

**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**

**DECISION OF THE COURT**

**INTRODUCTION**

1. These proceedings have taken a considerable time to come before the court. Whilst the process of collating the complaints took an appreciable time, some of the delay is Mrs Caroline Coats' (the Respondent) responsibility. The Nominated Notary, Mr Jeremy Mills has tried to obtain information from her and seek agreement to facts that are not in dispute with little success. Six sets of Directions were issued between 26<sup>th</sup> February and 1<sup>st</sup> December 2021 which were largely ignored by the Respondent.
2. The date for this two day hearing was set down in the directions hearing on 15<sup>th</sup> November 2021 (p.53) and she was further notified of the date on Form 5 of the Notaries (Conduct and Discipline) Rules 2015 by the Registrar on 21<sup>st</sup> December 2021. That document gave her notice that if she failed to attend the hearing it may proceed in her absence.
3. The Commissary heard her application under the abuse jurisdiction on 15<sup>th</sup> November and ruled against her (p.55-63). The Respondent has not answered any communications from the Faculty Office or the Nominated Notary since that date.
4. She was asked to inform the court and the Nominated Notary of the witnesses she wanted called at the hearing and to identify any witnesses she intended to call in her defence by 29<sup>th</sup> November. Both

parties were asked to submit their bundle of evidence by 22<sup>nd</sup> December. No responses were received to these directions. She was warned that, if she failed to notify what witnesses she required to be called, their statements would be read.

5. The proceedings were set to start at 10.30am specifically to allow her sufficient time to get to London and in the knowledge that she had caring responsibilities. She failed to attend at that time. The Faculty Office tried to make contact with her both on Wednesday 5<sup>th</sup> January and again on 6<sup>th</sup> January through her known email address and by calling the firm for which she has been acting as a consultant, and who took over her business, (number ending ...0919) and her mobile number (ending ...5547). There has been no response.
6. We allowed her a further half hour to give her time to contact the court or to arrive if she had been delayed. By 11am she had not arrived or contacted the court and, having heard submissions from the Nominated Notary we agreed to hear the matter in her absence. In our judgment she has been given every opportunity to attend and every opportunity to inform the court if there was a reason why she was unable to attend. We have also taken into account the attitude she has shown towards the orders of the court and the way in which she has shown little regard to the court or its process when she has attended by zoom; this has included, by way of example, making unfounded and unsupported allegations against the Nominated Notary and, separately, against the Commissary (see “Ruling on Abuse of the Process Submissions”, §§27-28, (pp.61-2)).
7. We do not know at this stage whether the Respondent will offer any apology or explanation for her absence; we have not allowed that to affect our decision on the merits of the complaints.

8. As to the hearing, we received an opening statement from the Nominated Notary who referred to the particular paragraphs under the Notaries (Conduct and Discipline) Rules 2015 (As Amended) (“the NCD Rules”) and the Notaries Practice Rules 2019 (“the NP Rules”). Where in our decision we refer to the NP Rules and the events complained of fall prior to the commencement of those rules, our references to provisions in the NP Rules extend to the predecessor provisions in the Notaries Practice Rules 2014 which were the same or substantially the same.
9. The Nominated Notary then took us through the statements and exhibits, his own statements and those made by the Respondent. He sought to identify those issues which the Respondent did not agree with when dealing with the statements on which he relied. Because his responses inevitably went outside the evidence provided in his witness statements, he was sworn at the end of the proceedings and asked if there was anything he wished to amend or add to in respect of what he had told us during the proceedings. He said that he had nothing to amend or add.
10. Whilst there is considerable overlap in the nature of four of the five heads of complaint, we have identified the five heads of complaint as follows:
  - (a) The Hamilton Complaints;
  - (b) Failure to notify the Faculty Office of the CILEx disciplinary findings;
  - (c) The Harrison Complaints;
  - (d) The Sadler Complaints, and
  - (e) The Previous Complaints, further particularised in the names of Ann-Marie Martin (29<sup>th</sup> April 2013), Margaret Dorothy Quick

(27<sup>th</sup> September 2013), Sansome and Reynolds (7<sup>th</sup> March 2014), Leonard Staff (23<sup>rd</sup> May 2014), Mrs Carol King (30<sup>th</sup> March 2015), Nancy Vera Kirk (18<sup>th</sup> December 2015), and Dr Pompa (20<sup>th</sup> May 2016).

11. We note that the Respondent was admitted to the Roll on 1<sup>st</sup> February 2011. The Nominated Notary identified that the Notaries Society (operating an approved complaints procedure under the NCD Rules) receives in the region of three to six complaints each year, some of which get no further than the lodging of the complaint. Looked at collectively this hearing concerns eleven complaints and represents a not insignificant proportion of the overall complaints received during the timeframe of these complaints by the Notaries Society and the Faculty Office overall.
12. We shall deal with each complaint in turn and have each contributed to the written Decision. References relate to the amended bundle provided for the hearing by the Nominated Notary. In doing so we will consider which Rules have been breached and the definition of notarial misconduct as it applies to the issues which arise, namely, that it must amount to serious misconduct falling seriously below the standard of service reasonably to be expected of a notary. In accordance with the 2011 decision of the court in In the Matter of F (a Notary) we must give proper weight to the use of the word “seriously” and that the conduct must fall seriously short of the standards to be expected of notaries, which words are now incorporated within the NCD Rules.

#### **THE ESTATE OF THE LATE CLAUDE STEWART MAX HAMILTON**

13. Mr CS Hamilton died on 15<sup>th</sup> November 2012 after a short illness. His Will appointed his widow, Mrs Rosemary Hamilton and the Respondent to be his executors and trustees. The legacy to the trust was satisfied

by the trustees taking an equitable charge over the late Mr Hamilton's 50% interest in their joint property in Gilbert Close for £262,500. This charge was index linked by reference to the Retail Price Index.

