IN THE COURT OF FACULTIES

In the matter of RICARDO ANTONIO LADO

And in the matter of the Notaries (Conduct and Discipline) Rules 2011

DECISION

1. On 14th and 15th April 2015 we heard two Complaints by Francis Michael Pulvermacher ("Mr Pulvermacher") under the above Rules ("the 2011 Rules") against Ricardo Antonio Lado ("Mr Lado"). Mr Pulvermacher presented the complaints and Mr Lado was represented by Mr Daniel Follon of Counsel. We are very grateful to both of them for the clarity and economy of their submissions both written and oral. On 23rd April 2015 we issued a summary of our findings and said that our written reasons would follow. These are our reasons.

2. The first Complaint was dated 30th December 2013. In its original form it alleged Notarial Misconduct by Mr Lado under 9 heads but 3 of these were deleted by the Second Decision on Directions dated 21 May 2014. The remaining heads were that Mr Lado:

   (1) failed to carry out the instructions of his clients within a reasonable time or, in some cases, at all (paragraph 4.1 of the Complaint);

   (2) failed to keep his clients informed of progress or lack of progress in their respective matters (paragraph 4.3);

   (3) charged clients fees for work he did for them which were unreasonably high (paragraph 4.5);

   (4) charged clients for work which he had not done (paragraph 4.6);

   (5) failed to supply clients with the information required by rules 5A and 15 of the Notaries Practice Rules 2009 either at all or else at an unreasonably long time after accepting instructions (paragraph 4.8); and

   (6) issued notarial documents which are untrue or in the alternative misleading (paragraph 4.9).

This Complaint was based on the handling by Mr Lado of matters on behalf of the following clients or potential clients, Mr John David Drysdale, Ms Katherine Sally Davies, Mr Paul Henry Thomas and Mrs Gwen Peleg Thomas and Mrs Jill Susan Delgado. At the outset of the hearing there were 14 issues in all to be determined in relation to this Complaint but 2 of them did not in the event require decision.

3. The second Complaint dated 5th September 2014 related entirely to matters handled on behalf of Mr Christopher Palmer. It alleged Notarial Misconduct by Mr Lado in that he:

(1) failed to carry out instruction of his client, Christopher Palmer, within a reasonable time or, in some cases, at all (paragraph 1of the Complaint);

(2) failed to keep his client, Christopher Palmer, informed of progress or lack of progress in the matter in which he was instructed (paragraph 2); and

(3) failed to do what he said he would do in relation to the matter of Christopher Palmer and in relation to Mr Pulvermacher's investigations giving rise to the Complaint (paragraph 3).

In their written and oral submissions the parties treated head (3) as raising 2 separate, although clearly related, issues but the facts relating to each issue are identical and we shall treat them as a single one. It follows that under the 2 Complaints there were 17 issues in all, 15 of which in the end required our decision.

5. At the outset of the hearing Mr Follon raised 5 preliminary issues of law. These were as follows:

(1) Mr Pulvermacher should be subject to cross-examination.

(2) The Court should not determine the Complaints because Mr Pulvermacher was not a Nominated Notary, and consequently not a Competent Complainant, for purposes of the 2011 Rules.

(3) The complaints in relation to Mr Drysdale and Mrs Delgado should not be entertained because these matters had been resolved under the Notaries Society Approved Complaints Procedure ("the NS Complaints Procedure").

(4) The allegation referred to in paragraph 4.9 of the first Complaint of the issue of untrue or misleading documents had been withdrawn by Mr Pulvermacher in an e-mail of 29 September 2014.

(5) Since their complaints had been resolved by agreement following use of the NS Complaints Procedure it would be a breach of contract by Mr Drysdale and Mrs Delgado to pursue them before the Court.

6. As regards issues (1) and (2) Mr Lado raised in a letter to the Registrar of 16th December 2013, before the first Complaint was issued, the question whether his previous acquaintance and professional contact with Mr Pulvermacher disqualified him from being the Nominated Notary within rule 5.2 of the 2011 Rules which states that:

"*A Nominated Notary appointed under this rule shall be independent of and not personally acquainted with the notary who is the subject of the allegations of Notarial Misconduct to be investigated.*"

In a letter of 30th December 2013 the Registrar informed Mr Lado that the Master of Faculties had considered and rejected Mr Lado's objections to Mr Pulvermacher's appointment. Mr Lado took no further steps to challenge the appointment and Mr Pulvermacher remained the Nominated Notary and in that capacity as a Competent Complainant made the Complaints which we have heard. In our judgment it is not open to us to consider objections to Mr Pulvermacher's appointment and we so ruled at the outset of the hearing.

7. Mr Lado wished to cross-examine Mr Pulvermacher for the purpose of exploring his independence and status as a Competent Complainant. Once we had decided that we could not consider that issue the principal reason for cross-examination disappeared and we ruled that it should not be required.

8. Issues (3) and (5) are related and have no substance. It is clear in our judgment that recourse to the NS Complaints Procedure does not, and cannot, prevent a complaint of Notarial Misconduct being made under the 2011 Rules. Paragraph 5.2 of the Procedure says that "*Nothing in this procedure prevents a party from pursuing their case with the Faculty Office (in cases involving misconduct), the Legal Ombudsman or the civil courts or as may be appropriate.*" The Notaries Society has no jurisdiction to determine issues of Notarial Misconduct which are matters for the Court. We should

add that in neither of the cases of Mr Drysdale or Mrs Delgado was there in fact any formal determination by the Notaries Society under its Complaints Procedure.

