

**IN THE COURT OF FACULTIES
IN THE MATTER OF
CAROLINE COATS, A NOTARY
AND IN THE MATTER OF
THE NOTARIES (CONDUCT AND DISCIPLINE) RULES 2015
(AS AMENDED)**

RULING ON ABUSE OF THE PROCESS SUBMISSIONS

BACKGROUND

1. Mrs Coats served a document dated 5th August 2021 on the court. Whilst it was untitled, it contained submissions which amounted to an application that to continue the proceedings would amount to an abuse of the process of the court. This she confirmed at a subsequent hearing and I directed that her application be heard on Monday 15th November 2021 and that the Nominated Notary put in a response, which he did.
2. I gave my ruling that the trial was to proceed and indicated that I would give fuller reasons in writing.
3. The court has a general and inherent power to protect its process from abuse. The abuse of process jurisdiction is a limited one but available in a hearing such as this. The purpose of the jurisdiction is to ensure that its process is not abused. If a party, a legal representative, or any other person acts in a way thought to be inappropriate the court may decide that it amounts to an abuse of its process. It includes (but is not limited to) acting in bad faith or with an improper purpose, attempting to re-litigate a decided issue and/or persistent failure to comply with rules or orders of the court.
4. In my judgment, and in accordance with the speeches in Connolly v. DPP [1964] AC 1254 the power to stay proceedings maybe exercised

where it will be impossible to give a respondent a fair trial or where a stay is necessary to protect the integrity of the court process.

5. Because it brings the proceedings to an end and deprives a party of the opportunity to present its case, it ought only to be invoked where it is clearly justified. It is acknowledged that the trial process itself is usually capable of resolving any issues which might be raised as an abuse of the court's process.

ABUSE PARAGRAPHS 2 AND 6

6. The document provided by Mrs Coats has numbered paragraphs. I will refer to those numbers in setting out her arguments as to why this is an abuse of the process of the court.
7. In argument she accepted that paragraphs 2 and 8 have no direct relevance to her application but are simply indicative of all that is wrong with the way that her case has been handled. Whilst I will take that argument into consideration, I shall not deal with those paragraphs further.

ABUSE PARAGRAPHS 3 AND 4

8. Paragraphs 3 and 4 have to be read together. Whilst Mrs Coats considered that the point she was making was self-evident, I had some difficulty grasping it. As I understood it her argument was as follows:
 - (a) Where complaints are settled between a notary and the Notaries Society by the informal route which usually ends with an award to the complainant of £250, there is no provision for those resolved complaints being relied on in these proceedings.
 - (b) A Nominated Notary appointed under Rule 7.5 may not be the

same Nominated Notary appointed under Rule 8.2. Rule 8.2 and 8.3 provide for a Nominated Notary to investigate and prosecute an allegation of notarial misconduct.

(c) Mr Mills cannot be both the Nominated Notary under Rule 7 and under Rule 8.

9. In response Mr Mills identified that he had been appointed to investigate Mrs Coats under Rule 8.2 and that he had never been appointed under Rule 7.5. He has relied on the complaints which have been the subject matter of informal proceedings to advance his case on the matters he has put before the court and on which he believes he is entitled to rely.
10. Rule 7 of the Notaries (Conduct and Discipline) Rules 2015 (As Amended) (“the Rules”) regulates the complaints resolution procedures. It has no bearing on the conduct of disciplinary proceedings which are regulated by Rule 8.
11. By a letter dated 22nd May 2019 (Bundle p.72-3) Mr Mills was appointed as the Nominated Notary to carry out the functions conferred on a Nominated Notary under the Rules by the Registrar in respect of the “current complaint” made by Charlie Hamilton.
12. Mr Mills was also referred to other complaints made against Mrs Coats which comprised both service complaints which had been referred to the Notaries Society and resolved under the informal procedure as well as “...more serious ones where formal investigations have been commissioned by the Faculty Office.” Two complaints had been investigated by Andrew Caplen as the Nominated Notary which related to complaints raised by Mrs Caitlin Thomas and the Winchester Cathedral Trust and a further complaint which was investigated by Nigel Pugh in respect of the estate of the late Margaret Quick.

13. Rule 6 governs the appointment of a Nominated Notary to carry out the functions conferred on a Nominated Notary by those rules. Rule 7 does not allow for a Nominated Notary to investigate under the informal procedure, but permits, under Rule 7.5, the appointment of not less than four notaries to carry out the functions set out in Rule 7.2 to resolve the complaints through the informal procedure.
14. A Nominated Notary can only be appointed to investigate where the Registrar receives evidence of an allegation concerning the conduct or practice of a notary. I am satisfied that Mr Mills was appointed pursuant to Rule 8.2
15. It is of note that Rule 7.5.2 prevents a notary who is a member of the panel being the Nominated Notary under Rule 8.2 in relation to the same dispute or complaint. Such a rule would be unnecessary if it was not possible for the same complaint to be dealt with by way the Complaints Resolution Procedure and subsequently investigated by a Nominated Notary in respect of an allegation of Notarial Misconduct. Further, Rule 10 allows for a complaint to progress from an Approved Procedure to an allegation of Notarial Misconduct.
16. Rule 13 seeks to deal with supplemental statements covering additional facts or matters on which the complainant seeks to rely in support of the complaint. This allows for the calling of evidence of other acts which go to support the allegation of misconduct so long as the evidence is relevant to proving the misconduct with which the notary is charged. This is further explained in the Guidance for Nominated Notaries under the Rules at paragraph 42:

