



The Faculty Office

The Code of Practice

This is the first of series of notes intended to prompt a review by notaries of their obligations under the Code of Practice¹. The series will focus initially on matters which have been particularly highlighted to the Faculty Office through the annual inspection regime which has now completed 4 cycles.

Record Keeping and File Storage (Chapter 17)

The **minimum** requirements to be observed when creating a file record of a notarial act are

- the date and nature of the act
- the name and details of the client
- the name and details of any signatories
- the name and details of any business entities or other persons being represented
- the details of the signatory's authority to act for the business entity or other person, if any
- the fee charged

When preparing a file record of a notarial act a notary should consider the client's interests and the likely interests of persons placing legitimate reliance on the notarial act when deciding what information to record and in what form.

Trust in the Office of a Notary (Chapter 5) - record keeping

A person placing legitimate reliance on a notarial act should be able to trust that any statements of fact made by the notary within the notarial act were properly verified, and that any statements of law were made by the notary competently, correctly, and with due regard to the reliance that would be placed on them.

For trust to be placed in a paper based notarial act it should be as tamper-proof as possible particularly if it extends to more than one sheet of paper. For trust to be placed in an electronic notarial act it should be as secure and tamper-proof as possible using appropriate technology.

¹ <http://www.facultyoffice.org.uk/notary/code-of-practice/#introduction>

The security of the notarial act (whether paper-based or electronic) should be backed up by notarial records, to which prompt recourse must be possible if any doubt should arise as to the genuineness, integrity or contents of the notarial act or the circumstances in which it was issued.

Issues highlighted by the Inspectors include:

- Failure to note company registration numbers and jurisdiction of incorporation to properly identify companies in notarial acts.
- Incomplete (or too brief) records especially not recording sufficient details of any document to which the notarial act relates so that the document can be identified. Even when a copy is kept of the notarial act and its associated document the register or index should have a brief description of the document e.g.:
"Attesting the signature of AB to a Power of Attorney in favour of CD to sell property in France"
- Illegible signatures of notaries. A notary's signature should be legible so that others can see which signature is that of the notary. Illegible signatures can cause problems of identification for anyone reading the document including the Foreign & Commonwealths Office and consuls when legalising.

These are of concern given that the Code of Practice requires that a notary be able to confirm the details of a transaction accurately (and backed by records).

The relevant Chapters of the Code of Practice contain more detail:

<http://www.facultyoffice.org.uk/chapter/record-keeping-and-file-storage/>

<http://www.facultyoffice.org.uk/chapter/trust-in-the-office-of-notary/>

Notaries should review their record keeping and file storage arrangements and take any necessary action to ensure compliance.

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The Code of Practice

The Code of Practice is designed to help notaries to comply with their professional obligations, to safeguard the interests of their clients and the interests of all persons placing legitimate reliance on notarial acts, and to enhance professional

Notaries must have regard to the Code at all times. This means that whilst the guidance and statements of best practice contained in this Code are not obligatory, a notary must be aware and take account of the Code and the statements of best practice contained in the Code when providing notarial services.

Failure to have regard to the Code can constitute notarial misconduct.