14. On 5<sup>th</sup> January 2015 Mrs Hamilton decided to move which required a sale of Gilbert Close and the redemption of the equitable charge. In 2018 she decided to move to Lancaster at which point the Respondent was asked to retire as Trustee.
15. The overall allegation made by the Nominated Notary is that the Respondent failed to provide an adequate professional service in the administration of the estate trust arising under the Will of the late Claude Stewart Max Hamilton. We have broken that general allegation into its constituent parts below.
16. **Failure to put in place a separate letter of engagement: in breach of 4.2.7 to operate the notarial practice in accordance with proper governance and sound financial and risk management principles.**
17. The Respondent had a letter of engagement in place with Mrs Hamilton in respect of the administration of the estate. There was no separate letter of engagement with the trustees who the Respondent admitted were a separate client. She clearly treated them as such because a separate financial ledger was kept for the trust which supports that the Respondent appreciated that the trustees were a separate client for regulatory purposes. We agree that this failure amounted to a breach of 4.2.7
18. **Failure to file a tax return with HMRC: in breach of 4.2.4 to provide a prompt and proper standard of service for all clients**

19. The Respondent failed to register the Will Trust with HMRC. The Respondent failed to address the tax implications. As a consequence a potential tax liability arose. The Respondent failed to notify Mrs Hamilton of a possible tax liability arising from the difference between her advice and the position of HMRC claiming income tax on the indexed element of loan repayment.
20. We have considered the Respondent's contention that a leading expert, Mr James Kessler QC was of the view that no tax was payable in these circumstances. As the Nominated Notary has identified HMRC have been forthright in stating the opposite position to that of Mr Kessler. They continued to challenge arrangements whereby the trustees make loans linked to the Retail Price Index or a similar index to the surviving spouse because they believed that, where these loans have been repaid to the trustees, the uplift in value above the principle sum initially lent constitutes interest under section 369(1) of the Income Tax (Trading Other Income) Act 2005 and on which income tax is payable.
21. We judge that it was incumbent on the Respondent to identify to her clients the risk that HMRC would charge tax on the interest and that she should have filed a tax return to account for the interest. It would have been open to the Respondent to have challenged the tax charged on the interest thereafter if instructed to do so by her clients. We find the breach of Rule 4.3.4 proved
22. **Mistake by conveyancer in breach of 4.2.7, and by virtue of Rule 21 and the requirement for supervision of a Notary's Office, Rule 4.2.4**
23. A member of staff employed by the Respondent acting on the sale of Mrs Hamilton's property at 8 Gilbert Close on 5<sup>th</sup> January 2015 made a mistake assuming the trust and Mrs Hamilton owned the property equally. In fact the Will Trust owned 44.5%. The mistake was

compounded on the purchase of Mrs Hamilton's replacement property at 11 Pyrford Mews by the execution of a Declaration of Trust without any evidence of consent of the Trustees. Minutes of a meeting of the Trustees in May 2016 were approved by the Respondent who failed to take the percentage share of the ownership of the Will Trust or the consent of the Trust into account.

24. The consequence of this mistake resulted in a shortfall to Mrs Hamilton of £29,420 from the net proceeds of sale. There could also have been an income tax liability for the Trustees on the indexed increment of £4,116.15.
25. The balance due to the Trust on the sale of 8 Gilbert Close should have been £71,647. Added to the £29,420 shortfall to Mrs Hamilton referred to above, the total sum of £101,607 was placed on the Respondent's client account. Mrs Hamilton was not informed and knew nothing of the £101,607 held on the Respondent's client account from 5<sup>th</sup> January 2015. She only became aware of the existence of the £101,607 on 21<sup>st</sup> March 2019 with the instruction of a new firm of solicitors and the retirement of the Respondent as Trustee.
26. As we have identified generally, the Respondent failed to take reasonable steps to ensure that the office was properly supervised and we are not satisfied that she spent sufficient time at her office to ensure adequate control of the staff employed there. We are concerned that her staff, none of whom were full time employees of the firm, were inadequately skilled and inadequately trained in the work that they were required to handle. By way of example, in a note by a member of staff in respect of the Sadler file (p.35) she comments:

“Not quite sure what he meant by that as my discretionary Will Trust knowledge is extremely limited”

27. This was an area in which CC & Co specialised and in which the Respondent's staff ought to have been given training and guidance. We make no criticism of the staff themselves; It is the duty of the Respondent to ensure but they are both competent and capable to undertake the work in her absence.
28. We find the breaches of Rules 4.2.7 and 4.2.4 proved.
29. **Overall conduct of the case (delays and cost): in breach of 4.2.4 to provide a prompt and proper standard of service for all clients**
30. There are five sub-headings of this allegation:
- (a) The issues surrounding failure to register the Will Trust with HMRC: we have dealt with this above.
  - (b) Delays in response to Mrs Hamilton's enquiries: the consequence of the delays on the sale of 11 Pyrford Mews put the sale in jeopardy and it was salvaged by Charlie Hamilton arranging to loan funds, ultimately not required, to enable the purchase to complete. This could have led to stamp duty consequences. In addition the delays resulted in invoices for work which was occasioned solely as a result of the Respondent's delays.
  - (c) The Respondent's refusal to step down as a Trustee: the Respondent was uncooperative about retiring as a Trustee. She stipulated her successor must either be a solicitor or a Notary which we do not find, in itself, to be inappropriate. She refused without reasonable justification to consent to the proposed appointment as replacement Trustee of the conveyancing solicitor who was acting on the sale of 11 Pyrford Mews. The Respondent insisted on the appointment of a solicitor in Lancaster where Mrs Hamilton was relocating. It took from 30<sup>th</sup> January 2019 until 20<sup>th</sup> May 2019 for the Respondent to resign as Trustee and to provide



Trust accounts. This all resulted in additional legal fees for Mrs Hamilton.

