule 7.5, to be dealt with in accordance with an Approved Procedure.
- 8.2 Where the Registrar receives evidence of or an allegation concerning the conduct or practice of a notary which appears to him to amount to an allegation of Notarial Misconduct he shall appoint a Nominated Notary to investigate pursuant to Rule 8.3.
- 8.3 A Nominated Notary appointed under Rule 8.2 shall diligently and expeditiously investigate evidence of or an allegation of Notarial Misconduct and shall make a complaint under Rule 11.1 and prepare and prosecute disciplinary proceedings against a notary in the Court under Part IV of these rules, if after investigation, the Nominated Notary reasonably believes that there is a *prima facie* case of Notarial Misconduct to be answered.
- 8.4 If the Nominated Notary upon investigating the evidence or an allegation of Notarial Misconduct considers that there is a *prima facie* case of Notarial Misconduct he shall make a written report to the Registrar stating the reasons for his decision.

- 8.5 The Master on the application of the Registrar may discharge a Nominated Notary from his investigatory and prosecutorial functions with respect to a specific allegation or evidence of Notarial Misconduct if the Registrar considers that the Nominated Notary is not acting uprightly, diligently or expediently in fulfilling his duties in the matter and appoint another Nominated Notary in his place.

9. Interim suspensions by the Registrar

- 9.1 Where the Registrar receives evidence concerning a notary which amounts to *prima facie* evidence of Notarial 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 IV of these rules.
- 9.2 A suspension given under this Rule may be renewed by the Registrar for any number of times but each suspension shall be for no longer than a period of three months.
- 9.3 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 9.1.
- 9.4 The Registrar's power under this Rule 9 shall not be exercisable after the receipt by the Registrar of the answer in Form 4 or the end of the twenty-one day period specified in Rule 11.5 (time for delivery of reply to complaint), whichever is the earlier.
- 9.5 If following appointment by the Registrar:
- 9.5.1 the Nominated Notary decides not to bring a complaint under Rule 11.1 and makes his written report to the Registrar in accordance with Rule 8.5 or
 - 9.5.2 a complaint is withdrawn with the leave of the Court under Rule 15 or
 - 9.5.3 the decision is taken by the Court that disciplinary proceedings are to cease in respect of the complaint,
- the suspension and/or any conditions imposed on the notary's practice shall automatically lapse.
- 9.6 Any interim order made under this Rule 9 may be discharged or varied by the Commissary on application made to him after the end of the twenty-one day period specified in Rule 11.5.

10. 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 8.2.

PART IV: DISCIPLINARY PROCEDURE

11. Making of complaints of Notarial Misconduct

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

11.2 Where:

11.2.1 Evidence of or an allegation of misconduct concerning the practice of a notary has been received by or brought to the attention of the Registrar and he has not appointed a Nominated Notary to investigate that evidence or allegation under Rule 8.2 of these rules within 28 days of receiving the evidence or allegation, or

11.2.2 The Registrar has appointed a Nominated Notary to investigate that evidence or allegation and the Nominated Notary 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 or evidence 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.

11.3 A complaint of Notarial Misconduct howsoever arising shall be made to the Registrar by a written complaint in form 1 delivered to the Registrar and shall be supported by a Statement setting out the allegations and the facts and matters supporting the complaint and each allegation in form 2.

11.4 On receiving a written complaint and Statement 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.

- 11.5 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 stating whether or not the Respondent intends to contest the proceedings in whole or in part and if only part which part and on receipt of an answer the Registrar shall serve a copy on the complainant.

12. Respondent's reply to complaint

Within forty-two days of service of the notice of proceedings on him and provided the Respondent has delivered to the Registrar an answer the Respondent shall, if he intends to continue to contest the proceedings, deliver to the Registrar a Statement in reply to the complaint stating which facts in the complaint are agreed and which are not and on receipt of such Statement the Registrar shall send a copy to the complainant.

13. Further Statements or allegations

- 13.1 With the leave of the Court the Complainant may file supplementary Statements with the Registrar containing additional facts or matters on which the complainant seeks to rely in support of the complaint or containing further allegations and facts or matters in support of the further allegations. Any supplementary Statement containing further allegations against the Respondent shall be treated as though it were a complaint for the purposes of Rule 12.

