

IN THE COURT OF FACULTIES

IN THE MATTER OF ALAN RUSSELL KERR, A NOTARY
AND
IN THE MATTER OF THE NOTARIES (CONDUCT AND DISCIPLINE)
RULES 2015 (AS AMENDED)

DECISION OF THE COURT

INTRODUCTION

1. Ms Samantha Davies was appointed as the Nominated Notary to investigate various complaints made against Alan Kerr (“the Respondent”). She made the following complaints against the Respondent:
 - (a) Breach of Rule 4.2 of the Notarial Practice Rules 2019 in respect of the services, or lack of services he provided to various clients and his obligations to them;
 - (b) Breach of Rule 9.1 of the Notaries (Conduct and Discipline) Rules 2015 by the use of his company legend after he had been suspended from Notarial Practice;
 - (c) Breach of Rule 7.3 of the Notaries (Conduct and Discipline) Rules 2015 in his failure to engage with the professional regulator and co-operate with the investigation by the Nominated Notary.
2. The Respondent has not attended these proceedings. He contacted the Faculty Office on 20th January 2023 and wrote that “I will not be attending the hearing which I consider is undemocratic and I have been punished enough”.
3. He has provided no grounds to support his claim that the proceedings are “undemocratic” and we know of no principle ourselves to support the proposition that a disciplinary process whose rules and regulations

are subject to the Courts and Legal Services Act 1990 and whose findings could in certain circumstances be the subject of an appeal elsewhere could be described as undemocratic, particularly when, as a Notary appointed by the Court of Faculties, he knows about and has made himself subject to its disciplinary process.

4. We are at a loss without assistance from the Respondent to understand why he considers he has been punished enough unless it be a reference to his practice certificate being suspended, a matter he has never sought to appeal after it was put in place.
5. We note that in a letter dated 16th August 2022 from Meesons & Spurlings, who then represented the Respondent, it was stated that they had spoken to the Respondent and to Mrs Kerr, his ex-wife, who was no longer prepared to assist. The Respondent informed them that he was not fit enough to undertake any work of any nature at the current time and has no income to employ anyone to work for him.
6. With his health in mind and the fact that he was not practising, the Commissary asked that steps be taken by the Nominated Notary to see whether the Respondent might be able to pay some compensation to his clients and, if he did so, whether the Nominated Notary would consider it in the public interest and in the interest of the Respondent to continue proceedings bearing in mind the costs of a hearing. Due to lack of engagement, this could not be taken forward.
7. On 31st May 2022 he was required to provide medical evidence to the Nominated Notary and the court by 27th June 2022. He failed to respond, and we note that this was at a time when he was still represented by solicitors in the proceedings.

8. In an email dated 27th November 2022 his ex-wife, Mrs Vanessa Kerr (p.83) asserts that the Respondent has a medical certificate to say that he is unfit for work until at least the end of January 2023. She was asked on 6th December 2022 to provide a copy of the certificate. No certificate has been produced.
9. It follows that we have no information on which to conclude that he is unfit to attend these proceedings or that he requires special measures to allow him to, for instance, attend via a link from his home. We do not know what is the nature of any illness he has and whether that would prevent him attending a hearing even if we were to accept that he was unfit for work.
10. The Respondent was warned that if he failed to attend we would consider proceeding in his absence. In the absence of any assertion by him in his latest communication with the court that he cannot attend for medical reasons, and having given it careful consideration, we decided to proceed with the hearing. We have not held the fact of his failure to attend against him.
11. We will deal with each area of complaint in turn.

BREACH OF RULE 4.2 OF THE NOTARIES PRACTICE RULES 2019

12. Insofar as it is relevant to these complaints, Rule 4.2 requires that a notary shall:
 - 4.2.1 uphold the rule of law and the proper administration of justice;
 - 4.2.2 act with integrity;
 - 4.2.3 maintain his independence and impartiality;
 - 4.2.4 provide a prompt and proper standard of service for all clients;
 - 4.2.5 act in a way that maintains the trust in the office of notary which the public may reasonably expect;