- (d) The Respondent's refusal to deal with Mrs Hamilton's son, Charlie: Mrs Hamilton had no experience in financial matters. She gave her son Charlie Hamilton a Power of Attorney. The Respondent refused to deal with Mr Hamilton. When he telephoned the Respondent's office the Respondent accused him of harassment and threatened to report him to the police. Mr Hamilton held a Power of Attorney for his mother and was fully entitled to ask for information about his mother's position as a trustee. In her first Statement the Respondent contended that Mr Hamilton was not her client and that he had attempted to persuade her to do things which she considered inappropriate. Having read Mr Hamilton's statement (pp.112-115) we accept, as he accepted, that he was "tenacious" but nothing can reasonably explain the attitude which the Respondent took to the enquiries made by him on behalf of his mother. We accept that the Power of Attorney would not have permitted him to act for his mother as trustee, but it provides no reason for her unhelpful attitude towards him. We see nothing in Mr Hamilton's statement or elsewhere to support the Respondent's claim that he tried to make her do anything inappropriate.
- (e) The funds incorrectly retained on the Respondent's client account which were not paid to Mrs Hamilton: We have dealt above under the heading 'Mistake by conveyancer' about the funds incorrectly retained on the Respondent's client account which were not paid to Mrs Hamilton. The sale of 8 Gilbert Close completed on 5<sup>th</sup> January 2015. It was not until 14<sup>th</sup> March 2019 that the Respondent disclosed her firm was holding £101,607.

31. Having considered all aspects of the complaint in respect of her handling of the estate we are satisfied that there have been repeated breaches of Rules 2.4.2 and 2.3.7 such as to amount to serious misconduct.

#### **DISCLOSURE OF CILEX FINDINGS**

32. It would appear that the Respondent became a member of the Chartered Institute of Legal Executives (“CILEx”) when she stopped practising as a solicitor. CILEx has never regulated her practice but, as a body, it has jurisdiction over her as an individual member of CILEx.

33. At some time before May 2018 CILEx Regulation began an investigation into her conduct. On 3<sup>rd</sup> May 2018 the Respondent purported to resign her membership. She was informed by a letter dated 6<sup>th</sup> June 2018 that her resignation request could not be actioned due to CILEx’s investigation into her conduct. That letter was in conformity with CILEx’s Bylaw 12 and Rule 6 of the CILEx Regulation Enforcement Rules 2015. The relevant Bylaw and Rule could not be more clearly or simply stated. Rule 6 states:

“Where a Relevant Person [defined in the Interpretation paragraph to include a CILEx member] is the subject of any investigation or proceedings under these Rules termination of Membership or Authorisation will not be valid until any such investigation or proceedings are determined.”

34. Abby Adamah, the Disciplinary Standards and Process (Policy) Manager at CILEx Regulations Ltd explained the position further in the investigation report dated 30<sup>th</sup> April 2019 and which was sent to the Respondent. In that document, in addition to an explanation of the Bylaw and Rules, the relevant parts were quoted.

35. A further explanation was provided by Ms Adamah in a statement dated 3<sup>rd</sup> October 2019 and served on the Respondent on 15<sup>th</sup> October.
36. Despite those explanations of what is a common place requirement to prevent a member of an organisation defeating disciplinary proceedings by resigning from their Regulatory body, in a statement dated 16<sup>th</sup> October Mrs Coats once again claimed that she was not a member of CILEx. Ms Adamah responded on the same day to explain to her that her resignation was invalid and that she was still subject to their disciplinary jurisdiction. Despite being invited to do so the Respondent did not provide any evidence to show that she resigned prior to the CILEx Regulation Investigation.
37. On 31<sup>st</sup> October 2019 the Respondent was given a reprimand by the CILEx Disciplinary Tribunal in respect of three charges which related to a failure by the Respondent to understand and comply with the regulation applicable to her and a failure to deal with her regulator openly, promptly and cooperatively contrary to principle 4 outcome 4.1 and 4.2 of the CILEx Code of Conduct 2015. She was ordered to pay costs. In the Respondent's First Statement in these proceedings she identified that the CILEx proceedings were dealt with in her absence.
38. By virtue of paragraph 24.3 of the NCD Rules, a notary who is also a member of a Specified Profession (CILEx is a "Specified Profession") against whom a complaint has been made by the Relevant Body, and where such complaint has been found by that body to be substantiated is required to report such finding forthwith to the Registrar.
39. The Respondent failed to disclose the finding to the Registrar. As a result of being informed of the CILEx finding, the Registrar wrote to the Nominated Notary on 13<sup>th</sup> December 2019 asking him to investigate this. The Nominated Notary emailed the Respondent forwarding the

email from Ms Adamah which set out the Respondent's stated position that she was not a member of CILEx and asked if she had any further comment (p.368-7). She replied (p.367):

“I think we need to discuss this... Suffice to say that the CILEx investigator was wrong and the reason that I wrote to the Prime Minister and the Ministry of Justice.”