9. Apart from the considerations mentioned in the previous paragraph, issue (5) is based on a basic misconception about the nature of the Complaints. They are not complaints made by the clients but by the Nominated Notary acting in the public interest. It would not have been competent for the clients to exclude by any agreement with Mr Lado the possibility of these Complaints being pursued even if they had wished to do so.

10. Issue (4) turns on the interpretation of the e-mail of 29th September 2014 from Mr Pulvermacher to Mr Lado. In that e-mail Mr Pulvermacher said in relation to the allegation of issuing untrue or misleading documents that "*there is no dispute about the documents that you issued.*" Mr Lado relies on that statement as indicating an intention to withdraw that allegation. When it is read in context it cannot in our judgment reasonably be given that interpretation. The purpose of Mr Pulvermacher's e-mail was to identify the issues of fact on which oral evidence might be required for the purpose of agreeing a timetable for the hearing. When Mr Pulveramcher said that there was no dispute about the documents which Mr Lado had issued he clearly meant only, as the following paragraph of the e-mail shows, that there was no need to cross-examine Mrs Delgado about them. Where allegations in the Complaint are withdrawn (paragraphs 4.2 and 4.7) that is stated unambiguously in the e-mail. We would add that in his evidence, both written and oral, and in his written submissions Mr Lado dealt fully with the substance of this allegation. We are not convinced that he was misled by Mr Pulvermacher's e-mail but, if he was, he has not been prejudiced at all by the pursuit of this allegation.

11. Notarial Misconduct is defined in rule 2.1 of the 2011 Rules. It was agreed that the only part of that definition which is relevant is paragraph (iii) which reads as follows:

"*Other serious misconduct which may include failure to observe the requirements of these rules or of the Notaries Practice Rules 2009 or falling seriously below the standard of service reasonably to be expected of a public notary*."

12. Paragraph 4.8 of the first Complaint alleges failure to comply with rules 5A and 15 of the Notaries Practice Rules 2009 ("the 2009 Rules"). Rule 5A.1 of the 2009 Rules which came into force on 1st May 2011 provides that:

"*When a notary accepts instructions for professional work or changes the terms on which he is acting 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 2011 and the Legal Services Act 2007 and how to make such a complaint*." Rule 15.1 provides that:

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

13. In relation to the second Complaint arising out of the affairs of Mr Palmer the Notaries Practice Rules 2014 ("the 2014 Rules"), which replaced the 2009 Rules as from 1st May 2014, are relevant. Rule 4.2.6 provides that a notary shall:

"*comply with all legal and regulatory obligations and cooperate with the Master and any persons or body appointed by him in exercise of the Master's regulatory functions.*"

14. It was agreed that in determining these Complaints the Court should in general apply the civil standard of proof, that is the balance of probabilities. Mr Follon submitted, as an exception to the general rule, that in relation to the allegation of issuing an untrue or misleading document we should apply what is sometimes described as the floating civil standard. In other words, the more serious an allegation the stronger is the evidence required to prove it even on the balance of probabilities. This exception was also agreed and we applied this higher standard in relation to the allegation of the issue of untrue documents.

15. In relation to the first Complaint it is more convenient to determine the issues by reference to those arising out of the affairs of the individual clients rather than the heads of the Complaint and we shall deal with them in the order in which the clients gave evidence.

16. The first witness was Mrs Delgado. Following a preliminary telephone conversation, in a letter dated 5 May 2011 she consulted Charles Crookes, a firm where Mr Lado then worked as a notary, about the renunciation by her four children in her favour of their interests in her deceased husband's assets in Cape Verde. In that letter she gave

details of the names and dates of birth of the children. She had a meeting with Mr Lado on 18 May 2011 at which she handed Mr Lado various documents and told him that one of the children, Petrina, did not have legal capacity. He indicated that he needed the addresses of the children and evidence of authority to act as Petrina's guardian. On 23 May 2011 Mr Lado wrote to Mrs Delgado asking for certified and sealed copy of the Probate in order for him to prepare the waiver deed. Mrs Delgado did not see a copy of this letter until 2 June 2011 and in a letter dated 23 June 2011she sent Mr Lado a certified and sealed of the Probate and the full names, addresses and dates of birth of the children. As regards Petrina she said that there was no formal documentation detailing her care arrangements.

17. In an e-mail of 6 July 2011 Mr Lado told Mrs Delgado that he had left Charles Crookes and sent her a form of authority to sign if she wished him to proceed with dealing with her husband's Cape Verde estate. He said that "*Upon receipt of the papers I will proceed immediately with your matter*." Mrs Delgado returned the signed authority the same day. Having heard nothing from Mr Lado, in an e-mail of 22 September 2011 Mrs Delgado said that she was awaiting progress and anxious to be able to complete the matter on her next visit to Cape Verde in December. She also pointed out that she had no idea what his fees might be. Mrs Delgado telephoned Mr Lado's office on 20 October 2011 and left a message but her call was not returned. As appears from her e-mail of 16 November 2011, Mrs Delgado understood that a meeting had been arranged for 18 November 2011 at which she and three of her children would sign the renunciation document but that meeting did not place. Mrs Delgado spoke to Mr Lado on the telephone on 24 November 2011 and he told her that Petrina did not have capacity to renounce her share. Following that she sent him an e-mail on the same day indicating that Petrina would retain her share. In an e-mail dated 29 November 2011 Mr Lado confirmed that he had received the birth certificates for each of the children and sent copies of a client care letter, his firm's Terms and Conditions and a payment form. In the letter he estimated the costs at approximately £2,100 plus VAT together with disbursements of about £200-£300. In the fourth paragraph he said that he was in the process of finalising the Notarial Probate bundle and preparing the Notarial Deeds.

