

NOTARIES (CONDUCT AND DISCIPLINE) FEES AND COSTS ORDER 2015

WE CHARLES RICHARD GEORGE One of Her Majesty's Counsel Commissary or Master of the Faculties of the Most Reverend Father in God Justin Portal by Divine Providence Lord Archbishop of Canterbury Primate of All England and Metropolitan so far as We lawfully can or may do hereby make the following ORDER pursuant to the provisions of Rule 23 of the Notaries (Conduct and Discipline) Rules 2015:

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PART I: PRELIMINARY

1. Citation and Commencement

- 1.1 This Order may be cited as the Notaries (Conduct and Discipline) Fees and Costs Order 2015
- 1.2 This Order comes into force on the 1st day of November 2015

2. Interpretation

2.1 In these rules:-

- **“Advocate”** means a notary, a barrister, a solicitor, or a chartered legal executive.
- **"Court"** means the Court of Faculties.
- **“Fee Earner”** means a Litigator, or person employed by a Litigator, who undertakes work on a case;
- **“Instructed Advocate”** means—
 - (a) where leave of the Court has not been given to a party to instruct multiple Advocates, a single Advocate, being the Advocate who for the time being has primary responsibility for the case or the party himself if unrepresented and being an Advocate; or
 - (b) where the Court has given leave for a party to be represented by more than one Advocate, each of those Advocates.
- **"Instructed Litigator"** means –
 - (a) where leave of the Court has not been given to a party to instruct multiple Litigators, a single Litigator, being the Litigator who for the time being has primary responsibility for the case or the party himself if unrepresented; or
 - (b) where the Court has given leave for a party to be represented by more than one Litigator, each of those Litigators;
- **“Judge”** means the Commissary or a Deputy Commissary of the Court, and if sitting with Assessors, those Assessors as well;

- **“Litigator”** means the person representing a party, being a solicitor, firm of solicitors or a person authorised under the Legal Services Act 2007 to conduct litigation or the party himself if unrepresented;
- **“Nominated Notary”** means a person appointed by the Registrar under rule 6 of the Notaries (Conduct and Discipline) Rules 2015;
- **“Party”** means either a complainant, applicant or a respondent in proceedings before the Court;
- **“Representative”** means an Instructed Advocate or an Instructed Litigator;
- **“Senior Solicitor”** means a solicitor eight years post qualification experience including at least eight years of litigation or other relevant experience and **“Senior Notary”** shall have a corresponding meaning;
- **“Solicitor, Notary, Legal Executive or Fee Earner of equivalent experience”** means a solicitor, notary, Fellow of the Institute of Legal Executives, or equivalent Fee Earner;
- **“Trainee Solicitor or Trainee Notary or Fee Earner of equivalent experience”** means a Trainee Solicitor or Trainee Notary or other Fee Earner who is not a Fellow of the Institute of Legal Executives;

2.2 The fees and rates set out in this Order are exclusive of value added tax.

PART II: COSTS AND FEES PAYABLE - GENERAL

3. Fees and disbursements payable to officers of the Court

- 3.1 Part III sets out the fees which are to be paid to the Judges and Registrar in respect of the carrying out by them of the duties of their offices that are specified.
- 3.2 Officers of the Court are entitled to recover such disbursements as appear to the Judge to have been reasonably incurred in performance of their functions.

4. Fees payable to Nominated Notaries

- 4.1 Part IV sets out the fees which are to be paid to Nominated Notaries in respect of the carrying out by them of the duties of their offices that are specified.
- 4.2 A Nominated Notary must seek the leave of the Court before instructing a Litigator or Advocate and if leave is given Clause 5 applies as appropriate.

