

GUIDANCE ON SANCTIONS

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Introduction

The Notaries (Conduct and Discipline) Rules empower the Court of Faculties to apply a series of sanctions where a notary public is found to have committed misconduct. This guidance sets out the factors which the Court of Faculties is likely to take into consideration when determining which sanction to apply and which sanctions might be relevant in particular cases. It is of general application as each case will be decided on its own facts but is designed to give some assistance to those who are responding to disciplinary allegations or who are involved in making complaints.

It has been prepared by the Faculty Office with the agreement of the Commissary (the Judge of the Court of Faculties). It is not binding on the Court or the parties. The guidance is in two parts. The first part is a narrative discussion of the Court’s approach to discipline having regard to the types of cases that it has encountered before and the underlying purpose of the Court’s work. The second part takes

separate categories of misconduct and provides examples of likely sanctions depending on the facts, mitigation and aggravating factors. Neither section is intended to limit the Court's broad discretion when deciding cases. The actual cases referred to in this guidance are not binding precedents but they may help to show how the Court approached the issue of sanctions in particular circumstances which may or may not recur in other cases. The categories given are not exhaustive and they are likely to be overlapping. The two parts are intended to be read as a whole and neither section is intended to take precedence over the other.

The main purpose of the disciplinary system contained in the Rules is the promotion and protection of the public interest. The "public" is a deliberately wide term and may be society at large, a section of the public or an individual such as a client or someone who placed legitimate reliance on a notarial act. This means the greater the harm a notary's acts have or are likely to cause to the public or a section of the public or an individual, the greater the likely sanction. That harm takes many forms. It might be because:

- a notary has acted dishonestly and misled someone,
- someone has suffered financial loss because of what the notary has done wilfully or unwittingly,
- the notary has not exercised care, skill and professionalism to achieve the client's reasonable aims by not providing a proper standard of service,
- the notary has done something unbecoming which has diminished their standing and risks diminishing the standing of notaries generally, such as having committed a criminal offence.

In order to apply a sanction the Court must first find proven "notarial misconduct" by the respondent notary. Under the Rules "notarial misconduct" means:

- (1) fraudulent conduct;
- (2) practising as a notary without a valid Notarial Practising Certificate or in breach of a condition or limitation imposed on a Notarial Practising Certificate; or
- (3) serious misconduct which may inter alia include failure to observe the requirements of these rules or of the Notaries Practice Rules 2019 or falling seriously below the standard of service reasonably to be expected of a notary or persistent failure to provide the standard of service reasonably to be expected by a notary; or
- (4) conduct unbecoming of the office of notary which may inter alia include being convicted of a criminal offence (other than a minor Road Traffic Offence).

Once misconduct is proven to the Court's satisfaction the Court may apply the following sanctions:

- order that the notary be struck off the Roll of Notaries;
- order that the notary be suspended from practice as a notary for a specified period or until certain conditions have been met or indefinitely;

- impose conditions as to the future scope or conduct of the notarial practice of the notary or conditions relating to the monitoring or supervision of their practice and direct that their Practising Certificate be endorsed;
- impose conditions as to the training that the notary must complete or further examination or examinations that they must pass before they may continue or resume practice as a notary; or
- order that the notary be admonished.

In addition to these sanctions the Court may order that the notary:

- indemnifies any Client of the notary whom the Court finds to have suffered actual loss as a result of the Notarial Misconduct in question; and
- pays a monetary sum not exceeding £10,000 (or such higher sum as the Master may from time to time specify for the purpose of these rules) such sum to be paid to whomsoever the Court may direct.

The respondent notary is entitled to make any submissions by way of mitigation in respect of any sanction (including any order for costs) which the Court may impose.

The Registrar of the Faculty Office may decide to (or, at the direction of the Court, shall) advertise any sanction against a notary under this Rule in a newspaper circulating in the area of the notary's practice or former practice or in the London Gazette, a publication of one of the notarial membership societies, or in any other relevant publication as the Registrar sees fit.

The Registrar must publish on the website of the Faculty Office (with a link to the notary's entry on the list of practising notaries on the website) the Order imposing any sanction against a notary Rule and the Court shall stipulate the period of time (whether indefinite or limited) for such publication.

