

An instruction too good to turn down? Beware of the consequences!

We must surely all agree that the application of the highest professional standards is paramount to the reputation and well-being of our profession. Not only can this keep us from infringing our own rules but it also serves to send a message to the rest of the worldwide fraternity of Notaries (common law and civil law alike) that we are reliable and trustworthy professionals.

Rule 4 of the Practice Rules requires us (among other things) to uphold the administration of justice, to act with integrity, to maintain our independence and impartiality and to act in a way that maintains trust in the office of notary which the public may reasonably expect.

The Code of Practice also reminds us of our duty of care to persons in all jurisdictions who may place legitimate reliance on our notarial acts. It goes on to state the following:

“The acts of a notary authorised in England and Wales are accepted and relied on throughout the world as full and final proof of the matters stated in those acts, whether matters of fact or matters of law. The recipient of a Notarial Act must be able to have faith in the integrity of the notarial act – that the matters of fact and law contained in the act have been properly verified on the basis of positive evidence and knowledge of the law.....”

Let us suppose that you are approached by an organisation whose management is not professionally qualified in legal matters but who offer to facilitate the notarisation and legalisation of documents required for use abroad. As an example, these documents might include powers of attorney or commercial agreements signed on behalf of companies or other legal entities. You are asked to assist by providing a notarial certificate, not in relation to

the execution of the underlying document, but to a signature which has been made on a paper attached to the underlying document (or to wording which has been endorsed on it) by a representative of the organisation which has approached you. This additional paper (or endorsement) contains a form of certificate to the effect that the signature appearing on the underlying document is the true signature of the person who has purported to sign it. It may also say that the person concerned is a director and was duly authorised to sign the underlying document and even that the signature is valid and binding.

All you are being instructed to do is to authenticate the signature of the person signing the appended or endorsed certificate. Although the fee for notarising each such certificate may be modest, you are invited to notarise multiple quantities of such documents on a regular basis which, when taken together, amount to a reasonable income for what you are being asked to do. However, not only are you asked to assume that the signature you are being instructed to notarise is true, but you either know or suspect that the person concerned has made few, if any, enquiries as to the continuing legal existence of the company named in the underlying document, or as to the identity, capacity or authority of the person(s) purporting to represent that company. Moreover, you know or suspect that the skill set of the person whose signature you are authenticating would probably not include the ability to verify such matters.

Some may say that none of this matters because all you are being asked to do is to verify the signature of the person who signed the certificate appended to or endorsed upon the underlying document and

which then of course allows an apostille to be obtained.

I would argue that in such circumstances, a Notary should ask what value he is adding to the document and whether he is fulfilling his duties as a Notary. Surely, what the end user needs to know is that the underlying document has been validly executed and may safely be relied upon and that someone with relevant skills has carried out the necessary due diligence and has confirmed that such is the case. Given the signature, stamp and seal of a Notary and the presence of the Apostille, a person seeking to rely on the documents might reasonably assume that the Notary had made all the necessary enquiries and had satisfied himself that

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all was in order. I am assuming, of course, the Notary has not attempted to limit his liability by adding a caveat along the lines that he has made no enquiry whatsoever into the circumstances in which the underlying document came to be executed and is merely confirming the signature of the person who has signed the appended certificate. That would surely be unhelpful to the point of rendering his certificate almost valueless.

If you should ever be approached by a third party to provide notarial services similar to the kind described above, I would strongly recommend that you first satisfy yourself that you will not become in breach of the Rules or the Code of Practice and that you are not bringing the profession

into disrepute and that your professional indemnity policy will cover you when it turns out that the underlying document is, in one or more respects, incorrect, misleading or invalid. You should also ask not only what value you are actually adding by providing your seal and signature but also what significance an end user, acting reasonably, may assume from your intervention with regard to the underlying document. In the event of a loss and a claim, I very much doubt that a Court or Regulator would have much sympathy in response to a plea by the notary that all he was doing was verifying the signature of someone he happened to know.

It also raises the question as to whether the Foreign Office should be attaching apostilles to such documents. Bearing in mind that they will not legalise an academic certificate unless the Notary has confirmed that he has made due enquiries as to its genuineness, would it not be consistent to require the Notary to confirm that he had also carried out appropriate due diligence in relation to the underlying document of the kind described above?

In summary, I would urge all Notaries most strongly to think twice before accepting instructions to carry out what appears to be an easy job providing a regular fee income and a steady stream of work, lest you find yourself embroiled in unwanted litigation, the subject of disciplinary action and ultimately and worst of all, at potential risk of losing your practising certificate.