5. Costs recoverable by a party to proceedings

- 5.1 Part V sets out the costs recoverable by a party to proceedings.
- 5.2 A party is entitled to seek an order for costs under Part V in relation to work carried out by him and disbursements including court fees incurred by him or on his behalf by his Instructed Litigator and/or Instructed Advocate.
- 5.3 A party must obtain the prior order of the Judge to instruct on a matter
- 5.3.1 multiple Litigators and/or multiple Advocates; and/or

5.3.2 an Advocate who is a Queen's Counsel

if an application for costs is to be entertained in relation to the costs and disbursements of more than one Litigator or Advocate and/or for the additional costs set out in this Order of an Advocate who is a Queen's Counsel.

- 5.4 The Judge will not give leave under 5.3 above unless there is a special reason with regards to the novelty, weight and complexity of a case.
- 5.5 The Judge shall not issue an order for costs in relation to work done or disbursements incurred by a Litigator or Advocate who is not an Instructed Litigator or an Instructed Advocate.
- 5.6 With the agreement of the parties to proceedings the Judge may order that an order for costs will be in a fixed sum assessed by the Court as representing or being a contribution towards the reasonable costs of the party concerned and that Part V will not apply.

PART III: FEES PAYABLE TO OFFICERS OF THE COURT

6. Table of Court fees

The following prescribed fees shall apply to orders made by the Judge with respect to the costs of the Court-

		<i>Commissary/ Deputy Commissary</i>	<i>Assessor</i>	<i>Registrar</i>
		£	£	£
1	Fees payable on the Judge or Court giving directions (otherwise than at the hearing in respect of which fees are payable under paragraph 2 of this Table), such fees to be fixed by the Judge within the limits shown.	100 - 400	50 - 350	50 - 350
2	Fees payable where the issue, whether interlocutory or final, is heard in Court or in Chambers--			
	(a) if the hearing lasts half a day or less	500	400	400
	(b) if the hearing lasts a whole day or more than a half (fees on same scale for subsequent days).	1,000	750	750
3	Fee on the Judge preparing a written judgment or drafting the form of order or both, such fee to be at the hourly rate shown and in	350	250	-

	respect of the number of hours certified by the Judge as spent on such work.			
4	On review, a fee, to be fixed by the Judge and paid to the Registrar, in respect of the cost of preparing for the use of the members of the Court copies of all documents required for the use of the Court.			
5	Fee in respect of all other work carried out by the Registrar in his or her capacity as such, in relation to proceedings to which this Table applies, on or after the date on which the proceedings were instituted in accordance with the Notaries (Conduct and Discipline) Rules 2015 or on which a person was authorised to act as complainant in accordance with those Rules (including preparatory and ancillary work and correspondence)-- such fee to be at the hourly rate shown and in respect of the number of hours certified by the Registrar as spent on such work.			250
6	Fee in respect of all other work carried out by the Registrar of the Court and in his or her capacity as such, in relation to investigations carried out under the Notaries (Conduct and Discipline) Rules 2015 at any time including the appointment of a Nominated Notary in accordance with those Rules (including preparatory and ancillary work and correspondence)-- such fee to be at the hourly rate shown and in respect of the number of hours certified by the Registrar as spent on such work.			250
7	Fees payable on an assessment of costs to be paid by the party applying for assessment:-			
	(a) where the amount allowed	200	70	70

does not exceed £5,000

(b) where the amount allowed exceeds £5,000

(i) for the first £5,000	200	70	70
(ii) for every £200 or fraction thereof over £5,000.	10	6	6

PART IV: FEES PAYABLE TO NOMINATED NOTARIES

7. Table of fees to be paid to nominated notaries

The following prescribed fees shall apply to fees payable to Nominated Notaries:-