40. We have reviewed the Respondent's First Statement dated 5<sup>th</sup> January 2021; she maintains that she had resigned and that CILEx restored her membership unilaterally; she does not accept that they were entitled to do that. She did not inform the Registrar and was not in breach of Rule 24.3 because she does not consider that she was a member of a Specified Profession at the time of the decision of the Relevant Body.
41. We have also looked at the issue she raised in the abuse hearing about the CILEx complaint which, put shortly, is that had the Nominated Notary investigated this matter more fully he would have discovered that the Registry knew more about this than she does.
42. She has provided no explanation as to why the clearly stated Bylaws and Rules of CILEx do not apply to her or why she failed to inform the Registrar of the Faculty Office about the disciplinary proceedings. We note that she did not even take the precaution, if she was seriously challenging the decision of CILEx, of informing the Registrar that there was a finding against her which she considered to be wrong in law or in fact.
43. We find there has been an obvious breach of paragraph 24.3 of the NCD Rules. We find that her failure to inform the Registrar amounts to notarial misconduct as defined.

#### **THE ESTATE OF THE LATE NANCY VERA KIRK**

44. The allegation is that taking into account her overall conduct of the case, particularly the delays and costs involved, the Respondent failed to provide an adequate professional service in the administration of the estate of the late Nancy Vera Kirk in breach of Rule 4.2.4
45. A complaint had been raised by Mrs Harrison to the Faculty Office about the handling of the estate of her mother (Mrs Vera Kirk) by Mrs Coats in 2015. The complaint had been addressed and dealt with, albeit not to the satisfaction of Mrs Harrison.
46. It appears that the original complaint to the Faculty Office was made by Mrs Harrison in October 2015 alleging unprofessional (and possibly illegal) behaviour by the Respondent, in her role as Administrator and co-Executor of her mother's estate (pp.471-464). The report at that time suggested that a new administrator should be appointed. In her original complaint, Mrs Harrison stated that Mrs Coats did agree to this, however that Mrs Harrison found her slow and obstructive in dealing with matters, which she stated added considerable additional costs for her, as she was forced to use her solicitor to chase Mrs Coats for replies.
47. In her further complaint 21<sup>st</sup> October 2019 (pp. 371-374) Mrs Harrison challenged the invoice of Ms Coats dated 8<sup>th</sup> February 2019 as being excessive for various reasons which included the Respondent claiming for a Caveat that she placed which she had no grounds for issuing. It also appears that her invoice included costs for gathering in assets, which she apparently confirmed to the solicitors for Mrs Harrison at a face-to-face meeting that she had not done but stated that she had informed Mrs Harrison and her sisters by a letter.

48. Mrs Harrison also complained that the Respondent had claimed £515 (at £285 per hour) for an hour-long meeting with her new solicitor. Her claim included costs for a parking meter fee and petrol and 'to conclude', for all of which the client had not apparently been informed beforehand.
49. Of particular concern is the registration by the Respondent of a caveat. A Caveat effectively blocks a probate application and is generally used where there are doubts about the Will itself, for instance if there are concerns about the validity of a deceased person's Will. We find that there was no legal justification in this case for Mrs Coats to lodge a Caveat except, perhaps, her motivation to ensure that she was paid in respect of her invoices.
50. In her First Statement the Respondent commented upon the fact that Mrs Harrison did not contact her about the complaint, the delay in making the complaint and that the complaint was in fact against the Faculty Office decision in 2015 rather than what occurred in 2013. Whilst our consideration of the Respondent's handling of the Estate arises from the complaint originally made in 2015, the foundation of that complaint was the Respondent's handling of the Estate and that is the conduct we have are asked to consider.
51. As to the issue of costs the Respondent submitted that they had been agreed in full by Mrs Harrison. In our judgment that does affect the validity of the costs in the first place and does not affect our view on the more serious issue, namely, the registration of a Caveat by the Respondent.
52. We therefore find that these failings amount to a breach of rule 4.2.4

**THE ESTATE OF MARGARET AND OF THE LATE DENZIL JOHN POULSON SADLER**

53. The Statement of Agreed Facts of 20<sup>th</sup> August 2021 in respect of the above confirms the following: A complaint against Mrs Coats was received by the Faculty Office in September 2020 from solicitors Barker Gotelee, acting for Christopher and Michael Sadler relating to the estate of their mother, Margaret Sadler, and the Denzil John Poulson Sadler Will Trust, created by the Will of their late father. Caroline Coats & Co (“CC & Co”) drafted the Wills of Denzil Sadler and Mary Sadler both dated 19<sup>th</sup> September 2006. Both Wills appointed Mrs Coats as executor and trustee alongside the survivor of Mr and Mrs Sadler and after both deaths, their sons Christopher Sadler and Michael Sadler.
54. Mr Sadler died on 13<sup>th</sup> January 2009 and Mrs Sadler and Mrs Coats were appointed as executors and trustees. CC & Co drafted a Deed of Appointment and an equitable charge deed which was signed by both Mrs Coats and Mrs Sadler. These documents passed the value in Mr Sadler’s bank accounts to Mrs Sadler and transferred his half share of his property to Mrs Sadler in return for a loan due to the trustees of the trust. This loan was secured against the property and was repayable on demand by the trustees. CC & Co prepared a number of sets of minutes that incorrectly stated that a half share of the property was held in trust. These minutes were signed by Mrs Coats and Mrs Sadler.
55. Mrs Sadler died on 4th June 2019 and as a result the executors of her will are Mrs Coats, and Mrs Sadler’s sons Christopher and Michael. In June 2019 Mrs Coats resigned as a trustee of a trustee of the Denzil John Poulson Sadler Will Trust and was replaced by Michael Sadler.
56. In his second witness statement the Nominated Notary, identified that the issues raised by Barker Gotelee centred around inaccuracy of drafting and record keeping, poor training and management of office staff and poor communication with clients and third-party professionals

which may be viewed as obstructive. The Nominated Notary alleged that the Respondent failed to provide an adequate professional service in the administration of the estate of Margaret Sadler and the Will Trust of the late Denzil John Poulson Sadler. Again, we have broken this down into its constituent parts as follows: -