18. By the beginning of April 2012 Mr Lado had prepared in both English and Portuguese notarial acts authenticating and certifying the translations of the deeds of renunciation for each of the three children and incorporating translations of their birth certificates.

These are most conveniently set out in Exhibit "RAL 3" to Mr Lado's affidavit dated 15 April 2015. Two of Mrs Delgado's daughters signed their deeds but for reasons which it is unnecessary to explore her son did not sign his.

19. On 26 April 2012 Mr Lado sent Mrs Delgado a bill for £1609.20 (£2109.20 less £500 paid on account). Her response on 27 April 2012 was to say that she wanted nothing more to do with him and make a complaint to the Notaries Society. The outcome of that complaint, which was never formally determined, was that Mr Lado refunded £100 of the £500 paid on account. Mrs Delgado then instructed a solicitor simply to prepare a deed of renunciation in English which she would arrange to be translated in Cape Verde. For this she paid a total of £615.30.

20. The first allegation relating to Mrs Delgado is that Mr Lado charged fees which were unreasonably high. We do not find this proved. Mr Lado's evidence in his affidavit of 15 April 2015 was that he spent 8 hours on the preparation of the deeds, his charging rate being £220 an hour. The reasonableness of that rate was not challenged. We do not consider that the sum paid by Mrs Delgado to the solicitor whom she subsequently instructed is of much assistance to us. He prepared a single English language document rather than three bi-lingual documents, as Mr Lado did. We have not taken into account the fact that, following the complaint to the Notaries Society, Mrs Delgado obtained a small refund as there was no formal determination of her complaint. We have therefore to form our own view of the reasonableness of the fees demanded by Mr Lado without any relevant comparisons. Our view is that they were on the high side, bearing mind that, once one document had been prepared, the time required for the others would be greatly reduced, but we do not consider that they were so unreasonable that it constituted Notarial Misconduct by Mr Lado to charge them.

21. The second allegation was that Mr Lado did not within a reasonable time after accepting instructions provide Mrs Delgado with the information about fees and complaints required by the 2009 Rules. We find this allegation proved. It was, we believe, almost common ground that this issue turns entirely on when Mr Lado accepted Mr Delgado's instructions. She said that she instructed him in July 2011 when she authorised him to obtain her papers from Charles Crookes. It was not suggested to us that, if that is correct, provision of the required information almost five

months later was within a reasonable time. Apart from the mere lapse of time, Mrs Delgado had asked for information about fees on 22 September 2011 without result.

22. Mr Lado's case was that he accepted instructions only on 29 November 2011 when he had received the birth certificates of the children and it had been confirmed that Petrina would be retaining her share. He was emphatic in his oral evidence that his acceptance of instructions was always conditional on receipt of all the necessary certificates and evidence of Petrina's guardianship. We reject that. As regards Petrina's position, Mr Lado had known since 23 June 2011 that she had no guardian. The idea that a notary or solicitor does not accept instructions until he has received every document and piece of information which he may need in order to complete his task is unreal. Moreover it is clear in our judgment that from 6 July 2011 onwards Mr Lado considered himself to have been instructed. On that date he confirmed without qualification that on receipt of the papers from Charles Crookes he would proceed immediately with Mrs Delgado's matter. The terms of Mr Lado's letter of 29 November 2011 in which he confirmed that he was in the process of finalising the Probate Bundle and was preparing the Notarial Deeds are wholly inconsistent with his assertion that he accepted instructions and began work only on that date.

23. The third allegation is that Mr Lado issued notarial documents which were untrue or misleading. We should emphasise that it is not suggested that this conduct was in any way fraudulent. The basis for this is that the English versions of the certificates enclosing the children's birth certificates and translations of them into Portuguese are headed "NOTARIAL CERTIFICATE ENCLOSING A SWORN NOTARIAL TRANSLATION FROM ENGLISH INTO PORTUGUESE." The Portuguese version uses the word "jurada" which means "sworn". The allegation is simply that these documents could not accurately be described as sworn since they contained no jurat or any other indication that they were sworn by Mr Lado in accordance with the Oaths Act 1978. That is on the face of it incontrovertible.

24. We had considerable difficulty in understanding what Mr Lado's answer to this allegation was. His case as set out in paragraph 1.8 of his affidavit of 21 March 2014 was that the words "Dou Fe" in the Portuguese version mean "swear" so that there was an error in translation in the omission of that word from the English version. That is no doubt correct but it does not address the allegation which is that both versions are

described as sworn translations when they are not. We found it concerning that in his oral evidence Mr Lado appeared to have difficulty in understanding what the real complaint about these documents was. He referred on a number of occasions to "notarial swearing" and appeared to be suggesting that a notary can swear to the authenticity of a document without the need to do so before another person. However, he acknowledged that he had sworn documents before other persons and did not do so on this occasion.

25. It must in our judgment be a serious matter for a notary to issue documents which are described as sworn when they are not and we find Notarial Misconduct proved in this respect.