		£
1	Fee on the investigation of the evidence or allegation of Notarial Misconduct referred to him by the Registrar such fee to be fixed by the Registrar within the limits shown.	2,000- 3,000
2	Fee for the written report to the Registrar following investigation of evidence or allegation of Notarial Conduct such fee to be fixed by the Registrar within the limits shown.	500 - 750
3	Fees in respect of carrying out any and all interim directions prior to the hearing of the case such fee to be fixed by the Registrar within the limits shown.	500 - 1,000
4	Fee for preparation and prosecution of case such fee to be fixed by the Registrar within the limits shown.	1,000 - 3,000
5	Fees payable where the issue, whether interlocutory or final, is heard in Court or in Chambers such fee to be fixed by the Registrar within the limits shown-- (a) if the hearing lasts half a day or less (b) if the hearing lasts a whole day or more than a half (fees on same scale for subsequent days).	500 - 1,000 1,000 - 2,000
6	Fees payable in respect of attending on the giving of judgment and matters arising in respect of the judgment including preparation of papers for an assessment of costs and attendance on that	500 - 1,000

assessment such fee to be fixed by the Registrar within the limits shown.

PART V: COSTS RECOVERABLE BY A PARTY TO PROCEEDINGS

8. General Provisions

8.1 In determining costs the Court has an absolute discretion and, subject to the provisions of this Part V can—

8.1.1 take into account all the relevant circumstances of the case including the nature, importance, complexity or difficulty of the work and the time involved; and

8.1.2 allow a reasonable amount in respect of all work necessarily carried out and properly, actually and reasonably done.

8.2 The Court cannot allow costs whether or not at the prescribed rates if those costs exceed the amount payable to the Litigator or Advocate by the applicant.

8.3 Where a party to the proceedings is acting as the Litigator or the Advocate the rate at which fees are to be awarded to him for acting in that capacity may be reduced by such proportion as the Court thinks fit.

9. Claims for Litigators' fees and disbursements

9.1 Subject to Paragraph 19 no claim in relation to the fees and disbursements of a Litigator in respect of work done in proceedings in the Court may be entertained unless the represented party submits it within one month of the final decision of the Court after the hearing of the complaint.

9.2 Subject to Paragraph 9.3, a claim for fees in proceedings in the Court must be submitted to the Court in such form and manner as the Judge may direct and must be accompanied by any receipts or other documents in support of any disbursement claimed.

9.3 A claim must—

9.3.1 summarise the items of work done by a Fee Earner in respect of which fees are claimed according to the classes specified in Paragraph 14

9.3.2 state, where appropriate, the dates on which the items of work were done, the time taken, the sums claimed and whether the work was done for more than one party;

9.3.3 specify, where appropriate, the level of Fee Earner who undertook each of the items of work claimed;

9.3.4 specify any disbursements claimed, the circumstances in which they were incurred and the amounts claimed in respect of them.

9.3.5 state whether the applicant claims that Paragraph 15 applies in relation to an item of work, and must give full particulars in support of the claim.

9.3.6 specify any special circumstances which the applicant considers should be drawn to the attention of the Court

9.3.7 supply such further information and documents as the Judge may require.

9.3.8 contain a certificate of accuracy in the prescribed form from a partner, member or director of the Litigator verifying the disbursements made and all sums claimed.

9.3.9 state whether the applicant is unable to recover the VAT or any proportion of it as an input tax and provide a certificate signed by the Litigator in the prescribed form to that effect in cases where a Litigator has been instructed.

10. Determination for Litigators' fees

10.1 The Judge may allow work done in the following classes by Fee Earners—

10.1.1 preparation, including taking instructions, interviewing witnesses, drafting and finalising witness statements, preparing list of documents and providing appropriate bundles for use in connection with any court hearing, ascertaining the case, advising, preparing and perusing documents, dealing with letters and telephone calls which are not routine, preparing for advocacy, instructing an Advocate and expert witnesses, conferences, consultations, views and work done in connection with advice on appeal;

10.1.2 advocacy, including applications to the Court;

10.1.3 attending at Court where an Advocate is assigned, including conferences with the Advocate at Court;

10.1.4 travelling and waiting; and

10.1.5 writing routine letters and dealing with routine telephone calls.

10.1.6 any other steps necessarily and properly taken for the proper conduct of proceedings before the Court.