- 13.2 On receiving a supplementary Statement the Registrar shall serve a copy on the Respondent.

14. Agreed statements

- 14.1 The Respondent and Complainant may engage in "without prejudice" communications between themselves with a view to determining whether the parties can come to an agreed settlement as to facts and issues of the complaint.

- 14.2 If under this Rule the Respondent and the Complainant agree on certain facts and issues of the complaint they may set these down in writing and by mutual agreement present the agreed statement to the Court.

- 14.3 The agreed statement under this Rule may contain an admission by the Respondent of Notarial Misconduct and propose a sanction to be imposed upon the Respondent and/or an offer of redress to be made by him.
- 14.4 Except in circumstances where the agreed statement under this Rule is clearly wrong, the Court shall accept the veracity of the statement and shall have regard to it as evidence when making its findings but the Court shall retain full discretion to find whether or not the Respondent is guilty of misconduct and, if so, what order should be made by penalty or otherwise in consequence of the finding.

15. Withdrawal of complaints

The complainant may withdraw the complaint with the leave of the Court.

16. Hearing and case management directions

- 16.1 If the Respondent fails to deliver an answer within the time prescribed by Rule 12 the Registrar shall appoint a date for the hearing of the complaint, where possible with the agreement of the parties or, failing that, by direction of the Court and give notice to both parties in form 5.
- 16.2 If the Respondent delivers an answer and the reply pursuant to Rule 12 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:-
- 15.2.1 for the filing and service of further evidence including the Statement evidence of witnesses,
 - 15.2.2 for the preparation and disclosure of lists of documents and for the inspection of such documents,
 - 15.2.3 for the filing of skeleton arguments,
 - 15.2.4 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,
 - 15.2.5 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.

17. Witnesses and witness evidence

17.1 If a party to the complaint requires the witness to any Statement 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.

17.2 If a witness who has been so required to attend the hearing does not attend the onus shall be on the party seeking to rely on the evidence of that witness contained in the Statement to show why the Statement should be accepted in evidence.

18. Procedure

18.1 Whether on application or of its own motion 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.

18.2 The Court may dispense with any requirements of these Rules in respect of notices, Statements, witnesses, service or time in any case where it appears to the Court to be just so to do.

18.3 The Court may issue practice directions under the authority of the Commissary concerning the practices or procedures of the Court as are consistent with these Rules and as shall seem appropriate.

18.4 The complaint shall be decided on the basis of the Statements filed and the evidence of any witnesses.

18.5 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.

18.6 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. In either case the Court's decision will be delivered or handed down in such a way that its contents are made public (this may include making the decision available to access on the website of the Court).

- 18.7 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.
- 18.8 Forms 3, 5, 6, 8 and 10 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.
- 18.9 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 or (but only with the permission of the Court) any other person.
- 18.10 Every hearing shall take place in public unless:
- 18.10.1 The Court considers that a hearing in public will cause exceptional hardship or exceptional prejudice to a party, a witness or any person affected by the application, or
- 18.10.2 in the Court's view a hearing in public would be prejudicial to justice in which case the hearing or part of it may be held in private and the Court shall make such order as shall appear to it to be just and proper.
- 18.11 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 Parts IV and V of these Rules as appears to him to be reasonable.

19. Standard of proof

- 19.1 Subject to Rule 19.2 the Court shall make findings of facts on the balance of probabilities.
- 19.2 Where the allegation made against the notary involves directly or by implication a finding of fraud, dishonesty or criminal activity on the part of the notary, the Court must be satisfied on the evidence beyond reasonable doubt.

20. Service of documents

- 20.1 Any notice or document required by these rules 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.

- 20.2 Any notice or document required by these Rules to be served by the Registrar may be served:
- 20.2.1 personally or
 - 20.2.2 by sending it by ordinary first class post or
 - 20.2.2 document exchange or
 - 20.2.3 the Royal Mail's Special Delivery service

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 and in the case of personal service, the next working day.

21. Interim suspension by the Court

- 21.1 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 a Statement in support of the application.
- 21.2 Subject to Rule 21.8, on receiving an application in form 7 and Statement 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 fourteen days after the date on which the documents are served on the Respondent) and shall give notice to the parties in form 8.
- 21.3 If the Respondent wishes to oppose the application he shall, within seven days of its service upon him, deliver to the Registrar a Statement in response and the Registrar shall serve a copy of the response on the Complainant.
- 21.4 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.
- 21.5 Unless the Court orders otherwise the costs of the parties to the application shall be reserved to the hearing of the substantive complaint.
- 21.6 An application under this Rule 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.