26. We turn next to the case of Ms Davies. She initially instructed Mr Lado when he was at Charles Crookes to act for her in a dispute about a Spanish building contract but we are not concerned with events prior to July 2011 when he left Charles Crookes. On 12 July 2011 Mr Lado sent Ms Davies an e-mail attaching an authority for the release of her papers to him which Ms Davies signed. Mr Lado said that he sent Ms Davies two letters dated 22 July 2011 and 4 August 2011 which she says that she never received. In the letter dated 22 July 2011 Mr Lado stated in the fifth paragraph that it was a condition precedent of accepting instructions that she should make a payment on account of £2,500. Enclosed with the letter were the Standard Terms of Mr Lado's new firm, Lado Formoso Bowen, and a Payment Form. In the letter of 4 August 2011 Mr Lado asked for confirmation that the payment on account would be made and said that he would not be in a position to accept instructions until it had been. Following an e-mail from Ms Davies of 21 September 2011 Mr Lado stated in an e-mail of the same date that he was currently in contact with Spanish Counsel. In a letter of the same date, which Ms Davies also said that she never received, Mr Lado said that he had reviewed the firm's accounts and repeated that he could not accept instructions until a payment on account had been made. In a further letter of 26 September 2011, which Ms Davies also said that she did not receive, Mr Lado said that, unless the payment on account was made by 29 September, he would close the file.

27. According to Ms Davies she sent Mr Lado a very large number of e-mails and text messages to most of which she received no reply. At some time after July 2012 Mr Lado did tell Ms Davies that the Spanish counsel he had talked to, Mr Meakins, had

been drowned. On 5 June 2013 Ms Davies sent Mr Lado an e-mail asking him to send all her papers to her by recorded delivery to 38 Mumbles Road, The Mumbles, Black Pill, Swansea. In an e-mail of 25 June 2013 Mr Lado said that he would send the papers to that address but in the final paragraph asked her to telephone him so that he could ensure that the papers would be sent to the correct address. Ms Davies said that she did not remember telephoning him. She said that she must have responded to him at some time but no such response has been produced. She eventually received the papers on 4 January 2014.

28. The allegations of Notarial Misconduct relating to Ms Davies are that Mr Lado (a) failed to carry out her instructions within a reasonable time or at all, (b) failed to keep her informed of progress or lack of progress, and (c) failed to supply her within a reasonable time or at all with the information regarding fees and complaints required by rules 5A and 15 of the 2009 Rules. An issue of fact which is in our view central to all these allegations is whether the four 2011 letters which we have referred to in paragraph 26 above were sent by Mr Lado and received by Ms Davies. We have no doubt that they were.

29. We base this conclusion both on our assessment of the evidence and the inherent probabilities. The evidence of Ms Davies has to be approached with great caution. It was self-evident that she has extremely strong feelings about Mr Lado's conduct. She described him as having made her life a misery for so long and said that everything which came out of his mouth was a lie. She accepted that she is looking for compensation. As regards the four letters, she accepted that they were correctly addressed and that she had had no problem with the post at that time. Her only explanation of them was that Mr Lado must have written them later. We unhesitatingly reject that. The letters have every appearance of being genuine and, while in this Decision we make serious criticisms of various aspects of Mr Lado's conduct and evidence, we do not consider that he did, or would have, fabricated these letters. We accept his evidence that they were written and sent when they purport to have been. It is inconceivable that they would all have been lost in the post and we find that Ms Davies received them. Although we would not place great weight on this we note that according to Ms Davies she sent e-mails to Mr Lado on 23 July and 5 August 2011, those being the dates when the first two of the letters concerned might be expected to have been received. That is probably not a coincidence.

30. Our conclusion that these letters were received really disposes of all the allegations with regards to Ms Davies. In our view Mr Lado made it clear to her on several occasions that he could act for her only if she made a payment on account of fees which she consistently refused to do. She cannot therefore complain that he failed to carry out her instructions. He had made it clear in his letter of 29 September 2011 that in the absence of a payment he would not do so. The second limb of this allegation relies on Mr Lado's failure to deliver Ms Davies's papers to her following her request dated 5 June 2013. His explanation for this is that he considers it unsafe to deliver papers to a client solely on the basis of an e-mail and that is why he asked Ms Davies to telephone him to confirm her address. We do not consider that explanation to be unreasonable and it would have been easy enough for Ms Davies to meet his request. We find that she did not do so. Mr Lado may perhaps be criticised for not pursuing this further but any failure on his part in this respect falls short of the level of seriousness required to constitute Notarial Misconduct. The complaint of lack of information about progress must fail for similar reasons. While it might have been prudent for Mr Lado to respond to the stream of messages from Ms Davies his failure to do so was not in our view misconduct on his part. Mr Pulvermacher accepted that, if we found that Mr Lado's letter of 22 July 2011 was received by Ms Davies, that would be a complete answer to the allegation of failure to supply the information required by the 2009 Rules. We therefore find that allegation not proved also.

31. The next witness was Mr Drysdale. The facts relating to his complaint lie within a small compass and are not significantly disputed. On 28 March 2013 Mr Drysdale attended Mr Lado's offices in order to have authenticated a number of documents relating to the estate of his deceased brother. This was duly done and it was agreed that Mr Lado would send the documents to Mr Drysdale's London lawyers by express delivery for which Mr Lado charged extra. By 5 February 2013 Mr Drysdale had paid the fee of £206 and the express delivery charge and on that day Mr Drysdale told Mr Lado by e-mail that he had done so and sent him the additional identification documents which Mr Lado had asked for. Mr Drysdale learnt that the documents had not been received by the London lawyers and on 14 February 2013 he e-mailed Mr Lado asking for confirmation that the papers had been sent and also left a telephone message which was unanswered. He e-mailed Mr Lado again on 5 March 2013 and received no reply. After several attempts to contact him Mr Drysdale spoke to Mr Lado

on 15 March 2013. Mr Lado said that the documents had been sent to the wrong address and that he would immediately send them to the correct address. The London lawyers told Mr Drysdale on 3 April 2013 that the documents had still not arrived. He telephoned Mr Lado on 4 April 2013 who told him that he had sent them in the week before Easter, which was from 25 to 30 March 2013. The documents actually arrived on 5 April 2013. Mr Drysdale complained to the Notaries Society and Mr Lado repaid Mr Drysdale the sum of £100.