10.2 The Judge must consider the claim, any further information or documents submitted for the Fee Earner under Paragraph 10.1 and any other relevant information and must allow—

10.2.1 such work as appears to the Judge to have been properly proportionate to the issues in question and done in connection with the matter (including any representation or advice which is deemed to be work done pursuant to the matter) by a

Fee Earner, classifying such work according to the classes specified in Paragraph 10.1 as the Judge considers appropriate; and

10.2.2 such time in each class of work allowed by him (other than routine letters written and routine telephone calls) as the Judge considers reasonable.

10.2.3 The fees allowed in accordance with this Part V are those appropriate to such of the following grades of Litigator as the Judge considers reasonable—

- (a) Senior Solicitor or Senior Notary;
- (b) Solicitor, Notary, Legal Executive or Fee Earner of equivalent experience; or
- (c) Trainee or Fee Earner of equivalent experience.

11. Determination for Litigators' disbursements

The Judge must allow such disbursements claimed under Paragraph 10 as appear to the Judge to have been reasonably incurred, provided that—

11.1.1 if they are abnormally large by reason of the distance of the Court or the person's residence or both from the Litigator's place of business, the Judge may limit reimbursement of the disbursements to what otherwise would, having regard to all the circumstances, be a reasonable amount; and

11.1.2 the cost of a transcript, or any part thereof, of the proceedings in the Court obtained otherwise than through the Registrar must not be allowed except where the Judge considers that it is reasonable in all the circumstances for such disbursement to be allowed.

12. Claims for fees of Advocates

12.1 Subject to Paragraph 19 a claim for fees for work done by an Advocate in proceedings in the Court may not be entertained unless the applicant submits it within one month of the final decision of the Court after the hearing of the complaint or it is submitted in accordance with paragraph 9.1 as part of the claim of a Litigator's for fees.

12.2 Where the applicant claims that Paragraph 15 applies in relation to an item of work the Advocate must give full particulars in support of his claim.

12.3 Subject to Paragraph 12.4 a claim for the fees of an Advocate by an applicant in proceedings in the Court must be submitted to the Judge in such form and manner as the Judge may direct.

12.4 A claim must—

12.4.1 summarise the items of work done by an Advocate in respect of which fees are claimed according to the classes specified in Paragraph 16

12.4.2 state, where appropriate, the dates on which the items of work were done, the time taken, the hourly rate charged and the sums claimed for each item and whether the work was done for more than one assisted person; and

12.4.3 give particulars of any work done in relation to more than one hearing.

12.4.4 The Advocate must specify any special circumstances which the Advocate considers should be drawn to the attention of the Court.

12.4.5 The applicant must supply such further information and documents as the Judge may require.

12.5 The Court may make such orders and directions as it sees fit to deal with the claim.

13. Determination for Advocates' fees

13.1 The Judge must consider the claim, any further particulars and information submitted for an Advocate under Paragraph 12 and any other relevant information and must allow such work as appears to the Judge to have been reasonably done.

13.2 The Judge may allow any of the following classes of fee to an Advocate in respect of work allowed by him under this Paragraph—

13.2.1 a basic fee for preparation including preparation for a pre-trial review and, where appropriate, the first day's hearing including, where they took place on that day, short conferences, consultations, applications and appearances, views and any other preparation;

13.2.2 a refresher fee for any day or part of a day during which a hearing continued, including, where they took place on that day, short conferences, consultations, applications and appearances;

13.2.3 subsidiary fees for—

(a) written advice on evidence, plea or appeal or other written work; and

(b) attendance at directions hearings, applications and appearances not covered by Paragraph 13.2.1 or 13.2.2.

13.2.4 Where the Court has not given leave for a party to be represented by a QC and a QC agrees to appear as the single Advocate or as a leading junior, the remuneration of the QC must be determined as if the Advocate were not a QC.

