

IN THE COURT OF FACULTIES

IN THE MATTER OF SUNITA KUMERI, A NOTARY

AND

THE NOTARIES (CONDUCT AND DISCIPLINE) RULES 2015 **(AS AMENDED) AND THE NOTARIES PRACTICE RULES 2019**

Appearances

Samantha Davies as Nominated Notary

Timothy Vaughan of Borneo Martell Turner Coulston LLP instructed by
Sunita Kumeri, the Respondent

DECISION OF THE COURT

INTRODUCTION

1. We would like to express our appreciation for the way in which Ms Kumeri (“the Respondent”) and the Nominated Notary have reached agreement on the issues in this case and have managed to agree a statement of facts and issues. This has allowed the matter to be resolved without undue costs being incurred. We have all sat on other disciplinary hearings where a lack of co-operation has resulted in delay and expense.
2. We note that this simple complaint was referred to the Nominated Notary in November 2021 and it is a matter of concern to the court that it nevertheless took from that date until 2nd August 2022, a period of nine months, for the complaint to be lodged with the Faculty Office. This is despite the fact that the evidence was, to a large extent, served to the Nominated Notary on a plate because the complaint came about as a result of information provided through a notary who used Mr Clow as a “mystery shopper”.

3. The Respondent had the good sense to instruct solicitors to represent her at an early stage which has been to the benefit of the Respondent and to the benefit of the process overall.

THE COMPLAINT

4. The Respondent accepts that she has breached Rule 4.2.4 and, as a consequence, Rule 7.5, of the Notaries Practice Rules 2019 in respect of issuing two notarial certificates on behalf of James Michael Clow, namely for a Master of Arts Certificate and a passport. She certified both documents without:

- (a) Seeing or corresponding with Mr Clow
- (b) Personally or through an employee inspecting the originals of the documents to be notarised.
- (c) Verifying the Master of Arts Certificate

but, instead, relied on copies of the documents which were sent to her by Brian Michael Howes, the Director and Head of Legalisation at Blair Consular Services ("Blair's"), who she knew well and who had been appointed as an intermediary by Mr Clow to represent him. This took place on 6th January 2021.

5. Her respective certification of each document was to this effect:

"That Brian Michael Howes who is well known to me and who is duly authorised by James Clow ("the client") to represent them in this matter had today caused the annexed copy...to be produced to me and has represented to me on behalf of the company that the said document is a true copy of the original document produced to him."

6. The Respondent accepts that she dealt with the matter in that way but only because she was told that the notarial acts were extremely urgent

and time sensitive and she was told that the originals of the two documents would be sent to her *ex post facto*.

MITIGATION

7. As to the facts, no claim was made against her by Mr Clow; the notarised documents were in fact true copies of the originals, no one suffered loss as a result of her actions, and the only fee she charged for the work was £8.
8. She also relies on the fact that Blair's confirmed that they had seen the original documents, and that she told Blair's that the release to the client of her notarial acts was conditional upon her seeing the original documents. She accepts that Blair's released the notarial acts to the client regardless. Subsequently she contacted Kingston University for verification of the Master of Arts certificate.
9. As to her own position, the Respondent was admitted to the Roll of Solicitors in May 2002 and qualified as a Notary in January 2011. She has never had any professional negligence claim made against her or been subject to any disciplinary proceedings either as a solicitor or notary.
10. The Respondent has set out various matters in her personal life which was affecting her work at the time. We do not consider it right to set those out in our Judgment, but we consider them to be relevant to explain why she acted as she did, and which we also consider are relevant to identifying the appropriate penalty.

11. The Respondent recognises, and deeply regrets, that she allowed her normally high professional standards to slip in the interests of expediency. She offers her unreserved apology to the court. She has not accepted any further work introduced by Blair's since the commencement of the investigation and will not do so in the future.
12. The Respondent is concerned that this has come to light as a result of another notary, who was acting independently of the disciplinary process, by using a "mystery shopper" when the professional regulator had the appropriate powers to inspect her records. We are not convinced that an inspection would, in fact, have brought conduct of this sort to light.
13. Without wishing in any way to encourage such activity within the notarial profession, we observe that it is in the interests of the profession as a whole that high standards of conduct and integrity are maintained. The fact that the breach of the Rules came to light in this way does not detract from what the Respondent has admitted doing.
14. We do not know whether the notary who employed the "mystery shopper" was doing so to bring to light the activities of Blair's so as to identify the dangers of an unregulated body employing notaries, or whether it was to identify which notary or notaries were willing to carry out notarial work for Blair's. The Respondent submitted that the notary could not have known in advance that the Respondent would be the person who acted for Blair's; nothing has been brought to our attention to suggest the contrary and we, therefore, accept that to be the case.
15. We were concerned to discover why it was that the Respondent was willing to undertake the notarial work involved for only £8, knowing that Blair's was charging £250 for the service that it was supplying to the

client. £8 is substantially below what we would expect a notary to charge for such services.

16. Our only purpose in wanting to know whether she did other work for Blair's was to assess whether the low fee she accepted was because she was undertaking a substantial number of notarial acts for Blair's or for some other reason, and whether to any extent the volume of work had caused her on this one occasion to be less diligent than she might otherwise have been. We understood that she had done other work for Blair's in the past and that, after this case came to light, she did no further work for them. We make it abundantly clear that we are not suggesting that she carried out other work for Blair's which offended the Rules.