- 4.2.6 comply with all legal and regulatory obligations and cooperate with the Master and any persons or body appointed by him in exercise of the Master's regulatory functions;
 - 4.2.7 operate his notarial practice in accordance with proper governance and sound financial and risk management principles; and
 - 4.2.8 ...
13. The Nominated Notary relies on his conduct in respect of various clients who have complained about his conduct which we set out below.
14. **Ms Karen Budd:** when the Nominated Notary contacted Ms Budd on 17th September 2021 her first concern was that she had been waiting since 25th June 2020 for a response from the Faculty Office to the complaints she had made about the Respondent. We are in no position to investigate that delay but we invite the Registrar to inquire into whether there was undue delay in providing her with a response.
15. Based on an email from Ms Budd to the Chief Clerk of the Faculty Office, the complaints she makes are as follows, that the Respondent:
- “Failed to act on instruction given, by not drafting/sending a letter to a third party. At no point advised me of this non action until repeated requests were made as to when the letter would be drafted. Mr Kerr could not confirm the facts accurately as conveyed to him, took no notes of either meeting, later summarising completely erroneous information. Inappropriate disclosure at two meetings about his personal life.”
16. The Respondent’s wife who assisted him in business emailed the Faculty Office on 29th March 2021:
- “...as you will see from the correspondence on 25 June 2020, I asked Karen Budd if she was happy with the wording of a letter I had drafted to Mrs Holloway. The e-mail also asked for her formal instructions and £300 on account in order to proceed.”
17. When Ms Budd was informed of what Mrs Kerr had written, she responded that she was:

“unsure why Mr Kerr had stated he heard no further from me after he sent me the draft of a one line letter to my sister. I responded to him in full on 25th June 2020 that this letter did not cover any of our two detailed conversations regarding my instructions... Mr Kerr’s failure to carry out my instructions and send the letter to my sister stating that she was required to communicate with me at all times...left me in a position whereby my relationship with my sister has now broken down irreparably

Mr Kerr took no action whatsoever on drafting my last will and testament, a matter that I had also instructed Mr Kerr on at both these meetings in 2020. I have instructed a new solicitor in this regard and my will is currently being drafted.”

18. In a brief response made on 4th August 2021 to the allegations (p.40) the Respondent told the Nominated Notary that no file was ever opened for Ms Budd who had paid no fees to him and that no formal complaint was made to him.
19. We are satisfied that, whether or not she had paid for the Respondent’s services at the time that their relationship broke down, a professional relationship existed between them. In those circumstances a file should have been opened by the Respondent and a copy of her identification document should have been taken together with proof of her residential address. He had clearly had at least two conferences with Ms Budd and records of those meetings should have been taken.
20. We are satisfied that, on the evidence available to us, the Respondent is in breach of Rule 4.2.4, 4.2.5 and 4.2.7.
21. **Simon Gill:** on 21st March 2021 Mr Gill, on behalf of Crescent Ltd, contacted the Respondent in order to notarise some documents. On 25th March the Respondent notarised them but they were not legalised. After chasing the Respondent about this he said that they would be legalised within five days. On 22nd April the Respondent notified them that he had received the documents back and was provided with an

address in Italy to which they were to be sent but, by 4th May, they had not arrived in Italy.

22. Mr Gill took them to another notary. On 13th May he emailed the Respondent for a response to his complaint and received no reply. His company are seeking a refund of monies paid, compensation for the additional costs incurred and general compensation.
23. In his response the Respondent said that the client had threatened one of his staff and was abusive. He offered to refund the fee but has heard nothing from the client. The Nominated Notary has an email from Alexander Kerr (the Respondent's son) dated 4th June (p./43) in which he asked for the bank details in order to return his fees.
24. It is unclear at what stage the client is said to have threatened one of the Respondent's staff and been abusive. Even if we accept that happened and, however inexcusable, we may understand the frustration felt by Mr Gill or someone on his behalf, it does not alter the fact that there was a failure on the Respondent's behalf to legalise the documents and to send them to Italy. We find on the material we have been provided that there is a breach of Rule 4.2.4
25. **Amanda Jopson:** as of 3rd August 2021 the Respondent had outstanding invoices in the amount of £586 which were due to Milton Keynes Legislation Services. Ms Jopson notified Christopher Vaughan, the Secretary to the Notaries Society on the same date. She attached three invoices which, for reasons we fail to understand, have not been produced. As a result we do not know for how long the amounts had been owing to Milton Keynes Legislation Services. We can infer from the fact of the complaint to the Society that they were sufficiently overdue to lead to the complaint being made.