57. **Failure to deal with IHT forms in breach of 4.2.7, and by virtue of Rule 21 and the requirement for supervision of a Notary's Office, Rule 4.2.4**
58. The Respondent admits in a letter to Barker Gotelee dated 3<sup>rd</sup> December 20## (p.417-8) regarding the Probate, 'It transpired that the paperwork had been incorrectly prepared, due to Jackie Beales mistakenly believing the Denzil John Poulson Sadler Will Trust to be a Life Interest Trust when it is in fact a Discretionary Will Trust'
59. We accept what is stated in the Nominated Notary's letter of 1<sup>st</sup> March 2021 that the Respondent's staff struggled to finalise the necessary paperwork even though the estate does not seem to have been complicated but indeed related to a Will that her firm drafted containing trust mechanisms with which she is familiar and seemed to recommend regularly. Further, it had transpired that Jackie Beales, the person in the Respondent's office that seemed to have conduct of the file had advised Barker Gotelee that she did not deal with trusts and could not answer trust related questions; this is despite the existence of the trust being an important factor in the estate administration.
60. The note of 'JB' regarding discussion with Mark Wrinch of Barker Gotelee states 'Not quite sure what he meant...as my discretionary Will Trust knowledge is extremely limited'. Mrs Coats accepted paragraph 32 of the witness statement of Rebecca Dixon, which contains the statement '...despite it being clear that the staff who were dealing with



the probate papers had, (by their own subsequent admission) little understanding of the Trust which interacts heavily with the probate papers' (p.484).

61. In letter of 20<sup>th</sup> January 2021 the Respondent rather dismissively asserts in paragraph 7 that '...I would not expect to be involved hands on in the day to day running of every file' (p.401)
62. The Respondent accepted paragraphs 27 and 29 of the statement of Rebecca Dixon (i) that the staff at CC & Co prepared several inaccurate versions of probate papers, in one instance wrongly advising the clients to write in a figure of £50,000 into the wrong form, which would have pushed the value of the estate to an amount as a result of which unnecessary inheritance tax would be payable by the client; and (ii) probate papers amended incorrectly by the Respondent showed the value of the net estate had changed somewhat significantly from £314,000 to £168,228 and yet a bank account figure of £50,000 had still not been included in the corrected papers, despite it having been clearly referenced by the client in correspondence with CC & Co.
63. We find that this failure amounts to a breach of Rule 4.2.7 and Rule 21 and by virtue of Rule 21 and the requirement for supervision of a Notary's Office, Rule 4.2.4.
64. **Failure to minute properly in breach of 4.2.7, and by virtue of Rule 21 and the requirement for supervision of a Notary's Office, Rule 4.2.4**
65. The Respondent confirmed in an email of 21<sup>st</sup> July 2021, accepting paragraph 15 of the witness statement of Rebecca Dixon of Barker Gotelee, that the minutes of the Trust were inaccurately drafted from 2011 onwards, and regularly refer to a half share of the property being

held in the Trust, despite the entire property having been appointed out to Mrs Sadler in return for the loan from the Trust secured against the property. The statement of Rebecca Dixon continues:

‘In speaking to Ms Coats she acknowledged this error and confirmed that the minutes were wrong. However, Ms Coats regularly signed trustee minutes rather than correcting the inaccuracy. [The inaccuracy] led to considerable confusion. There was a miscalculation of the value of the Trust assets as the equitable charge deed index linked the value of the loan, and further led to the Trust being dealt with improperly at additional expense for my clients because of further work by Ms Coats and myself in clarifying matters, which should not have needed addressing.’

66. We find that this failure amounts to a breach of Rule 4.2.7

67. **Failure to deal with complaints properly in breach of Rule 8**

68. At paragraph 36 of her witness statement Rebecca Dixon states that she first requested a copy of the complaints’ procedure of CC & Co on 1<sup>st</sup> July 2019 and was not provided with it until 4<sup>th</sup> November 2019, which fact is accepted by Ms Coats; and further that after she made the formal complaint to Ms Coats on 25<sup>th</sup> June 2020, there was no response from Ms Coats until 22<sup>nd</sup> December 2020, in a single page letter.

69. We judge that the complaints raised by Rebecca Dixon were not dealt with appropriately, nor was the complaints’ procedure laid out appropriately by Ms Coats.

70. We find that this failure amounts to a breach of Rule 8

71. **Failure to file a tax return in breach of Rule 4.2.4 and to provide a prompt and proper standard of service for all clients**
72. It is alleged (point 7, complaint of Barker Gotelee) that there was inaccurate reporting regarding the Trust to the new trustees and a lack of correct advice on trustees' duties. It appears that not only was the amount of the loan in respect of the equitable charge deed incorrectly calculated, but no advice was given at the time regarding reporting to HMRC. Mrs Coats overlooked the potential income tax and trust registration consequences of repaying the charge with indexation. When asked by the Nominated Notary to provide evidence of the advice she gave or the rationale for including an indexation provision on the charge following Mr Sadler's death, it became clear that Mrs Coats had not provided her clients with such information regarding the issue of indexed gains to allow them to make an informed choice. Her view (email of March 3, 2021, paragraph 5) is that
- 'On balance these clients were likely to have understood the point and decide upon it, but also equally likely that having done so they would wish to pay the least tax necessary'.
73. We judge that the Respondent was obliged to advise the clients of the possibility of a challenge by HMRC to the treatment of the indexed gain and potential risk and cost of such, to enable them to make an informed decision from that position and, as she had not done so, this amounts to a breach of Rule 4.2.4.
74. **Overall conduct of the case (delays and cost): in breach of 4.2.4 to provide a prompt and proper standard of service for all clients**
75. The Respondent by her actions and conduct caused unnecessary delay and cost. There is no satisfactory reply to the points in the Barker Gotelee complaint letter, in particular, point 4- slow response regarding

retiring as a trustee; point 9 – refusal to discuss probate and trust papers with R. Dixon; points 11-13 inclusive respectively being repeated requests for confirmation that CC & Co were not proceeding with certain work being ignored; refusal to send a breakdown of fees, and refusal to send valuation letters for the figures to enable the figures required for the inheritance tax account to be ascertained.