Michael Lightowler
March 2018

GDPR

Following a lengthy implementation period, the General Data Protection Regulation will finally come into full effect on 25th May 2018. All our members should now be fully aware of the need to be

DATA PROTECTION – FINAL REMINDER!!

compliant by the May deadline and I hope that everyone has been making good use of the guidance on the website. Hoping that it may not apply to you or that BREXIT will somehow magic it all away is only a dream. There will be no excuse for not complying. If you still have not done so, I would urge you to open the

Data Protection tab on the member's side of the website and make time to follow the guidance. I am pleased to hear that many of you have already done this and the Society welcomes the positive feedback it has generated. If you would like to access further guidance on this subject, please visit the fol-

lowing link on the ICO website: <https://ico.org.uk/media/1624219/preparing-for-the-gdpr-12-steps.pdf> Also, don't forget that this topic will receive further attention in the Society's continuing education days during 2018.

Michael Lightowler

Notary Talk

I have spent many a happy hour looking at (and learning from) the wide variety of subjects covered by Notary Talk and enjoying the wit of some of the subscribers. I thoroughly recommend to those Notaries who are not connected to contact the Moderators and join in. I attach the recently published “rules” from our Moderators, Avril and Laura, who I am sure will be delighted to assist you! I am delighted take this opportunity to thank them both for all their hard work.

Barry Holland
Editor

As Moderators of Notary Talk we would like to wish a warm welcome to those new members of Notary Talk who have joined us over the last twelve months or so. Our new members also now include a number of UCL Notarial Practice Course students who are following our posts on Notary Talk but who have not yet been granted a voice. It is good to remind everyone about the values and rules of Notary Talk and also to reiterate some of the good practice guidelines that make it easier for everyone to use our very valuable email forum.

Firstly, can we begin by reminding everyone that Notary Talk, although supported by the Notaries Society, is entirely separate from the Society and the Faculty Office. Notary Talk was established in March 1999 by the late Gregory Taylor as a means for Notaries to communicate, share relevant news and assist each other. Contrary to some beliefs, Notary

Talk does not generate any income and the Moderators are not remunerated for the role. We do the job purely voluntarily and out of the goodness of our own hearts. With all of that in mind, please note the following when posting on Notary Talk:-

- Rosemary Dunford, at the Notaries Society, has nothing to do with Notary Talk and so you should not send requests for membership, trouble shooting or removal from Notary Talk to her. We are grateful to Rosemary for passing on all your requests but she really has quite enough to do without these additional tasks.

- Please do not call the Notaries Society or the Faculty Office to action on Notary Talk. Not all Council members are members of Notary Talk and it is simply rude. Email Council members directly.

- NEVER forward private correspondence on in a post without seeking the other party's consent first.

- NEVER make libellous comments about fellow Notaries or anyone else.

- Keep subject headings simple and relevant and please refer to the Country (if relevant) concerned in the heading. This helps us to use the search function more effectively.

- ALWAYS reply under the relevant subject heading.

- ALWAYS use full sentences and good grammar and spellings. Do not use text language or abbreviated

made up language. We are literate people after all.

- Be conscious of not hogging the limelight or believing that your take on things is the ONLY possible answer.

- ALWAYS be polite and NEVER launch personal campaigns against fellow Notaries.

- Be patient with the Moderators particularly when sending emails, requests and posts of an evening, weekend, middle of the night or Friday. We do have jobs, lives and families.

- Before firing off a post, try to see if your query can be answered first by contacting the relevant authority, instructing Solicitor or client. If you manage to resolve your query, you could then post a useful and informative guidance email on how to deal with a particular matter.

- Please use the search function on Yahoo Groups; to do this you simply need to click on the “Visit my Groups” tab at the end of any Notary Talk email and then “Search Conversations” for your subject. If we all use the subject headings properly this helps the search function to work effectively. This prevents the same questions being asked time and time again. If you did not complete the Yahoo profile when you registered you may not be able to access this function. If you cannot access the search function you will need to unsubscribe and request a new invitation to be able to rejoin.

- It is all too easy to fire off a “knee jerk” email these days.

However, if everyone stopped to think before posting, maybe even leaving the response for an hour or two to think things over, we can avoid causing any potential hurt or damage and stick to the rules of showing common courtesy to all. Never forget to only send correspondence that you would be happy to stand up in court and be cross examined about by a Judge.

- Finally, if you wish to leave Notary Talk (and we hope that you don't) you can unsubscribe by going to the UNSUBSCRIBE button at the bottom of every post. Press and it is done, we will be notified. It is useful to us to know why you have unsubscribed so a quick email to either of us would be polite, otherwise we have no idea why you have decided to leave. You can only unsubscribe by using the email address that you were registered under so if you are using an address that you relinquish when you move firms, or retire, you cannot get back into Notary Talk.

The Moderators have no intention to stifle freedom of speech or limit the use of the Notary Talk but if we can all stick to the above principles, we will all get the most out of our wonderful email forum and you will make the Moderators' lives a lot easier.

With kind regards,
Co-Moderators of Notary Talk

Laura Delacroix-Humphreys
notarypublicsuttoncoldfield@gmail.com

Avril McDowell
avril.mcdowell@btconnect.com