32. We find the allegation of Notarial Misconduct in respect of failing to carry out Mr Drysdale's instructions within a reasonable time proved. The failure initially to send the documents to the correct address, although a regrettable error, would not by itself have constituted Notarial Misconduct. The serious aspect is that when it became apparent, or should have become apparent, that the documents had not been received it was about seven weeks before the error was corrected. Mr Lado told us that he sought to rectify the error as best he could but we cannot accept that. This was a simple task and we regard it as plain that the delay in performing it showed a standard of service falling seriously below that to be expected of a public notary.

33. A separate allegation was made that Mr Lado charged for work he did not do, namely the delivery of documents by express delivery. In our view, to the extent that this can properly be regarded as a separate allegation, this is not proved. The real complaint is not that Mr Lado charged for express delivery but that the delay in delivering the documents at all was inordinate.

34. Mr and Mrs Thomas consulted Mr Lado in March 2012 with regard to the creation of power of attorney in favour of a Spanish lawyer whom they had instructed to take proceedings for recovery from tenants of their Spanish property of arrears of rent and damages. Mr Lado agreed to act and on 30 April 2012 Mr and Mrs Thomas signed a poder at his offices. Mr Lado has produced an attendance note of this meeting. Although the note refers to a telephone attendance we accept Mr Lado's evidence that this was a mistake and accept that the note was contemporaneous and substantially accurate. Mr Thomas accepts that, as the note records, Mr Lado said that his fees would be £440 and that he agreed to pay this sum which he did later that evening by bank transfer. The note also records that Mr Lado printed out his firm's Terms and a Payment Form. Mr Thomas said that he had no recollection of this but it was conceded

during the hearing that he must be mistaken about that. Mr Lado produced a copy of the Terms dated 30 April 2012 and it was pointed out that Mr Thomas must have been given the firm's bank details in order to make a bank transfer.

35. On 14 May 2012 Mr and Mrs Thomas were told by their Spanish lawyer that another document was required and were sent the document to be signed by them and authenticated by Mr Lado. On 29 May 2012 the lawyer told them that he had spoken to Mr Lado who had said that he would post the document to him when everything necessary had been done. They met Mr Lado on 30 May 2012 and the document was duly signed and authenticated. There is a dispute between Mr Lado and Mr Thomas about what was said at the meeting on 30 May 2012. We should say that Mr and Mrs Thomas both made affidavits in these proceedings but only Mr Thomas gave oral evidence. For reasons connected with her work commitments Mrs Thomas was unable to attend the hearing and we draw no inferences one way or the other from her absence. We were asked to admit her affidavit as evidence but we declined to do so as we considered that in the circumstances the weight we could properly attach to it would be minimal. Mr Lado produced an attendance note of that meeting. We do not doubt that the note is substantially accurate.

36. According to Mr Lado he told Mr and Mrs Thomas three times that the extra document was superfluous but Mr Thomas insisted that they wanted to sign it. Mr Lado told him that any additional work would be charged to the client and that the additional fees and disbursements would be approximately £300. The document was then signed. The attendance note says rather oddly: "No offer was made to pay our fees for this additional work." Mr Lado says that he then made it clear that he would need a payment to release the document and that upon such payment he would send the document to Spain directly.

37. Mr Thomas's evidence was that he had no recollection of being told that the additional document was superfluous or of any mention of additional fees or the sum of £300. Nor had he any recollection of Mr Lado saying that he would need payment in order to release the document. He said that, if they had been told that the document was superfluous, they would not have gone ahead with it particularly if it involved an additional fee. They would have queried any additional fee on the ground that the second document was only required because the Spanish lawyer said that the first one

was defective. There would have been no point, according to Mr Thomas, in their signing the document if they had been told that it would not be sent to Spain without an additional payment which they were not prepared to make.

38. On 27 November 2012 the Spanish lawyer, having apparently spoken to Mr Lado several times but not obtained any positive information, told Mr and Mr Thomas that he had not received the extra document. Mr and Mrs Thomas sent Mr Lado an e-mail on 3 December 2012 asking for advice. There was no reply to this and they followed it up with another e-mail on 20 December 2012. Having received a chasing e-mail from Spain they sent a further e-mail to Mr Lado on 3 January 2013. On 7 January 2013 the Spanish lawyer sent a further e-mail saying that he had spoken to Mr Lado who was going to post the document to him. On 25 January 2013 the Spanish lawyer said that the document had still not arrived. On 31 January 2013, the Spanish lawyer having threatened to close the file, Mr and Mrs Thomas contacted Mr Lado again. He replied in an e-mail of the same date. He said that he had told the Spanish lawyer that the document would be with her offices early in the following week. The e-mail also said: "Our accounts Department could not find payment in respect of this case, which is why there has been confusion regarding this matter." An invoice was enclosed for a total sum of £300, £200 being in respect of notarising and legalising the document and £100 in respect of arranging FCO legalisation.

39. It is unnecessary to recite subsequent events in detail. Mr and Mrs Thomas maintained that their original payment of £440 covered the additional document. Mr Lado maintained that he was not obliged to send the document to Spain until he had received additional funds. Following a complaint to the Notaries Society on 9 October 2013 Mr Lado sent the document to Mr and Mrs Thomas. It had not received FCO legalisation.