The importance of trustworthiness

Trustworthiness (or "integrity") is the hallmark of the notarial profession. In the case of *Re Champion*, [1906] P. 86, the Master of the Faculties, Sir Lewis Dibdin, who was considering a striking-off application, described trustworthiness as being "the basis of the position of a notary public". An aspect of trustworthiness is honesty (i.e. telling the truth and not misleading). If a notary is found to have lied to a client, or a member of the public, or intentionally misled by deeds or words, or if a document prepared by the notary contains a false certificate, or a similar act of dishonesty has been found by the Court to have been committed, it is a most serious matter. Each notary must make an oath on admission that they will:

"... swear, that I will faithfully exercise the office of a public notary; I will faithfully make contracts or instruments for or between any party or parties requiring the same, and I will not add or diminish any thing without the knowledge and consent of such party or parties that may alter the substance of the fact; I will not make or attest any act, contract, or instrument in which I shall know there is violence or

fraud; and in all things I will act uprightly and justly in the business of a public notary, according to the best of my skill and ability.”

Similarly, if the notary has been found to mislead the Court of Faculties, it is a serious matter.

Cases involving dishonesty are likely to receive the most severe sanctions of striking-off or suspension from practice for a number of years unless the actual deceit was so minor, fleeting and uncharacteristic that a lesser sanction might be appropriate. Not only is trustworthiness important for the actual reliability of a notary to a particular client or transaction, but if a notary is found to be dishonest, that could bring into disrepute the profession at large and undermine the whole basis of notarial work. Therefore the public perception of notaries is also important when considering the appropriate sanction.

Dishonesty might manifest itself when a notary is acting as such but dishonesty outside of the notary's work is not irrelevant. In the case of *Re Box* (December 2016) Charles George QC, the then Master commented:

“As on the facts of Re Champion and of Re Marrache (4 August 2016), the conduct of which the notary has been found guilty was not conduct in the course of the notary's practice as a notary, and thus not conduct in breach of the notarial oath contained in section 7 of the Public Notaries Act 1843. Nevertheless the Tribunal's finding of dishonesty against the notary strikes at the heart of the trustworthiness which is fundamental to the role of a notary. This is emphasised by rule 4.2.2 of the General Principles in the Notaries Practice Rules 2014 that “A notary shall act with integrity”.”

While someone acting dishonestly can be said to be acting without integrity or trustworthiness, the concept of integrity is wider than just acting dishonestly. This means that it is possible to behave without integrity but not necessarily being dishonest. The Code of Practice sets out that:

“Integrity is central to the notarial profession and the office of a notary. Notaries are appointed by a Faculty issued in the name of the Archbishop of Canterbury and under the seal of the Archbishop's Faculty Office. The Faculty states that “full faith ought to be given as well in Judgment as thereout to the instruments to be from this time made by you”, which means that courts, other authorities, and all recipients of notarial acts should be able to trust those acts without further enquiry.

...

The particular nature of notarial services brings special meaning to “integrity”. The acts of a notary authorised in England and Wales are accepted and relied on throughout the world as full and final proof of the matters stated in those acts, whether matters of fact or matters of law. The recipient of a notarial act must be able to have faith in the integrity of the notarial act – that the matters of fact and law contained in the act have been properly verified on the basis of positive evidence and knowledge of the law, that the party or parties to the matter authenticated by the notary are clearly identified and have given their express and informed consent to be bound, that the notarial act is physically secure and safeguarded from unauthorised amendment, and that the notarial act is backed up by accurate records maintained in accordance with the Practice Rules...”

Cases involving a lack of integrity or, to put it another way, where the notary is seen not to be someone in which the public ought to place their trust, may or may not involve dishonesty but where a case of misconduct shows a lack of integrity the sanction is likely to be on the more serious end of the spectrum of sanctions.

Cases involving theft and fraud

Theft and fraud are criminal matters and clearly constitute some of the most serious cases. They also involve dishonesty. Therefore, cases of theft and fraud will almost always result in striking-off.

Included within this category would be intentional or reckless misappropriation of client monies or abuse of trust when appointed trustee of property.