- 21.7 At the hearing of an application under this Rule the Court may, if it considers it appropriate to do so, give directions under Rule 15.2 for the hearing of the substantive complaint.
- 21.8 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 Rule 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 Rule 21.2.
- 21.9 Where a complaint against a notary has been made to the Court under Rule 11.1 and the notary has been struck off or suspended from legal practice by a Relevant Body, as defined in Rule 24, 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.

22. Disciplinary Sanctions

- 22.1 Where the Court after hearing a complaint of Notarial Misconduct against a notary finds that it has been proved it may:
- 22.1.1 Order that the notary be struck off the Roll of Notaries,
 - 22.1.2 Order that the notary be suspended from practice as a notary for a specified period or until certain conditions have been met or indefinitely,
 - 22.1.3 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,
 - 22.1.4 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
 - 22.1.5 Order that the notary be admonished.
- 22.2 In addition to imposing any of the penalties listed in Rule 22.1 above the Court may order that the notary:-
- 22.2.1 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;

- 22.2.2 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.
- 22.3 The Respondent shall be entitled to make any submissions by way of mitigation in respect of any sanction (including any order for costs) which the Court may impose.
- 22.4 The Registrar may decide to advertise any sanction against a notary under this Rule in a newspaper circulating in the area of the notary's practice or former practice or in the London Gazette, a publication of a Designated Society, or in any other relevant publication as the Registrar sees fit.

23. Costs

- 23.1 Subject to Rule 23.3 it shall be within the discretion of the Court to order:
- 23.1.1 that the costs of either party arising from or incidental to the complaint be paid by the other party,
 - 23.1.2 that the costs of the Court be paid by either party or by both parties (whether in equal or unequal shares),
 - 23.1.3 that costs incurred unnecessarily be disallowed,
 - 23.1.4 that the costs of either party or of the Court shall be paid from the Contingency Fund,
 - 23.1.5 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, and
 - 23.1.6 that either party pay a sum to the Contingency Fund for monies paid out to a Nominated Notary acting in the exercise of his functions under these rules,
- in relation to costs incurred at any time after the earlier of the appointment of the Nominated Notary or the making of a complaint under Rule 11.1.
- 23.2 The Court may make an order as to costs under this Rule where any application is withdrawn including the complaint itself.
- 23.3 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.
- 23.4 The Master shall by Order, after consultation with the Commissary, approve a table of costs which will be applied by the Court, save in exceptional cases, in relation to orders for costs made under this Rule, and may, after consultation with the Commissary, issue

directions or guidance about the manner in which such a table is to be applied by the Court.

- 23.5 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.

24. Specified Professions and Relevant Bodies

- 24.1 For the purposes of these rules a 'Specified Profession' means a profession specified in the Schedule and in respect of a Specified Profession 'Relevant Body' means the disciplinary body named for that profession in the Schedule.
- 24.2 The Master may by order add to or amend the Schedule.
- 24.3 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 (whether in part or in whole), 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).
- 24.4 Where it comes to the attention of the Registrar that a Relevant Body has found a complaint against a 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 8.
- 24.5 In proceedings under these rules the written decision of a Relevant Body shall be evidence of the facts stated in that decision.

PART V: REVIEWS

25. Application for Review

- 25.1 Where as a result of an Order made under these rules or the 1993 Rules, or the 2009 Rules or the 2011 Rules a notary:

- 25.1.1 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 the 2011 Rules or under Rule 24 of these rules, and a period of not less than twelve months has elapsed since the date of striking off, or
- 25.1.2 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,
- 25.1.3 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
- 25.1.4 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 the 2011 Rules, or under Rule 24 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.