40. The first allegation made in respect of Mr and Mrs Thomas is that Mr Lado failed to carry out their instructions within a reasonable time or at all. Although, as will be apparent from our subsequent findings, Mr Lado's conduct of their affairs is open to serious criticism we do not find Notarial Misconduct in this respect. Mr Thomas was in our view an honest witness and we consider it likely that at the close of the meeting on 30 May 2012 there was some misunderstanding. Mr Lado did no doubt express the view in defence of his original work that the extra document was unnecessary and probably did say that a further fee would be due in respect of it. However, he did not

give them a precise figure or ask for any payment there and then. As the attendance note confirms, Mr and Mrs Thomas did not agree to pay any fee and we do not think that they would have done so since they regarded the extra document as part of the original work. We accept Mr Thomas's evidence that they would not have signed the extra document if they had known that it was unnecessary and that they would have to pay for it. We accept that Mr Lado probably did say that he would only send the document to Spain if he received payment although we also accept that Mr and Mrs Thomas did not receive that message. If they had it is difficult to understand why they bothered to sign a document which would be useless to them if they were not willing, as they were not, to pay for it. On balance our conclusion is that at the end of the meeting Mr and Mrs Thomas expected Mr Lado immediately to send the document to Spain whereas he considered himself under an obligation to do so only if he received a further payment. If his failure to do so resulted from a misunderstanding of the kind we have described his failure should not in our view be categorised as Notarial Misconduct.

41. We do, however, find Notarial Misconduct proved in respect of Lado's failure to keep Mr and Mrs Thomas informed of progress. It is wholly unacceptable that following the meeting on 30 May 2012 he did absolutely nothing. Following Mr and Mrs Thomas's e-mail of 3 December 2012 it was almost two months before Mr Lado produced a response. His explanation in his oral evidence was that he assumed that the document was not needed because Mr and Mrs Thomas had decided to accept his advice that it was unnecessary. We reject that. We do not consider that such an assumption would have been reasonable or that Mr Lado actually entertained it. When he finally replied on 31 January 2013 he did not give any indication that he had thought that the document was not required. On the contrary he attributed the delay to confusion over payment. In our judgment it was for him to clarify any confusion and the absence of any significant activity by him between 30 May 2012 and 31 January 2013 is inexcusable and constitutes Notarial Misconduct.

42. The allegation that Mr and Mrs Thomas were charged unreasonably high fees was withdrawn during the hearing as was the allegation that they were not supplied with the information supplied by the 2009 Rules. The remaining allegation was that Mr Lado charged for work which he had not done, namely the legalisation of the document signed on 30 May 2012. The document was not in fact legalised and at the time when

Mr Lado first sent his bill on 31 January 2013 he knew that it had not been. We find Notarial Misconduct proved in this respect. Mr Lado's explanation is that he would have done that work if his fees had been paid but that explanation is unacceptable. Following signature of the document on 30 May 2012 it was incumbent on Mr Lado to obtain legalisation within a reasonable time unless he had made clear to Mr and Mrs Thomas that he would not do so unless put in funds. He did not do this.

43. We turn to the Second Complaint dated 5 September 2014. This relates solely to the affairs of Mr Christopher Palmer. In September 2009 as executor of the will of his aunt, Ms Hardy, Mr Palmer instructed Mr Lado at a meeting with him when he was with Charles Crookes. Ms Hardy had left a property in Spain to Catherine Palmer, Mr Palmer's sister. Ms Hardy had originally owned a half share in the property but she had acquired the other half share from her former partner, Mr Simmonds. The purchase of that half share had not been registered at the Spanish Land Registry when she died. The instructions were to register the Spanish property in the name of Ms Hardy and Mr Lado accepted those instructions in a letter of 29 September 2009. On 5 November 2010 Mr Lado told Mr Palmer that the Notarial Probate Bundle had been prepared and the next step would be for Catherine Palmer to obtain a Spanish Identity Number (NIE). On 18 November 2011 she attended Charles Crookes's offices for that purpose. The Complaint with which we are concerned does not involve the period when Mr Lado was at Charles Crookes.

44. Mr Palmer produced as part of the exhibit to his affidavit what is described as a log of the contacts which he, his sister and his sister's partner Mr Lyle had with Mr Lado between September 2009 and May 2014. Although this is not a contemporaneous record much of it is based on e-mails and we accept that it is a substantially accurate summary of the extent and general nature of the communications. Although Mr Lado said that he did not accept it as a correct record no specific challenges to its accuracy were made.

45. On 20 July 2011, having learnt that Mr Lado had left Charles Crookes, Mr Palmer telephoned him. Mr Lado asked Mr Palmer and his sister to sign an authority to Charles Crookes to release all documents to his own practice which he had set up and forwarded the requisite forms. Catherine Palmer signed the authority in respect of the application for her NIE but Mr Palmer did not. He said that he did not do so because he

had already been told by Mr Crookes that Mr Lado had taken the files with him when he left and that Mr Lado never subsequently pressed him for the signed authority. Mr Lado's evidence was that this is incorrect but we cannot accept his evidence about that. Mr Palmer said that when they met Mr Lado on 23 April 2013 Mr Lado had the original documents on his desk and we accept that. He must have taken them from Charles Crookes when leaving or received them from there subsequently.

