



THE FACULTY OFFICE OF THE ARCHBISHOP OF CANTERBURY

NOTARIES (CONDUCT AND DISCIPLINE) RULES 2015 (as amended in September 2019)

Consultation on Remote Hearing amendments

The Faculty Office is consulting on its intention amend the Notaries (Conduct & Discipline) Rules 2015 (as amended in September 2019) to facilitate the holding of remote hearings of the Court of Faculties and apply gender neutral language.

The consultation will close on 19 October 2020.

Background of the Rules

The Notaries (Conduct and Discipline) Rules 2015 came into force on 1 November 2015. The Rules were subsequently amended in 2019 to ensure proceedings and decisions of the Court of Faculties are more transparent and to revise the suspension powers of the Registrar and the Court. The Faculty Office is now proposing to make further amendments to the Notaries (Conduct & Discipline) Rules 2015 (as amended in September 2019).

Introduction

In response to the Covid-19 pandemic the UK Government imposed a series of restrictions designed to prevent further spread of the disease. These included but were not limited to:

- Prohibition on non-essential use of public transport
- Social distancing requirements
- Shielding advice and requirements etc.

These restrictions could have impacted the ability of the Court of Faculties to hold disciplinary hearings in person, although no hearings in fact have been due to take place during the period.

It is important that the Court of Faculties continues to be able to hold disciplinary hearings in a way that is compliant with all relevant law on health and safety and government guidance. It is because of the need to allow disciplinary hearings to be conducted when movement and meetings are restricted which has prompted the Faculty Office to make the proposals which follow.

What other tribunals have done¹

Both criminal and civil courts have been able to conduct hearings or parts of hearings remotely using the powers given to them through statute and practice directions.

The Coronavirus Act 2020 further extended the use of video and audio technology in criminal trials [see ss.53-57]. Whilst it does not extend to allowing a defendant to give evidence remotely, the courts have used their inherent jurisdiction to allow a defendant to do so.

The Court of Appeal holds most appeal hearings with defendants linked by video from the prison in which they are serving their sentence. Although they have had the power to do so since 2007, by an amendment to s.31A(2) of the Criminal Appeal Act 1968, it has only made any substantial use of its power to do so over the last five years.

Since the Coronavirus Act 2020 came into force, one of the crucial requirements for criminal trials is that all those participating in the hearing can see each other. Video conferencing is one of the platforms capable of providing that facility. Any anxiety about the security of this technology has so far been shown to be illusory or capable of being addressed. Public access to criminal proceedings has to be maintained.

Civil trials can be conducted remotely and can be held in private where it is not possible to provide access to the public, so long as it the proceedings are recorded.

Advice from HHJ Anthony Leonard QC

Upon reviewing the Notaries (Conduct & Discipline) Rules 2015 (as amended) His Honour Judge Anthony Leonard, the Commissary of the Court of Faculties, advised that the present Rules did not provide for hearings to be held remotely except through the inherent powers of the Commissary. Exercise of those powers to hold a remote hearing would be extremely unlikely without the consent of all parties and provision for the hearing to be made public.

Proposal

It may be of substantial benefit in terms of cost and convenience if Direction Hearings take place remotely. The Faculty Office considers that a reliance on the inherent powers of the Commissary to be a temporary fix. Instead the Faculty Office proposes to make amendments to the Rules enabling the Court of Faculties to hold remote hearings both now, during the current pandemic, and into the future to cater for other occasions where physical attendance cannot be obtained. It is the intention of the Faculty Office that physical hearings are better, but if they cannot take place for whatever reason, or if one or more parties are precluded from being present, then participation by remote means should be facilitated.

The proposed amendments to the Rules are attached and shown in tracked changes.

¹ Source: correspondence with HHJ Anthony Leonard 13.06.2020

Gender neutral language

The Faculty Office is committed to promoting equality and diversity within the notarial profession and believes that such work should start at home. Using the masculine gender as a default has been understood by some to reinforce historic gender stereotypes. While the Interpretation Act 1978 (which is expressly incorporated into the Rules) provides that "words importing the masculine gender include the feminine", the Faculty Office considers that it is possible to draft in a gender neutral way which avoids that possible association with gender stereotypes while not sacrificing grammatical accuracy. That is why the Faculty Office is committed to ensuring all of its publications are drafted in gender neutral language.

Whilst making the proposed amendments to facilitate remote hearings of the Court of Faculties the Faculty Office is proposing to take this opportunity to make further amendments to the Rules to ensure the Rules are drafted in a gender neutral way. In so doing it has had regard to a [Guide to Gender Neutral Drafting](#) based on guidance by the Office of the Parliamentary Counsel. See also the following easy to read [article](#) produced within the Civil Service.

These proposed amendments to the Rules are also attached and shown in tracked changes.

HOW TO RESPOND

Please respond in writing by 5pm on 19 October 2020 to The Faculty Office:

By email to:

consultations@1thesanctuary.com

Please put "REMOTE HEARING CONSULTATION RESPONSE" in the subject line of your email

Questions about the proposed amendments

1.	Do you agree that the Court of Faculties should be able to hold remote hearings?
2.	Do you agree that parties should be able to apply for permission to attend via video link?
3.	Do you agree that 21 days is a reasonable amount of time to make an application?
4.	Do you agree that the Commissary should have powers to determine if a hearing should be conducted via video link, provided there is 'serious need' ?
5.	Do you agree that the Rules should be drafted in gender neutral language? Would you like to see this applied retrospectively to past notaries rules?
6.	Do you have any other comments on the proposed amendments?