Evidence of dishonesty may be as a result of criminal proceedings involving fraud, as in the case of *Re Marrache* (4 August 2016), where a notary of Gibraltar was convicted of a conspiracy to defraud clients of his firm and/ or trusts connected to such clients by a variety of dishonest actions, including transfer of monies out of clients' accounts of the firm, dishonest other payments, and creation of documents concealing the misapplication of client monies and showing false and misleading balances in client accounts. The notary was struck-off. See also the case of *Re Martin* (April 2022) which involved theft and which led to strike-off.

Dishonesty in overcharging and acting in a conflict of interests can also warrant striking-off. See *Re Shah* (July 2024).

Decisions of an equivalent disciplinary body or a court

The Court of Faculties is entitled under the Rules to treat the written decision of a disciplinary body of another branch of the legal profession, normally the Solicitors Disciplinary Tribunal, as evidence of the facts stated in that decision. The Court of Faculties need not however apply the same sanction. Its sanction may be more severe, less severe or the same. However, it is a relevant factor in determining sanction what the other disciplinary tribunal decided. In the old case of *Re Champion* (1906) a notary was struck off from the roll of solicitors for misconduct in relation to property of which he had been appointed administrator. The Court of Faculties determined that because the probate work that he would be entitled to do as a notary was the same that he had been allowed to do as a solicitor, it was sensible to follow suit and also strike him off as a notary. It would be common for the Court of Faculties to follow suit and apply the same or similar sanction to an equivalent disciplinary body or a court (if available) if the misconduct related to work that could and was likely to be done in both the notary's capacity as a notary, as in their capacity in their other profession.

It is however up to the Court of Faculties to impose a more severe sanction, if it considered that the other disciplinary body was too lenient, or generally to adopt a different approach when it was considered by the Court that the facts of case had a different affect or a different significance regarding that individual's work as a notary. In the case of *re Walsh* (December 2019) the Master of Faculties said "The responsibilities of a public notary are, if anything, higher than those of even a

barrister or solicitor, since in nearly all cases notarial business is concerned international transactions which proceed on the basis of the notary's integrity and good faith." It follows that it may be appropriate to impose a more severe sanction than a compatible regulatory body.

"Moments of madness" vs repeated misconduct

One-off actions which are proved to constitute misconduct may be treated more leniently than repeated misconduct or a pattern of bad behaviour, particularly if the notary has admitted the misconduct fully and candidly and cooperated with the Faculty Office. This is particularly the case if the notary can demonstrate that the misconduct was completely out of character and/or there were extraordinary circumstances which gave rise to the misconduct. However, some actions, such as theft and serious criminal behaviour are likely to be so serious as to strike at the heart of what it means to be a public notary and which may in isolation be sufficient for a suspension from practice for a year or more or striking-off.

Duty to cooperate with the Court

If the notary fails to cooperate with the Court of Faculties, such as not complying with its directions or in failing to give proper evidence, or ignoring an earlier sanction, this will be taken as behaviour that aggravates the misconduct. Similarly evidence that the notary has failed without just cause to cooperate with the Registrar, or the investigator or another officer of the Court of Faculties will be treated as aggravation.

On the other hand, if the notary lends full assistance to the Court and acts with candour and fully complies with all directions of the Court and responds to requests for information from the Registrar and investigator, this is likely to show the notary in a better light.

It is recognised that there will be cases where a notary cannot comply with the directions of the Court or the expectations of the Rules on the conduct of a case, for example due to health reasons, but that does not avoid the need to engage with the Court to lend assistance in fulfilling the overriding objective that the Court will seek to deal with cases justly and at proportionate cost. It should be noted that duties of cooperation are contained within the Rules themselves and so failure to cooperate may in itself amount to notarial misconduct. In *Re Lado* (April 2018) the Court stated that "We consider that the failure of a notary to abide by the orders of this court is a very serious matter in itself in respect of someone who holds themselves out to be a notary". Further in *Re Kerr* (January 2023) the Court said that:

"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.”