46. On 30 November 2011 Mr Lado said that a change in the law was holding up obtaining the NIEs. Catherine Palmer was told by Mr Lado on 1 March 2012 that she would have to go personally to the Spanish consulate in London to obtain it and she did so on 7 March 2012 and signed the necessary forms. There were a number of unsuccessful attempts during October and November 2012 to make an appointment for Catherine Palmer to see Mr Lado. These are set out in paragraph 10 of Mr Palmer's affidavit. On 14 January 2013 Mr Palmer telephoned Mr Lado who asked whether they would be available to sign the required forms within the next two weeks. Mr Lado said that he had been told that he would receive the necessary information from Spain on the following Friday and he was asked to contact Mr Palmer when he had received it. As he had heard nothing on 12 February 2013 Mr Palmer sent Mr Lado an e-mail complaining about the delay and threatening to write to the Law Society. Mr Lado replied on the same day stating that he would revert with a date for signature of the Spanish Inheritance Deed as soon as possible "*but rest assured that this matter will have my full attention over the course of the next 7 days*."

47. Having heard nothing further by 28 February 2013 Mr Palmer repeated his intention to take the matter up with the Law Society. After a number of further communications Mr Lado wrote a letter on 18 March 2013 setting out the position. In the second paragraph he said: "*We confirm that we are acting in accordance with your instructions, in a Notarial capacity, in order to give full effect, in accordance with Spanish Law, to the Spanish Inheritance of the late Dorothy Elizabeth Hardy and in particular, to the Legal Transfer of the aforementioned Spanish property known as 14 Otero del Sol, Avenida Mediterraneo, Villa Joyosa, Alicante, Spain to the legally entitled Inheritors*." In the fourth paragraph he said: "*In accordance with your Notarial Instructions I have also been in the process of preparing the Spanish Notarial Probate Bundle giving effect to Probate in Spain and the Spanish Deed of Acceptance pursuant to which the legal title held by ht deceased may pass to Catherine Palmer*."

48. On 23 April 2013 Mr Palmer and his sister attended Mr Lado's office in order to sign the Deed of Acceptance. Mr Lado advised them that the Deed only dealt with half of the property of the deceased and not with the half which she had purchased from Mr Simmonds. Mr Palmer told us that he was "gobsmacked" by this news and asked how it had happened. He told Mr Lado that he had given him a copy of the purchase deed at their first meeting in September 2009 and Catherine Palmer looked through Mr Lado's papers and found the Deed amongst them. Mr Lado said he would speak to the Spanish Land Registry about getting Mr Simmonds's share transferred into Catherine Palmer's name. In a letter of 1 May 2013 Mr Lado asked for a payment on account of £3,200 which was paid on the following day.

49. No progress having been made, Mr Palmer prepared a complaint to the Notaries Society on 1 October 2013. He sent the draft complaint to Mr Lado who immediately contacted him by telephone. He said the matter was complex and that, if Mr Palmer was unhappy, he would return the files and refund the money. Mr Palmer said that he simply wanted it completed and on Mr Lado saying that he would treat the matter as urgent Mr Palmer agreed not to send the letter. Mr Palmer chased Mr Lado for news of progress on a number of occasions during November 2013 without success. Mr Palmer was finally able to speak to Mr Lado on 14 January 2014 and Mr Lado said that he expected to finalise everything within four to six weeks. On 14 April 2014 Mr Lado wrote to Mr Palmer's solicitors stating that the transfer of the property was not straightforward because of discrepancies in the description of the property. On the following day Mr Palmer spoke to Mr Lado on the telephone. According to Mr Palmer's account of the conversation, Mr Lado suggested that a way forward would be to pay for a survey of the property and he estimated that another £5,000 would complete the legal work. Mr Palmer said that he would consult his solicitors. Mr Lado essentially repeated in further letters of 24 April and 16 May 2014 the point he had made in the letter of 14 April and in the second letter asked for payment of a further sum of £1,500 on account. Mr Palmer said that he knew that this was on account of possible survey fees.

50. In a letter of 20 May 2014 Mr Pulvermacher, who had been appointed as Nominated Notary to investigate Mr Palmer's complaint, asked Mr Lado to send his file to him no later than 30 June 2014. In a further letter dated 22 May 2014 Mr Pulvermacher said that he had made a mistake and required the file by 30 May 2014. In a reply dated 22

May 2014 Mr Lado said that, although he challenged Mr Pulvermacher's status as a competent complainant, he would deliver up the papers to a competent complainant or any other suitable person by 30 June 2014. He repeated this in a further letter of 23 May 2014 but made no reference to Mr Pulvermacher's letter of 22 May, substituting the earlier date of 30 May, although he had clearly received it. On 28 May 2014 in response to an e-mail from Mr Pulvermacher Mr Lado said that he would endeavour to deliver the papers to the Faculty Office as soon as practicable after he returned to the office in the following week.

51. It is right to record at this point that from early June 2014 until February 2015 Mr Lado was absent from work due to a serious illness and had a period in hospital undergoing an operation. In a letter of 6 June 2014, not having received Mr Palmer's file, Mr Pulvermacher set out the nature of the complaints to be made. On 6 August 2014 in a letter to Mr Palmer's solicitors, who also had apparently had requested the delivery of Mr Palmer's file, Mr Lado's firm referred to his illness but said that Mr Lado would endeavour to deliver up the papers during the course of the following week. That did not happen. The complaint was issued on 5 September 2014 and in his affidavit of 2 September 2014 Mr Palmer referred to the continuing problems caused by the failure to deliver the papers. The papers were finally sent to Mr Palmer on 23 January 2015.

