

Notaries Enforcement Guidance

Overview

The Faculty Office has developed this guidance in order to foster a culture of compliance and effective risk management through supervisory oversight, enforcement and remedial measures.

The guidance seeks to promote consistency, transparency and fairness in our administrative and enforcement processes and provides a basis for our decision making.

This guidance is not intended to supplant the Notaries Practice Rules 2019 nor the Notaries (Conduct and Discipline) Rules 2015 but is intended to give additional guidance as to the exercise of discretion on the part of the Registrar of the Faculty Office under those rules in particular in bringing enforcement action. This guidance is not intended to deal with complaints made against notaries, but where the Registrar of the Faculty Office has a concern about a notary based upon information in the Registrar's possession which originated from a source other than an external complaint.

Remedial Measures

By focusing on remedial activity and follow-up to correct weaknesses in processes, procedures, systems or controls within notarial practices, the Faculty Office aims to ensure ongoing compliance.

Remedial measures may include action plans and timelines, and supervisory follow-up to ensure that the required measures are effectively implemented.

The Schedule provides an outline of the timelines involved in setting and demonstrating remedial action once non-compliance is identified.

Notarial Misconduct

The focus of the Notaries (Conduct and Discipline) Rules 2015 is to discipline notaries who have committed "notarial misconduct". Notarial misconduct is defined as

- (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 notarial misconduct described in (1) and (2), if proven, is probably the easiest to recognise. The notarial misconduct in (3), such as a failure to observe the requirements of the rules or persistent bad service, requires more in the way of judgement. Ultimately, it is for the disciplinary Court of Faculties after hearing from the nominated notary bringing the complaint and the respondent notary to make a determination about whether notarial misconduct is proven, and what ought to be the sanction. However, this guidance is aimed to describe the way in which the Faculty Office identifies concerns about a notary which are more than trivial or fleeting and which require robust enforcement action.

The trigger for enforcement measures

In addition to corrective action, the Faculty Office may instigate disciplinary proceedings by appointing a nominated notary to investigate the concern where the gravity and nature of non-compliance is serious and systematic. For example, in relation to AML, where there is evidence of the following:

- No firm-wide risk assessment
- No AML policies, controls and procedures
- No client risk assessments (new and/or ongoing)
- No AML training and this is reflected in the quality of the firm's compliance with the regulations
- No review of adequacy and effectiveness of AML policies, controls and procedures
- No system for recording and submitting suspicious activity reports
- AML records not retained in accordance with the regulations
- AML policies, controls and procedures not being applied once in place
- Client risk assessments inadequate
- Client due diligence inadequate
- Unacceptable gaps in documentation
- Some AML policies, controls and procedures but out of date or lacking clarity
- Failure to demonstrate compliance with the remedial process

In relation to non-AML related matters:

- There has been a breach of the Accounts Rules which could cause a client loss
- There has been a breach of the rules which includes an element of dishonesty on the part of the notary
- Disciplinary action is necessary for the protection of the public (including bringing the notarial profession into disrepute)
- The notary is persistently seen not to cooperate with the Faculty Office or be persistently non-responsive to client communications
- The notary has made a mistake which is significant, either because it is a mistake that no notary ought reasonably to have made, or because it has significant repercussions for client or for the reputation of notaries
- The notary has made a series of mistakes which although trivial by themselves, amount together to a pattern of behaviour which shows a lack of competence or lack of regard to professionalism
- The notary is not registered with the Information Commissioners Office as a data controller for their client's data
- The notary's record keeping is such that it indicates the notary's office is not being kept in an organised manner

Generally:

- Where there has been no satisfactory or timely response to a request from the Faculty Office to the notary for action to be taken in relation to a matter (see flowchart in the Schedule)

The above points are not designed to redefine notarial misconduct or create a definitive list but serve as examples of when formal enforcement action should be taken. A matter shall not normally be referred for investigation by a nominated notary when the act or omission was trivial or capable of correction with ease, the notary has acted honestly and with candour to their client and the

Faculty Office and the act or omission is either insignificant in terms of the consequence to the client and public trust in notaries and is untypical of the notary concerned.

Sanctions

If a disciplinary case proceeds, the protective and disciplinary sanctions available under the Notaries (Conduct and Discipline Rules) 2015 are summarised as follows:

- interim order to suspend the notary from practice indefinitely or on condition
- restrict or limit or impose conditions on the notary's practice pending a hearing
- order that the notary be struck off the Roll of Notaries
- endorse the notary's practicing certificate and impose conditions relating to the monitoring or supervision of his practice
- 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
- order that the notary be admonished.
- pay a sum not exceeding £10,000 to another party
- although not strictly a sanction, the Registrar may order the advertisement of the disciplinary outcome