Similarly, where a notary has not disclosed to the Faculty Office that they have been convicted of an offence or have been charged with committing an offence or have been declared bankrupt, as required by the Practice Rules, the matter shall be considered extremely seriously. In the case of *re Meyjes* (November 2019) a notary had not disclosed to the Faculty Office that they had made a regulatory settlement with the Solicitors Regulation Authority which had the effect of a striking off order. The SRA took this action because the notary (acting as a solicitor) had falsified a solicitor's signature on a legal document. Despite the SRA taking this action, the notary continued to practice as a notary without informing the Registrar of the Faculty Office of the SRA's action. Despite the notary's otherwise unblemished record he was struck off the roll of notaries. See also *re Coats* (January 2022) where the notary failed to report being removed as a CILEX member to the Faculty Office.

In a case concerning the failure of a notary to provide a proper standard of service or failure to comply with the Practice Rules, a failure to comply with the requirements of the disciplinary process, such as failing to reply to correspondence from the Registrar without good reason may in itself point towards striking-off as the only realistic sanction.

“Resignation” as a notary when confronted with disciplinary proceedings will not be taken as an excuse not to comply with the requirements of the Rules and orders of the Court.

Cases involving giving a poor standard of service to clients

The sanction in cases where the notary is providing a poor standard of service to a client or clients is likely to vary depending on the standard of the work done, how often work has been done badly or too slowly, what period of time is covered by the poor standard of service, the reasons behind it, and the likelihood of the notary improving. In the case of *Re Coats* (January 2022) the Court considered the respondent's conduct overall as represented by the four areas of misconduct proven rather than look at them individually. The Court considered the disciplinary sanctions starting with the least serious. As the Court rejected the possible sanction as insufficient to reflect her overall conduct they went to the next in turn. As a result of that process the Court considered that the only sanction that reflected “the appalling service” the notary had provided to many clients over less than a decade in breach of the rules that they had identified was to strike her off the roll of notaries.

In that case the Court readily accepted that if they had been considering a single head of misconduct, the sanction may have been less severe.

Similarly, in the case of *re Kerr* (January 2023) which concerned a notary giving a repeated poor standard of service including making errors but without any dishonest conduct, the Court found the breaches of the rules to be individually less serious but, taken together, to show substantial failures on his part in the services the notary provided to his clients and determined that they must be marked by the notary being struck off the roll of notaries.

Cases involving misleading or fraudulent documents

The work of the notary concerns the attestation of documents in order that the document may be accepted in full faith. Therefore cases involving misleading or fraudulent documents prepared or attested by the notary are treated seriously. Where the certificate given by the notary was unwitting and mistaken but misconduct proven, the sanction is likely to be less than where the notary purposely set out to mislead.

In *Re Sanghera* (December 2023), a case involving a misleading certificate, the validity of such a document was said to be fundamental to the proper administration of justice. In this case in which the mitigation was unique, the Court decided it would be inappropriate to require the notary to carry out any training because she had learnt her lesson, nor was it necessary to impose any conditions on her future scope or conduct. Taking into account all the mitigating factors and, importantly, that the notary eventually admitted her wrongdoing, the Court decided that it was not appropriate to strike the notary from the roll of notaries but that she should be suspended from practice for four months.

Cases involving a casual or inattentive attitude to work or overwork

Cases where a notary is not providing a proper standard of service due to a casual or inattentive attitude to work or where the notary has got too much work to be able to accomplish it properly may be serious depending on the actual and likely harm to clients and the public. A case involving errors or persistent delays may or may not be serious depending on an assessment of risk. It may be appropriate in some cases to impose conditions on the scope or conduct of a notary's future practice or conditions relating to the monitoring or supervision of their practice. The Court could also impose conditions as to training or further examinations. If however such conduct is not capable of reformation because the notary has shown themselves to be unwilling or incapable of taking help and improving a more serious sanction including striking off would be proportionate.

Health and personal circumstances

Poor health and personal circumstances such as bereavement may explain why a notary is not providing a proper standard of service. It may also explain lapses of judgment and poor attention to rules. It might provide mitigation in appropriate cases but is unlikely to absolve the notary from responsibility for their conduct. Where relatively minor misconduct might be attributable to health it may be that cases involving dishonesty, criminality or persistent misconduct over a long period of time cannot be excused by reasons of health or personal circumstances.