14. Litigators' fees for proceedings in the Court

14.1 For proceedings in the Court the Judge must allow fees for work by Litigators at the following prescribed rates—

<i>Class of work</i>	<i>Grade of Fee Earner</i>	<i>Rate</i>	<i>Variations</i>
Preparation	Senior Solicitor or Senior Notary	£240 per hour	Up to £400 per hour for a Litigator whose office is situated within the City of London or a London borough
	Solicitor, Notary, Legal Executive or Fee Earner of equivalent experience	£200 per hour	Up to £300 per hour for a Litigator whose office is situated within the City of London or a London borough
	Trainee or Fee Earner of equivalent experience	£120 per hour	Up to £150 per hour for a Litigator whose office is situated within the City of London or a London borough
Advocacy	Senior Solicitor or Senior Notary	£360 per hour	Up to £410 per hour for a Litigator whose office is situated within the City of London or a London borough
	Solicitor, Notary, Legal Executive or Fee Earner of equivalent experience	£300 per hour	Up to £350 per hour for a Litigator whose office is situated within the City of London or a London borough
Attendance at court where more than one Instructed Litigator present	Senior Solicitor or Senior Notary	£300 per hour	

	Solicitor, Notary, Legal Executive or Fee Earner of equivalent experience	£250 per hour	
	Trainee or Fee Earner of equivalent experience	£100 per hour	
Travelling and waiting	Senior Solicitor or Senior Notary	£250 per hour	
	Solicitor, Notary, Legal Executive or Fee Earner of equivalent experience	£200 per hour	
	Trainee or Fee Earner of equivalent experience	£80 per hour	
Routine letters written and routine telephone calls		£10 per item	£12 per item for a Litigator whose office is situated within the City of London or a London borough

14.2 In respect of any item of work, the Court may allow fees at less than the relevant prescribed rate specified in the table following Paragraph 14.1 where it appears to the Judge reasonable to do so having regard to the competence and despatch with which the work was done.

15. Allowance of Litigators' fees at more than the prescribed rate

15.1 The Judge may allow fees at more than the prescribed rate where it appears to the Judge, taking into account all the relevant circumstances of the case, that—

15.1.1 the work was done with exceptional competence, skill or expertise;

15.1.2 the work was done with exceptional despatch; or

15.1.3 the case involved exceptional complexity or other exceptional circumstances.

15.2 Where the Judge considers that any item or class of work should be allowed at more than the prescribed rate, the Judge must apply to that item or class of work a

percentage enhancement in accordance with the following provisions of this paragraph.

15.3 In determining the percentage by which fees should be enhanced above the prescribed rate the Court may have regard to—

15.3.1 the degree of responsibility accepted by the Fee Earner;

15.3.2 the care, speed and economy with which the case was prepared; and

15.3.3 the novelty, weight and complexity of the case.

15.4 The percentage above the relevant prescribed rate by which fees for work may be enhanced must not exceed 35%.

16. Advocates' fees for proceedings in the Court

16.1 Subject to sub-Paragraph 16.3, for proceedings in the Court the Judge must allow a reasonable fee for work by Advocates, not to exceed at the following maximum rates—

Advocate other than QC					
<i>Types of proceedings</i>	<i>Basic fee</i>	<i>Full day refresher</i>	<i>Subsidiary fees</i>	<i>Written work</i>	<i>Attendance at</i>
			<i>Attendance at consultation, conferences and views</i>		<i>Attendance at directions hearings, applications and other appearances</i>
All cases	Maximum amount: £1,500 per case	Maximum amount: £1,500 per day	Maximum amount: £350 per hour, maximum amount per case: £2,000	Maximum amount: £400 per hour, maximum amount per case: £3,000	Maximum amount: £1,500 per appearance

QC					
<i>Types of proceedings</i>	<i>Basic fee</i>	<i>Full day refresher</i>	<i>Subsidiary fees</i>	<i>Written work</i>	<i>Attendance at</i>

			<i>consultation, conferences and views</i>		<i>directions hearings, applications and other appearances</i>
All cases	Maximum amount: £3,000 per case	Maximum amount: £3,000 per day	Maximum amount: £500 per hour, maximum amount per case: £3,000	Maximum amount: £550 per hour, maximum amount per case, £3,500	Maximum amount: £2,500 per appearance

16.2 Where a refresher fee is claimed in respect of less than a full day, the Court must allow such fee as appears to the Court reasonable having regard to the fee which would be allowable for a full day.