26. There has been no response by the Respondent to this complaint. We are satisfied that there has been a breach of Rule 4.2.7.
27. **John Zeale:** He responded to the Nominated Notary by return and set out that the Respondent had been instructed on 25th May 2021 to notarise various documents in respect of the death of his wife and a power of attorney to his brother-in-law in Mauritius. The Respondent told Mr Zeale that it would take three weeks to complete. After four weeks Mr Zeale contacted the Respondent's office without success. He sent a letter on 20th July to which he received no reply. He emailed the Respondent on 18th August and received a reply from Alexander Kerr that he had called the Foreign Office and the documents would be back early next week. He was told that the Respondent would refund £50 of the £170 fee.
28. Nothing happened; Mr Zeale contacted the Faculty Office to complain and there were further emails to the Respondent on 24th, 27th, 31st August and 8th September which did not resolve the matter. Mr Zeale employed another notary at a cost of £335 and the documents were available by 5th October. His brother-in-law also incurred additional costs.
29. The Respondent has not responded to the Nominated Notary in respect of this complaint. In our judgment there are clear breaches of Rule 4.2.4.
30. **Cedrick Fawcett:** when Mr Fawcett was contacted by the Nominated Notary on 17th September 2021 he immediately responded to state that he had withdrawn his complaint. In an email dated 4th August 2021 (p.40) the Respondent said that Mr Fawcett was picking up a refund cheque for £180 the following Thursday. The Nominated Notary has

little information about the complaint and we have considered it no further in respect of Rule 4.2.

BREACH OF RULE 9.1 OF THE NOTARIES (CONDUCT AND DISCIPLINE) RULES 2015

31. Rule 9.1 permits the Registrar to suspend a notary from practice where he has received *prima facie* evidence of notarial misconduct if the Registrar is satisfied that it is required for the protection of the public. No application was made pursuant to Rule 9.6 to vary or discharge the order.
32. The Respondent was suspended from practice on 7th August 2021. Insofar as we can review the decision of the Registrar at this stage, on the evidence he had received from complainants, he was fully justified in taking the course he did. That the Respondent did not challenge the order reassures us that the Registrar's decision could not be faulted. We have read the inspection report carried out on the Respondent's business on 25th August 2021 which raises a number of concerns over whether the Respondent should have been allowed to continue in practice.
33. In our judgment he has breached Rule 9.1 in an email to Mr Zeale on 18th August 2021 (p.71) signed by Alexander Kerr above the words

Kerr & Company
Notary Public
Commissioner for Oaths
34. We note that there is other correspondence by Alexander Kerr preceding this where he does not use "Notary Public" (p.65). We also note that "Notary Public" appeared on another email after his suspension (p.38)

35. Whilst we do not consider this to be a serious breach of the Rules, it is nevertheless made out on a balance of probabilities.

RULE 7.3 OF THE NOTARIES (CONDUCT AND DISCIPLINE) RULES 2015

36. We are satisfied that the Respondent has failed to engage with his professional regulator and cooperate with the investigation by the Nominated Notary. In particular he failed to respond to proper and appropriate enquiries made by her on 6th December 2021 and 6th January 2022.
37. Looking at the Respondent's attitude to the investigation, there has been an almost total absence of cooperation in the investigation which has extended to failing to respond to the directions of the court. It has made this investigation more complex because of his failures to engage with the process.
38. We have considered the history of his contacts during the process:
- 29/07/21: The Nominated Notary wrote to the Respondent requesting information regarding Ms Budd, Mr Gill and Mr Fawcett to the address provided by the Faculty Office. Whilst Mrs Kerr acknowledged receipt of the request and that it would be passed to the Respondent for his attention, no response was made.
- 04/08/21: The Respondent sent a response to the Faculty Office rather than the Nominated Notary. That may have been because the Faculty Office had given notice that he was to be suspended from practice. He provided some response to the complaint made by Ms Budd, Mr Gill and Mr Fawcett. He wished to place on record that he has not committed any form of notarial misconduct, dishonesty or any criminal offence and requested that statement was withdrawn. He asked for the decision to suspend be reconsidered until the inspection had taken place, which was carried out on 25th August.
- 06/12/21: The Nominated Notary requested copies of the Respondent's files in respect of Ms Budd, Mr Gill, Ms

Jopson, Mr Zeale and Mr Fawcett, all of whom had made complaints against the Respondent. She made it clear that, because he had been suspended, she wanted to conclude this investigation as soon as possible. She sent the request to two further email addresses with which she had been provided as well as the address which the Faculty Office had for him. There was no response.

06/01/22: The Nominated Notary emailed the Respondent to all three addresses again asking for a response and informing him that if he did not respond she would have to write a report without his input.