76. The witness statement of Rebecca Dixon goes further to state that there were regular delays in dealing with Ms Coats in relation to the administration of the Trust. There was a request to Ms Coats in September 2018 to arrange the necessary deed of retirement for Ms Sadler whose mental capacity was declining, to retire as a trustee and for Mr C Sadler to be appointed in her stead. The deed was not provided by Ms Coats until the end of November 2018, to allow this to proceed.
77. We therefore find that there have been breaches of Rule 4.2.4

#### **ALLEGED PERSISTENT FAILURES**

78. In her First Statement the Respondent, with some justification, was critical about the lack of particularity as to the nature and extent of the “persistent failures” alleged against her by the Nominated Notary. In his Second Statement the Nominated Notary provided a list of complaints to which he referred (pp.14-15), supported by the statement of Christopher Vaughan and by documents which he has exhibited (pp.420-479). We have summarised each complaint below.
79. **Ann-Marie Martin:** Mrs Martin complained about the delays in administering her father’s estate and about a personal visit she made to her when she was not the Respondent’s client. This was dealt with by the Notaries Society Complaints Resolution Procedure and the panel

considered the Respondent's behaviour to be unacceptable but that it fell short of conduct warranting disciplinary proceedings and recommended that the Respondent paid £250 to Mrs Martin by way of compensation.

80. In a letter dated 30<sup>th</sup> May 2013 the Respondent expressed herself as "stunned and surprised" by the letter setting out the panel's decision and pointed to inaccuracies in the way that the complaint was handled. She complained that she had not been given the material on which to make a proper response to the complaint (p.425). As to the complaints themselves, she submitted that a visit to a client in their home was the way that she did business and was a unique selling point. The response from the panel refers to the panel's "surprise" at the contents of the Respondent's letter; they affirm that the Respondent was provided with all the material on which to provide a response. The panel identified the difference between visiting a client and, as here, visiting a former client in their home without invitation.
81. **The late Margaret Dorothy Quick:** this complaint was referred to the President and Past President of the Society under the approved Complaints Procedure. The panel concluded that the matter should be referred to the Faculty Office with a view to a complaint being made under the Rules and that the actions of the notary fell seriously below the standard of service reasonably to be expected of a public notary.
82. The complaints were investigated by a Nominated Notary. He found errors in the paperwork and in the understanding of Ms Beales who was employed by CC & Co and who was supposed to be supervised by Ms Heald. He described the engagement letter in which CC & Co had been wrongly described as the executor as "a nonsense". He concluded that the uncomplicated will had never been read by anyone in the office and described that as "inexcusable". The error only came to light when the

file was produced to the Respondent when the grant was to be applied for.

83. There followed a process by which the successor firm to Blatch & Co, who were the appointed executors, were asked to renounce their office of executorship and Mrs Francione, a beneficiary under the will, was asked to authorise her mother's will to be released to CC & Co. A decision was taken that the successor firm should remain as executors. There was a conflict between that firm and CC & Co as to whether the file was delivered to the to the successor firm. There followed acrimonious correspondence. There was a delay by CC & Co in transferring the equity release funds to the successor firm and the money was not sent until 21<sup>st</sup> June 2013.
84. Having reviewed the matter the nominated notary decided that he could not be sure that there was more than a 51% probability that those facts actually constituted notarial misconduct and he found on a balance of probabilities that the court would not make a finding of notarial misconduct against Caroline Coats. In those circumstances he decided that no disciplinary proceedings should be brought against the Respondent.
85. We observe that the Nominated Notary was considering this at a time when the standard of proof required the court to find beyond reasonable doubt that there had been misconduct which fell seriously short of the standards to be expected of notaries whereas the standard is now set as being on a balance of probabilities. Whether the same test to refer misconduct to the court ought to be applied by a Nominated Notary now that the standard of proof is generally expressed as being where it is "more likely than not" that there was misconduct is arguable because there is no longer the same margin between a decision based on a 51% probability and being sure, as there is between a 51% probability and

finding on a balance of probability that the misconduct fell seriously short of the standards to be expected of notaries.

86. We note that on the Faculty Office website it describes the duty of the Nominated Notary when reviewing a complaint in these terms:

“ The first task of the nominated notary is to establish if “prima facie” (on the face of the matter) there is a case to answer. This means a “first look” and is not a detailed review.”

If the nominated notary decides that prima facie there is a case of notarial misconduct they will report and put the allegations formally to the notary and the notary will write a reply...

It is at this stage when the Court of Faculties takes control of the proceedings...”

87. The Nominated Notary dealing with this matter did not have our advantage of knowing that the staff employed by the Respondent have shown themselves to be inadequately knowledgeable or experienced in the matters which they were dealing with on a daily basis. The Respondent has a professional responsibility in respect of the service provided by her firm and, had the Nominated Notary seen the broader picture, he may well have concluded that the Respondent’s failure to oversee her staff and ensure that those she employed were competent to carry out the work could in itself have led to a finding of professional misconduct.