16.3 Where it appears to the Judge, taking into account all the relevant circumstances of the case, that owing to the exceptional circumstances of the case the amount payable by way of fees in accordance with the table following Paragraph 16.1 would not provide reasonable remuneration for some or all of the work the Judge has allowed, the Judge may allow such amounts as appear to the Judge to be reasonable remuneration for the relevant work.

17. Authorisation of expenditure

17.1 Where it appears to a Litigator necessary for the proper conduct of proceedings in the Court for costs to be incurred in relation to representation by taking any of the following steps—

17.1.1 obtaining a written report or opinion of one or more experts;

17.1.2 employing a person to provide a written report or opinion (otherwise than as an expert);

17.1.3 obtaining any transcripts or recordings; or

17.1.4 performing an act which is either unusual in its nature or involves unusually large expenditure,

the Litigator may apply to the Court for prior authority to do so.

17.2 Where the Judge authorises the taking of any step referred to in Paragraph 17.1, the Judge shall also authorise the maximum to be paid in respect of that step.

- 17.3 A Representative in any proceedings in the Court may apply to the Judge for prior authority for the incurring of travelling and accommodation expenses in order to attend at a hearing in those proceedings.
- 17.4 No question as to the propriety of any step or act in relation to which prior authority has been obtained under this Paragraph 17 may be raised on any determination of disbursements, unless the Litigator knew or ought reasonably to have known that the purpose for which the authority was given had failed or had become irrelevant or unnecessary before the disbursements were incurred.
- 17.5 Where disbursements are reasonably incurred in accordance with and subject to the limit imposed by a prior authority given under this Paragraph 17, no question may be raised on any determination of fees as to the amount of the payment to be allowed for the step or act in relation to which the authority was given.
- 17.6 Where disbursements are incurred in taking any steps or doing any act for which authority may be given under this Paragraph 17, without such authority having been given or in excess of any fee so authorised, payment in respect of those disbursements may nevertheless be allowed on a determination of disbursements payable under Paragraph 11.

18 Expert services

- 18.1 Subject to Paragraph 18.2, the Judge may provide for the payment of expert services (such rates to be reasonable in respect of the time properly and necessarily taken and the qualifications and expertise of the relevant person instructed to provide those services) normally not to exceed the following rates-

<i>Expert</i>	<i>Non-London - hourly rate unless stated to be a fixed fee</i>	<i>London - hourly rate unless stated to be a fixed fee</i>
Any expert service save for provision of medical report	£250	£300
GP (medical report)	£100 fixed fee	£150 fixed fee

- 18.2 The Judge may, in relation to a specific claim, make an additional allowance if he/she considers it reasonable to do so but in particular where the expert's evidence is key to the client's case and either—
- 18.2.1 the complexity of the material is such that an expert with a high level of seniority is required; or
- 18.2.2 the material is of such a specialised and unusual nature that only very few experts are available to provide the necessary evidence.
- 18.3 Any additional allowance authorised under Paragraph 18.2 must not exceed 35% of the rate set out in Paragraph 18.1.

19. Time limits

- 19.1 Subject to Paragraph 19.2, the time limit within which any act is required or authorised to be done under this Order, may for good reason, be extended by the Judge.
- 19.2 Where a Representative without good reason has failed (or, if an extension were not granted, would fail) to comply with a time limit, the Judge, may, in exceptional circumstances, extend the time limit where the application to extend the time has been made prior to its expiration and must consider whether it is reasonable in the circumstances to reduce the fees payable to the Representative under this Order, and make an Order for the costs incurred by and incidental to the application in favour of the other parties provided that the fees must not be reduced unless the Representative has been allowed a reasonable opportunity to show cause orally or in writing why the fees should not be reduced.

C R GEORGE

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MASTER