- 25.2 In the case of an application under Rule 25.1.1, Rule 25.1.2 or Rule 25.1.4 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 25.1.3, 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.
- 25.3 An application under this Rule shall be made in form 9 and shall be accompanied by a Statement or Statements setting out in full the grounds of the application and the evidence in support.
- 25.4 On receiving an application brought under this Rule the Registrar shall appoint a Nominated Notary to act as Respondent to the application.
- 25.5 Upon receiving an application and Statements in support the Registrar shall issue the application and serve a copy of each document on the Nominated Notary appointed as Respondent under Rule 25.4 and the Registrar shall also serve on both parties notice of hearing of the application in form 10.
- 25.6 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 Statement delivered under Rule 25.3 to the Complainant who shall be entitled to attend the hearing and (if the Court so permits) to address the Court.

- 25.7 The Registrar may decide to advertise the notary's application under this Rule in a newspaper circulating in the area of the applicant's practice or former practice or in the London Gazette, a publication of a Designated Society or in any other relevant publication as the Registrar sees fit.
- 25.8 Any person may, no later than 10 days before the hearing date of an application to which this Rule applies, serve on the Court and the parties to the application notice of his intention to oppose the grant of the application and the Court may allow that person to appear before the Court at the hearing of the application, call evidence and make representations upon which the Court may allow him to be cross-examined.
- 25.9 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 a Statement or Statements 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.
- 25.10 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 Statement filed in support of and any Statements 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.
- 25.11 If the Court is satisfied that notice of the hearing was served on the applicant in accordance with these Rules, the Court shall have the power to hear and determine an application notwithstanding that the applicant fails to attend in person or is not represented at the hearing.
- 25.12 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.
- 25.13 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 23 shall apply mutatis mutandis.
- 25.14 Upon hearing an application brought under this Rule the Court may:
- 25.14.1 In the case of an application under Rule 25.1.1 or 25.1.4 order that the notary be restored to the Roll of Notaries either immediately or on some specified future date;

- 25.14.2 In the case of an application under Rule 25.1.2 order that the suspension be lifted either immediately or on some specified future date;
- 25.14.3 In the case of an application under Rule 25.1.3 order that the conditions imposed be lifted or that different conditions be imposed;
- 25.14.4 Impose such conditions upon any order or require such undertakings to be given by the petitioner as it thinks fit, or
- 25.14.5 Dismiss the application.

26. Revocation, Savings and Consequential Amendments

- 26.1 Subject to Rule 26.2 the 2011 Rules and the 2000 Rules are hereby revoked.
- 26.2 Where any proceedings before the Court had been commenced under the 2011 Rules or the 2000 Rules prior to the coming into force of these rules the 2011 Rules and the 2000 Rules (as the case may be) shall continue to have effect in respect of those proceedings.
- 26.3 In Rule 3.3 of the Notaries (Prevention of Money Laundering) Rules 2007 “Public Notaries (Conduct and Discipline) Rules 2011” is omitted and “Notaries (Conduct and Discipline) Rules 201[-]” substituted therefor.
- 26.4 References to the 1993 Rules, the 1997 Rules and the 2011 Rules and in other rules and regulations made by the Master shall be construed by reference to the corresponding Rule in these Rules.

THE 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

Chartered Legal Executive	The Investigating Committee or the Disciplinary Tribunal of the Chartered 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
Any other Authorised Person as defined by Section 18 of the Legal Services Act 2007 authorised to carry out reserved legal services	The body responsible for exercising disciplinary regulation over the Authorised Person in question with respect to that reserved legal service

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 201[-]

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 statement of truth which accompanies this written complaint.

DATED this day of 20...

Signed

Address for service

Form 2: Statement of truth 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 201[-]

I [CD] of [address] make the following statement 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 statement 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.]
4. I believe that the facts stated in this [witness] statement are true.

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 201[-]

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 statement of truth 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 statement of truth 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 201[-]

To the Registrar

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

1. I intend to contest the complaint OR I intend to contest the following parts of the complaint:- [specify] 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 201[-]

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 201[-]

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 201[-]

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 statement of truth.

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 201[-]

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 [-]

IN THE COURT OF FACULTIES

In the matter of [AB] a notary and

In the matter of the Notaries (Conduct and Discipline) Rules 201[-]

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 [-] of the said rules.
3. The grounds of this application and the evidence in support of it are fully set out in the accompanying statement[s] of truth

DATED this day of 20...

Signed

Petitioner

Form 10 Notice of Hearing of Petition under Rule [-]

IN THE COURT OF FACULTIES

In the matter of [AB] a notary and

In the matter of the Notaries (Conduct and Discipline) Rules 201[-]

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