88. **The Estate of Mrs H.M. Sansom:** complaints were made by B.M. Sansom and Mrs R.B. Reynolds which was considered under the Approved Complaints Procedure and fell into three parts:

- (a) A request made by Mr Sansom for a distribution to the executors’ account which was never actioned by the Respondent. This was upheld.

- (b) The retention by the Respondent of £24,500 against a potential outstanding debt of £360 in respect of a barrister's disputed fees. There was a delay in the distribution by errors made by the Respondent in the BACS transfer process. The complaint was upheld because, although they had some sympathy with the Respondent's submission that there was little point in making two distributions in close succession, that decision should have been reviewed when matters were taking longer than expected.
- (c) The sale proceeds of a property belonging to the Will Trust were distributed without authority directly to the beneficiaries whereas they should have been paid into the Trust bank account. The panel found that, whilst it was technically true that the Respondent did not have authority to distribute directly to the beneficiaries, there was no suggestion that any beneficiary lost out; indeed the beneficiaries received their money more quickly as a result of the direct distribution. Nevertheless because of the technical breach they upheld this complaint.

89. The Respondent was ordered to pay £250 by way of compensation for the delays involved in parts (a) and (b) of the complaint.

90. **The Estate of Leonard Staff:** two of the beneficiaries, being the grandson and granddaughter of the deceased lodged a complaint with the Notaries Society in relation to the costs charged by the Respondent for the administration of the estate and the poor service they received together with the delays involved to get to the point of a final statement between 2011 and 2013, a period of nearly three years' following the death of Leonard Staff (pp.454-5). In her introductory letter the Respondent estimated that the costs would amount to £2,500. The



eventual cost claimed was £14,000 and there were further costs of £720 charged for the preparation of two documents relating to their grandfather's house and of which they were given no notice.

91. In a subsequent email the complainants informed Mr Vaughan that they were undecided whether to pursue the matter because the Respondent had made what they considered to be a veiled threat to charge them £60,000 for her work. Mr Vaughan advised them to take independent legal advice. Having considered the costs of instructing a solicitor and possible court costs, they decided not to pursue the matter. They added these comments which we consider to be pertinent to the complaints we are considering:

“Unfortunately the Respondent is Trustee on a Life Interest Trust for my daughter and despite my requests for her to stand down she is insisting to continue so I'm left dealing with her for the long term.

I would hope that her actions to date and her standards of conduct remain on file should complaints arise in future from other unfortunate relatives forced to use her services.”

92. **Mrs Carol King:** complaints contained in a letter dated 5<sup>th</sup> December 2014 were investigated under the approved procedure (p.463). The notaries appointed to look into the complaint found that the Respondent had provided information with regard to her chargeable time but no time records to justify the invoice sent to her client. The Respondent claimed that there was no requirement to keep itemised records of time, a submission which was described as “clearly incorrect”. They described the Respondent's comments on the professionalism of one of her staff as “unprofessional” and the delays in dealing with correspondence as “unacceptable”, particularly the refusal to release papers during a five month period and which prevented an application for probate for Mrs

King's husband. They considered that the Respondent had completed work which should not have taken more than an hour and that she should make a repayment to Mrs King of £870.

93. **The Estate of Peter Pompa:** a complaint was made by Bridget Hill, senior probate manager of Chorus Law. The Respondent was the witness to the will of Mr Pompa for which an affidavit of due execution was required. The Respondent was first contacted as to whether she would be able to swear an affidavit on 6<sup>th</sup> November 2015. Ms Hill chased her up on three occasions to 3<sup>rd</sup> February 2016. Eventually Ms Hill drafted a suitable affidavit and on 5<sup>th</sup> April sent it to the Respondent to sign. No sworn affidavit was produced before Ms Hill submitted her complaint over a month later on 17<sup>th</sup> May (p.478).
94. However Ms Hill was contacted by the Respondent's secretary on 29<sup>th</sup> April who said that an affidavit had been sworn and returned but could not assist as to the date on which this had happened. No affidavit was received although on 29<sup>th</sup> April Ms King informed the Respondent's secretary that if there was no response by 16<sup>th</sup> May she would lodge a formal complaint.
95. The Respondent wrote to Chorus Law on 17<sup>th</sup> May to inform them that the affidavit had been sworn. The Respondent claimed that the affidavit had not been received until 29<sup>th</sup> April. She set out expenses totalling £57 which she wanted reimbursed. Ms Hill responded on 18<sup>th</sup> May stating that because of the Respondent's delay probate had not been granted and there was, therefore, no funds available to pay the Respondent. She refuted the claim that the affidavit had not been sent until 29<sup>th</sup> April and set out the various communications she had had since 11<sup>th</sup> December 2015.

96. As a result of the Respondent's assertion in the letter of 17<sup>th</sup> May 2016 (p.474) Mr Vaughan on behalf of the Society wrote to her in these terms:

“You must now realise that this is now a much more serious situation. The integrity of our profession is of the utmost importance. If we do not tell the truth, or act in a misleading way, we cannot expect anyone to recognise or acknowledge that our Notarial Certificates are true... May I suggest you return this affidavit to chorus law immediately without charge.”

97. On 27<sup>th</sup> May 2016 Mr Vaughan spoke to Ms Hill who told him that the affidavit had been received by her on the basis that her complaint against the Respondent was withdrawn. She explained that she was not withdrawing her complaint because staff at the Respondent's office had not been truthful as to the affidavit of due execution and in addition the Respondent's behaviour had held up the administration of the estate by several months (p.472).