“If the evidence is relevant and admissible, the Nominated Notary may seek to call evidence of previous complaints or prior conduct whether or not the complaint has been proved in

disciplinary proceedings. Such evidence is likely to be admissible in, but not restricted to, the following circumstances:- if the parties to the proceedings agree to the evidence being admissible, or it is important explanatory evidence, or it is relevant to an important matter in issue in the instant complaint. For the general principles which will apply, see s.101 etc of the Criminal Justice Act 2003. See also the Court of Faculties' ruling In the matter of Robert JH Ward, a Notary [2015] at paras 4-9"

17. Finally Mrs Coats relies on correspondence between the Registrar and the Nominated Notary which she submits amounted to the Registrar "...encouraging/instructing him to file his complaint". Although the argument does not identify to which correspondence she is referring, I have looked through the bundle and the only letters I can find from the Registry to the Nominated Notary are dated 13th December 2019 (Bundle p.124) and 27th February 2020 (Bundle p.138). I am unable to interpret those letters in the way that Mrs Coats asks me to do; the Registry has to draw the Nominated Notary's attention to the complaints it receives. The Nominated Notary has confirmed that he has only consulted the Registry on procedural matters.

18. It follows that I find nothing that might amount to an abuse of the process of the court raised in these two paragraphs.

ABUSE PARAGRAPH 5

19. Mrs Coats complains that the Nominated Notary has only investigated one of the matters detailed in his complaint and cited others without consideration of their genuineness or severity. It follows, she argues, that the complaint should not have been made. Throughout the Nominated Notary has worked under the instruction of the Faculty Office.

20. Mrs Coats considers the five paragraphs of the complaint in the following way:

- (a) Mr Hamilton has no standing to complain and the investigation is flawed; she was not informed of his appointment and his findings are incorrect.
- (b) As to the CILEx disclosure, that has not been investigated at all and, if it had been the Nominated Notary would have discovered that the Registry know more about this than she does.
- (c) As to the estate of the late Nancy Vera Kirk, the Nominated Notary has not investigated it at all and, if he had, he would know that Mrs Harrison has had the same complaint investigated three times.
- (d) As to the Sadler complaints, the Nominated Notary has not investigated them at all and, had he done so he would have discovered that not everything was borne out by the facts, although she concedes that elements of their complaint were correct.
- (e) The general complaint that she persistently failed to meet the standard of service that could reasonably be expected by her clients was given to the Nominated Notary by the Faculty Office.

21. The Nominated Notary has dealt with those points as follows:

- (a) Mr Hamilton, as an Attorney appointed under a Lasting Power of Attorney by his mother has sufficient standing to raise a complaint.
- (b) He has examined each complaint fully and has spent time with the Respondent understanding matters from her perspective. He has set out his reasoning in relation to each complaint in detail. I note that the Nominated Notary has now served a

statement from Abby Adamah which sets out CILEx's position.

- (c) See the response to (b) above.
 - (d) See the response to (b) above. In addition the Nominated Notary expressed surprise that Mrs Coats suggests that Barker Gotelee are acting in any way other than out of professional concern for their clients.
 - (e) See paragraph 14 above.
22. I find nothing in her first point. Whilst she can argue this at a later stage if she so wishes, I can see no reason why a complaint cannot be taken up by an Attorney on behalf of the person for whom he holds a Power of Attorney.
23. Whilst Mrs Coats can make submissions at a later stage about the strength of the evidence, the Rules allow the Nominated Notary to rely on documents and hearsay statements, and that is what he has done to a large extent in bringing these complaints before the court. There is nothing to suggest that he has deliberately ignored evidence in order to put a false case before the court. If the Nominated Notary fails on a balance of probabilities to persuade the court based on the documents, hearsay evidence and statements from witnesses in respect of all or any part of the misconduct he alleges, then his case will fail. In assessing whether he has persuaded the court, Mrs Coats will be able to call evidence to support her own case.
24. I find nothing to support an application to stay the proceedings on these grounds.

ABUSE PARAGRAPHS 6 AND 7

25. Mrs Coats complains that in her attempts to reach agreement on

various topics, the Nominated Notary has been intransigent. She is inevitably drawn to suspect that this is a salary funding exercise. She considered that the Nominated Notary was not competent to carry out his role. She considers that the close connection between the Faculty Office and Nominated Notary and the Faculty Office and the appointment of the Notaries to sit with the Commissary leads to the conclusion that they are prosecutor, judge and jury.

26. She alleged that by contrast with the Nominated Notary “I do not even have direct contact with the Commissary and all communications must transit the Faculty Office first.” I questioned Mrs Coats about this at the hearing to discover whether she was suggesting that I had direct access and communication with the Nominated Notary as those words clearly suggest. Albeit it reluctantly, she accepted that I did not have any direct contact with the Nominated Notary.
27. The Nominated Notary has dealt with this in his response both orally and in writing. He adverted to the difficulty he had encountered in getting Mrs Coats to engage in the process of listing the agreed facts, he refuted the allegation of “salary funding” especially where the costs he can claim are below commercial rates. He set out his qualifications to act as Nominated Notary. He set out his surprise that she should be challenging the role of the Faculty Office.
28. I have considered her submissions. I find nothing in them. I judge them to be unsubstantiated. As to her complaints about the system overall that is something that she can always take up with the Society. The complaints system is established by rules made by the Master of Faculties under the Courts and Legal Services Act 1990 and is subject to the oversight of the Legal Services Board under the provisions of the Legal Services Act 2007. I reject these grounds.

ABUSE PARAGRAPH 9

29. The final ground put forward by Mrs Coats is in effect a submission of no case to answer rather than one which falls under the abuse jurisdiction.

CONCLUSION

30. Having considered all her submissions I do not find the proceedings against Mrs Coats to amount to an abuse of the process of the court.

His Honour Judge Leonard QC
Commissary to the Archbishop of Canterbury
1st December 2021