PENALTY

17. We have reminded ourselves of the penalties available as set out in Paragraph 22.1 of The Notaries (Conduct and Discipline) Rules 2015 (as amended) and which range from the notary being struck off, to being suspended from practice, to conditions being placed on the scope or conduct of her practice, to training, and to being admonished.
18. The gravamen of her conduct was to release certified copies of important documents without having carried out the appropriate checks. Once signed and handed over by the Respondent she had no control over what use was made of them; an undertaking from Blair's not to release them to the client until she had seen the originals of the certified documents did not amount to proper control over those documents.
19. One of the principal purposes of the role of a notary is to provide assurance that copies of documents are true copies of original documents which they have seen and to arrange for appropriate

verification of documents as necessary. A failure by a notary to comply with the requirement to look at original documents before certifying a copy, and to verify the authenticity of documents where appropriate, is capable of affecting commercial and public confidence in the process and as a result the standing of the notarial profession as a whole.

20. However, we consider that these disciplinary proceedings have in themselves provided a salutary lesson for the Respondent. We conclude that the Respondent is unlikely to breach the Rules in the future.
21. In deciding the appropriate penalty we have taken into her previous conduct as a solicitor and a notary and her personal circumstances at the time. We also have full regard to the fact that she admitted her misconduct at an early stage in the investigation by the Nominated Notary.
22. In our judgment the appropriate penalty is to admonish her.

COSTS

23. This judgment has been delayed whilst awaiting the schedule of costs, the submissions on behalf of the respondent and whilst the court considered what was an appropriate amount which the respondent should be asked to contribute towards the costs. The total costs amount to £6,800.
24. The Nominated Notary has set out her costs as £3,000 which covers the fee on investigation (£2,000) a fee for the report to the Registrar (£500), and a hearing cost for less than half a day (£500). These fees are in accordance with the fees chargeable as set out in the Notaries (Conduct and Discipline) Fees and Costs Order 2015 ("Costs Order").

25. The balance of the costs schedule is made up of the costs of the Assessors (£1,400) and of the Registry (£2,400). Again these costs are in accordance with the Costs Order. In our view the costs overall could not be considered excessive in terms of the costs of civil litigation.
26. Mr Vaughan submitted that:
- (a) In civil proceedings and in other disciplinary proceedings an order for costs does not ordinarily include the “overheads of the court”.
 - (b) The Costs Order regulates the scale of fees which may actually be paid to various individuals for the services they provide but it does not mean that those fees need necessarily be laid at the door of the respondent.
 - (c) Part V of the Costs Order provides a template of factors to be taken into account and that the court may allow a reasonable amount in respect of the work done.
27. In assessing the costs to be paid by the respondent, Mr Vaughan asks us to take into account that:
- (a) The respondent was co-operative throughout;
 - (b) The delay in the matter being investigated;
 - (c) The unusual origins of the complaint which was not from a member of the public;
 - (d) Concerns about her practice could have been dealt with by inspection,
 - (e) This was a minor transgression met with an admonishment, and
 - (f) The respondent is not a person of unlimited resources.
28. We agree that the Costs Order is there to regulate the fees charged. The decision is that of the judge, that being the Commissary or the

Deputy alone, as to what are reasonable costs to be charged by the Nominated Notary, the Assessors and the Registry. The award of costs against the unsuccessful party, is for the court hearing the complaint to decide. Costs ordinarily follow the event but that does not mean that we do not have any discretion as to the amount awarded in costs.

29. As to Mr Vaughan's submissions in respect of paying the overheads of the court, we accept that this court may be out of line with other disciplinary panels. We consider that the reason for this is because of the very small size of the profession and the burden which would be placed on notaries who never trouble the court were the costs to fall on the notarial profession as a whole.
30. Whilst the cost of the assessors and, if charged, the costs of the Commissary can be properly described as the overheads of the court, the costs of the Registry are less easily described as such. They are in the unusual position of being in part responsible for instructing the Nominated Notary, in part providing advice and a service to the respondent and the profession generally, and in part for assembling the court and providing accommodation for the hearing. We note that the cost of providing such accommodation, which could only be described as overheads of the court, is not charged by the Registry.
31. The Registry costs set out on the costs' schedule cover preparatory and ancillary work including correspondence (£1,500) and investigatory work (£250) which in whole or in part may not amount to overheads of the court, and preparing the papers for the use of the court (£250) and attendance at hearings (£400) which can be categorised as court overheads.
32. We do not accept Mr Vaughan's argument that this matter could have been dealt with by inspection. As Mr Vaughan identified in his

submissions on penalty, the “mystery shopper” could not have known which notary was acting for Blair’s and, by the time that it became apparent, it would have been inappropriate to go forward with an inspection.

33. We have been given no details of the respondent’s financial position other than that she is not a person of unlimited financial resources. In the circumstances, we judge that any financial difficulties she may have can be mitigated by allowing sufficient time for the costs to be paid.
34. We see no reason why the respondent should not pay costs. We note that the Nominated Notary has submitted fees at the lowest end of the scale of proscribed fees. We agree with Mr Vaughan that the degree of cooperation in the investigation ought not to result in the respondent paying all those costs. We will make a reduction of 25%
35. Similarly we will apply the same percentage reduction to the Registry costs and reduce those by 25%. We will then round the total figure down by £100.
36. We make an order that she pays £5,000. In the absence of any further submissions on time to pay, she will pay that amount in eleven monthly instalments of £400 and a final instalment of £600.
37. We give no direction under Rule 22.4 of the 2015 Rules (as amended) in respect of advertising the sanction imposed.

His Honour Judge Leonard QC (Commissary)

Mrs Elizabeth McQuay (Lay Assessor)

Mrs Esther Ogun (Notary Assessor)

3rd May 2023