98. It seems that the complaint remained unresolved.

99. **Conclusion:** The material summarised above identifies to us a catalogue of failures on the part of the Respondent directly and in respect of her oversight of her business. Those she employed were on a part-time basis and do not seem to have been given the guidance they deserved, nor did they display the sort of knowledge they would need to deal with the issues that arise from the work which CC & Co held itself out through the Respondent as competent to handle. We make no direct criticism of any of the Respondent's employees; it was the Respondent's responsibility to ensure that she had a competent workforce to handle the work that she was taking on, particularly where,

as the correspondence and emails show, she was often absent from the office.

100. Whilst no individual complaint would necessarily amount to notarial misconduct, taken as a whole it does amount, in our judgment, to what is now described in the amended NCD Rules as “persistent failure to provide the standard of service reasonably to be expected of a notary”. We consider that, even without the express insertion of those words into the Rules, the court would have been entitled to conclude that, looked at cumulatively, her conduct fell seriously below the standard of service reasonably to be expected of a notary.
101. Her handling of these individual matters include breaches of paragraphs 4.2.2, 4.2.4, 4.2.5 and 4.2.7 of the NP Rules. At the abuse hearing on 15<sup>th</sup> November 2021 the Respondent objected to the Nominated Notary relying on complaints which had already been adjudicated upon. We found nothing in the Rules that suggested that complaints handled by the Notaries Society and which were never taken forward to a disciplinary hearing could not be deployed by the Nominated Notary at such a hearing. If she was right about that, then no disciplinary proceedings would be entitled to look at the conduct of a notary overall; it would leave the Society to decide whether they should deal with individual complaints as they were made or whether they should wait for them to accumulate to such an extent that the notary should face disciplinary proceedings before the court for persistent failures. Such a course would not be in the interests of complainants nor the good standing of the Society.
102. Such evidence would be admissible in any event as similar fact evidence. In the notes for guidance provided to the Nominated Notary specific reference is made to adducing evidence of prior conduct and that it will ordinarily be proved by adducing evidence of the finding

together with an agreed statement of facts. If the previous conduct has not been proved against the notary, then the Nominated Notary will have to call admissible evidence of the prior conduct (see R. V. Z (Prior Acquittal) [2000] 2 A.C. 483). The guidance specifically states that it will not be competent for the Nominated Notary to make unspecific and/or unsupported allegations of previous misconduct at a hearing or to adduce evidence of prior misconduct which bears no relevance to the issues to be decided in the instant complaint. The principles to be adopted it is suggested are similar to those that would be required in a criminal trial where it is submitted that the evidence is admissible under s.101(1) of the Criminal Justice Act 2003.

103. We are in no doubt that the evidence of these previous complaints was relevant and admissible in respect of our consideration of the conduct of the Respondent on the first, third and fourth heads of complaint we had to decide. We are also satisfied that her conduct looked at as a whole in respect of the fifth head of complaint involved many breaches of the NCD Rules and that, taken together, her conduct fell seriously below the standard of service reasonably to be expected of a notary.
104. However, we have decided to make no formal finding against the Respondent in respect of the fifth head of complaint but to use the evidence adduced by the Nominated Notary as similar fact evidence capable of supporting his case against the Respondent on heads 1, 3 and 4.

#### **OUTCOME**

105. We have found in relation to the five heads of complaint that have been referred to the court that serious misconduct as defined has been proved in relation to heads of complaint 1 to 4. In respect of head of complaint 5, whilst we consider that the complaints cumulatively amount

to notarial misconduct we have decided to make no finding in respect of it but to use that evidence to support, as it does, the complaints made in respect of heads of complaint 1, 3 and 4.

106. We have had to go on to look at penalty. We have to consider the Respondent's conduct overall as represented by the four areas we have found proved rather than look at them individually. We have considered the disciplinary sanctions as set out in paragraph 22.1 of the NCD Rules. We considered the sanctions available starting with the least serious. As we rejected the possible sanction as insufficient to reflect her overall conduct we went to the next in turn.
107. As a result of that process we consider that the only sanction that reflects the appalling service she has provided to many clients over less than a decade in breach of the rules that we have identified is to strike her off the Roll of Notaries.
108. We readily accept that if we had been considering a single head of misconduct, the penalty may have been less severe. By way of example, the breach of Rule 24.3 of the NCD Rules in respect of the second head may well have resulted in a lesser penalty.
109. We are conscious that the Respondent has not had the opportunity to address us on penalty and we consider it appropriate, despite her attitude to these proceedings, to give her the opportunity to make written representations as to any factors she wishes to put before the court as to why another sanction other than being struck off should be preferred by the court. Secondly, we have to consider an application for fees and costs of the Nominated Notary and of the court which would otherwise be borne by the Contingency Fund. We have directed that the Nominated Notary and the Faculty Office provide detailed schedules of costs no later than 21<sup>st</sup> January and which are to be sent to the

Respondent. Ordinarily costs follow the event but the Respondent should make any representations she wishes about them in writing. The court requires her written submissions on penalty and costs to be sent to the Faculty Office no later than 28<sup>th</sup> January 2022.

110. The Nominated Notary has not identified any indemnity or amounts which the complainants seek by way of compensation. If he wishes to do so he must do so in writing, providing a breakdown of the figures and the name and current address of anyone who seeks an indemnity or a monetary payment, by 21<sup>st</sup> January and the Respondent may respond by 28<sup>th</sup> January 2022.
111. The court will reconvene on 4<sup>th</sup> February 2022 at 4.30pm by zoom to consider penalty and costs.
112. The order to strike the Respondent off the Roll should await that hearing on 4<sup>th</sup> February 2022. In the interim period and for the protection of the public she is suspended from practice as a notary.

His Honour Judge Leonard QC (Commissary)

Mrs Elizabeth McQuay (Lay Assessor)

Mrs Esther Ogun (Notary Assessor)

13<sup>th</sup> January 2022