52. The first allegation of Notarial Misconduct is that Mr Lado failed to carry out Mr Palmer's instructions within a reasonable time or at all. As in the case of Mrs Delgado a crucial question is when Mr Lado was instructed by Mr Palmer. Was it in or about July 2011, as Mr Palmer says, or only on 18 March 2013, as Mr Lado asserts? We have no doubt that he was instructed in or about July 2011. The documentary evidence points clearly to this conclusion. The terms of the letter of 18 March 2013 itself are inconsistent with an initial acceptance of instructions on that day. Mr Lado said in evidence that the letter could have been better worded. We disagree and consider that it correctly reflects the position that Mr Lado had been acting on Mr Palmer's instructions for some time. We have stated above that we do not accept Mr Lado's evidence that he did not take or receive Mr Palmer's papers from Charles Crookes. It is striking that during the period from July 2011 until March 2013 when there were numerous attempts by Mr Palmer to obtain information on progress Mr Lado never once asked for confirmation that he was instructed or requested any papers from Mr Palmer. His assurance on 12 February 2013 that the matter would receive his full attention over the

course of the next seven days is wholly inconsistent with his assertion that he had not then been instructed.

53. On this basis his delay in carrying out Mr Palmer's instructions between July 2011 and April 2014 was inordinate and inexcusable. To the extent that delay was caused by the error in the Deed of Acceptance produced by Mr Lado for signature on 23 April 2013 this was entirely Mr Lado's fault. We accept Mr Palmer's evidence that it was, or should have been, clear from the original instructions and the papers in Mr Lado's possession precisely what was required. Mr Lado also sought to attribute the delay after April 2013 to Mr Palmer's unwillingness to pay for a survey of the property. We reject that. We accept that Mr Lado did advise Mr Palmer to have a survey of the property in order to solve the identification problem but we find that this advice was not given until April 2014, as Mr Palmer says, rather than in April 2013, as Mr Lado says. There is no documentary evidence at all that Mr Lado gave this advice prior to April 2014 or warned Mr Palmer that his failure to pay for a survey was holdings things up. It is striking that in none of the letters written by Mr Lado to Mr Palmer's solicitors in April and May 2014 did Mr Lado say that Mr Palmer's refusal to pay for a survey was the cause of delay and we reject his contention that it was. This conclusion is also supported by Mr Palmer's log which shows that the question of a survey was mentioned on 15 April 2014. There is no mention of it earlier.

54. For essentially the same reasons we find Mr Lado's failure to keep Mr Palmer informed of progress constituted Notarial Misconduct. Mr Follon submitted concisely that there were no reports on progress because there could be no progress. We reject that because we have rejected the basis of the submission, namely that the lack of progress was attributable to Mr Palmer's refusal to pay for a survey.

55. We turn to the remaining issue relating to Mr Palmer, namely Mr Lado's failure to do what he said he would do and his failure to do what he said he would do in relation to the investigations of the Nominated Notary. We find Notarial Misconduct proved in this respect. The fact that on 20 May 2014 Mr Pulvermacher asked Mr Lado for delivery of the file (initially by 30 June 2014 but speedily corrected to 30 May 2014) and the papers were only delivered to Mr Palmer on 23 January 2015 speaks for itself. In his letters of 22 May 2014 and 28 May 2014 Mr Lado did agree to deliver up the papers, although not to Mr Pulvermacher whose status as Nominated Notary he was

challenging. On 6 August 2014 he agreed to use his best endeavours to deliver them to Mr Palmer's solicitors during the following week. It was submitted to us that the reason why Mr Lado did not accede to Mr Pulvermacher's request was that he considered him not to be independent. That may well have been the reason but it does not provide any measure of justification for a failure to comply with a reasonable requirement of an appointed Nominated Notary. Rule 4.2.6 of the 2014 Rules requires such compliance. We accept that from June 2014 Mr Lado was seriously unwell but this can provide no sort of explanation of the failure to deliver the papers for about 8 months. The file was not voluminous. Mr Lado said in evidence that he did a little light work while he was away ill and it is to be borne in mind that rule 21.3 of the 2014 Rules requires suitable alternative arrangements to be made without delay where the operation of a notary's office is prevented by illness. We are quite unable to accept that, if the delivery of Mr Palmer's papers had been given the attention and priority which it deserved, there would have been any difficulty in achieving it months before it happened.

56. The above are the reasons for our findings contained in the summary dated 23 April 2015. In the light of them a further hearing will be required so that we may (a) decide what, if any, penalty, to impose in respect of the 8 findings of Notarial Misconduct which we have made and (b) decide how the costs of the proceedings are to be borne.

57. It may be helpful if we give some indication of how our minds are working at present on the question of penalty although we have not of course reached any conclusions. In the absence of any dishonesty or deliberate misconduct we do not think that the facts of this case reach the threshold where an order striking Mr Lado off the Roll of Notaries or any suspension of him from practice for a specified period needs to be considered. On the other hand we do consider that it might not meet the public interest for us simply to admonish Mr Lado or order him to pay a fine.

58. What has clearly emerged from our hearing of these Complaints is that Mr Lado has a casual attitude to the carrying out of his instructions and keeping clients informed of progress and a reluctance to accept his failures in this respect. It may that a major cause of his problems is that he accepts more work than he is able with his limited resources to undertake efficiently. Our present feeling is that we need to address these issues. The 2011 Rules enable us to impose conditions on the scope or conduct of Mr

Lado's future practice or conditions relating to the monitoring or supervision of his practice. We could also impose conditions as to training or further examinations. We are likely to be considering what would be appropriate, useful and practical in this area and would just add this. While it is not generally appropriate for the Nominated Notary, who is effectively the prosecutor, to make submissions about penalty, in this case we do invite Mr Pulvermacher to provide any assistance which he feels he properly can on the options open to us in addressing the issues we have identified.

Rodney Stewart Smith

(Deputy Commissary)

Julie Fenn

Keith Shawcross

15 May 2015