31/05/22: Directions given by the court to provide medical evidence by 27th June 2022 (p.1); nothing was provided. The Nominated Notary was requested, in an attempt to see whether matters could be resolved by the payment of compensation to the Respondent's clients, to provide without prejudice compensation details. She was unable to do so because the Respondent did not engage with her in the process. After a series of chasing emails to Meesons & Spurlings who then represented the Respondent, an email was sent to the Nominated Notary and the Faculty Office on 11th July to identify that they had instructions for a hearing that afternoon. Directions were made at that hearing as to service of papers and responses required from the Respondent which were not adhered to by the Respondent.

16/08/22: Meesons & Spurlings informed the Faculty Office that they were unable to continue to represent the Respondent owing to a conflict because the Respondent was holding monies which belonged to one of their clients. The Respondent's ex-wife, who used to do the banking, was not prepared to assist and he relied on her to do the banking. Meesons & Spurlings suggested that a professional was asked to intervene to resolve matters. We express our surprise that the Respondent was unable to release the money from his firm's account himself.

07/10/22 By virtue of the directions given by the court on 16th August 2022 (p.79), the Respondent was to have provided a response to the Nominated Notary and the court by 7th October. There was no response.

39. We have set out a fuller history of his contacts with the Nominated Notary and the Faculty Office to identify his lack of cooperation in the

investigation and court process overall. Anyone holding themselves out as providing professional legal services to the public should understand the importance of responding to an investigation by their regulatory body. The disciplinary system is designed not only to protect the public from professional misconduct but also to protect the legal services provider from misguided complaints and misunderstandings as to how legal professionals conduct themselves. The integrity of the professional body relies on its members responding to complaints timeously so as to provide a system in which the public and the professional body can have confidence.

OUTCOME

40. We have found each of the allegations against the Respondent proved. We stress that we do not find that he has acted dishonestly or that he has committed any criminal offence.
41. We considered whether we should adjourn the hearing to give the Respondent the opportunity to address us on the appropriate disciplinary sanction. Bearing in mind his failures to respond to any requests by the Nominated Notary or directions of the court together with the fact that he has been suspended from practice and currently has no practising certificate, we considered that the likelihood that he would respond when weighed together with the additional costs that will be incurred did not justify any further delay.
42. We consider the breaches of Rule 7.3 of the 2015 Rules to be the most serious breach and one which must attract the sanction of being struck off the Roll of Notaries pursuant to Rule 22.1.1. We consider that the breaches of Rule 4.2 of the 2019 Rules are individually less serious but, taken together, they show substantial failures on his part in the services

he provided his clients and must be marked by the Respondent being struck off the roll of Notaries.

43. As to the breach of Rule 9 of the 2019 Rules, we find the breach to which our attention was specifically drawn by the Nominated Notary to be on its own relatively minor. However we have to look at the breach in light of the fact that when the inspection took place on 25th August 2021 the Respondent was continuing to undertake substantive work on probate and conveyancing matters (pp.55-56). While the Respondent may have said, had he at any stage responded during these disciplinary proceedings, that he was not doing this work as a notary, he will have taken these matters on in his capacity as a notary. Further to our knowledge he was not being regulated at that time by any other professional body. This makes the allegations drawn to our attention by the Nominated Notary more serious and, taken with the other breaches to the Rules which we have set out, we impose the same penalty in respect of this breach.
44. We have considered compensation. Because the Respondent never produced his files, and because the information provided by the complainants is far from complete, we have found ourselves constrained in the order for compensation that we would wish to make.
45. We have decided that there is sufficient information to make an order in favour of Crescent Motorcycles for £310. We are unable to go above that amount owing to a lack of specificity in the claim although we readily accept that their loss was greater. We also make a compensation order in favour of Mr Zeale of £335. We have taken that figure on the basis that he has been provided, eventually and by another notary, with notarial services which he would have always needed to pay for. The Faculty Office must provide the full details of to whom and where the Respondent should send the compensation.

46. We have made no order in respect of the amount owing to Milton Keynes Legislation Services and consider their best recourse is to the County Court or Small Claims Court.
47. Nothing in this judgment prevents other clients who have lost money as a result of the Respondent's acts and omissions from bringing claims against him.
48. In relation to costs, we have given the Nominated Notary and the Faculty Office seven days to provide us with the figure for costs. Once provided, the Faculty Office are to notify the Respondent of the figure and he will have 28 days to respond with any submissions he has as to costs. Thereafter we will consider what amount the Respondent should pay in costs and will provide that figure in writing to the parties.

His Honour Judge Leonard KC (Commissary)

Mrs Elizabeth McQuay (Lay Assessor)

Mrs Esther Ogun (Notary Assessor)

25th January 2023