Agreed sanctions

A notary can agree to being removed from the roll of notaries if the notary admits misconduct and wishes to forgo the cost and potential complexity of disciplinary proceedings.

Such cases will still be referred to the disciplinary Court for a finding which will be published, but the procedure for that can be streamlined and an in-person hearing avoided in appropriate cases.

Such a procedure will normally be available where the notary offers to be removed from the roll of notaries and fully admits the allegations made (see Rule 20.2).

Where the notary would accept some lesser sanction, or only accepts some of the allegations made, the Court will need to consider whether it is a suitable case to be decided on the papers or not. The notary and the complainant may agree a statement of facts and issues and the agreed statement. This agreed statement may contain an admission by the notary of Notarial Misconduct and propose a sanction to be imposed upon the notary and/or an offer of redress to be made by them. Except in circumstances where the agreed statement is clearly wrong, the Court must accept the veracity of the statement and shall have regard to it as evidence when making its findings but the Court retains full discretion to find whether or not the notary is guilty of misconduct and, if so, what order should be made by sanction or otherwise in consequence of the finding. In such circumstances the Court could (as envisaged by rule 20.3) proceed to determine the case on the papers without a hearing and apply a sanction that is agreed by the parties.

Included in these cases might be those where a notary has in some other capacity been through a hearing held by another regulator, there has been a published reasoned decision, and that regulator has imposed a sanction. In those circumstances it may be appropriate for the Court to agree with the parties that the matter may be considered on the papers alone, either on an interlocutory basis or in full, and apply a sanction that follows suit (eg suspension from practice for a number of years).

Normally where there is no certainty as to the sanction or the allegations have not been fully admitted, it will be necessary for there to be a hearing.

Cases involving suspension

Where a notary has been suspended from practice by the Registrar and/or by order of the Court on an interim basis pending a disciplinary outcome the Court may decide to take this period into account when imposing a sanction that the notary be suspended from practice, but the Court is under no obligation to do so.

Payment of costs

The payment of costs is not a sanction as such. The Court will normally make an order for costs in accordance with the table of costs contained in the Notaries (Conduct and Discipline) Fees and Costs Order 20-- . It is within the discretion of the Court to order:

- that the costs of either party arising from or incidental to the complaint be paid by the other party,
- that the costs of the Court be paid by either party or by both parties (whether in equal or unequal shares),

- that costs incurred unnecessarily be disallowed,
- that the costs of either party or of the Court shall be paid from the Faculty Office Contingency Fund,
- that a party against whom an order for costs is made shall, instead of paying those costs to the other party or the Court, pay them into the Contingency Fund, and
- that either party pay a sum to the Contingency Fund for monies paid out to an Investigator or a Prosecutor acting on the case.

The Court may make an order as to costs where any application is withdrawn including the complaint itself.

The Court exercises a wide discretion when making determinations about costs. However, a notary which has been found to have committed notarial misconduct will normally be responsible for the reasonably and properly incurred costs and fees of the Court, its officers, the investigator and the prosecutor and any other party to the matter, together with Value Added Tax where applicable. The notary is entitled to make submissions by way of mitigation to the Court with respect to an order for costs.

Administrative powers and sanctions

In addition to sanctions that may be imposed by the disciplinary court after a hearing, the Registrar of the Faculty Office may impose administrative sanctions. Where the Registrar becomes aware of a notary's failure to observe the requirements of the Notaries Practice Rules 2019 (including lending cooperation to the Faculty Office) or that a notary is falling below the standard of service reasonably to be expected of a notary then, without prejudice to the other provisions of these rules, the Registrar may do any or more of one of the following:

- direct a notary to take a specific action,
- give a formal warning,
- require the notary to submit to an action plan setting out what the notary will do to remedy failings and prevent the re-occurrence of failings,
- invite the notary to enter into a regulatory agreement with the Faculty Office,
- rebuke the notary in writing whether or not publicly,
- require further training or supervision,
- require an apology.

The Registrar shall not exercise any of the administrative powers without first having given 21 days' notice to the notary and having given consideration to any representations made by the notary. The Registrar must give notice in writing to the notary of the exercise of any of the administrative powers and the notary must within the timeframes specified in such notice comply with such action that is required or in the absence of such a timeframe, within a reasonable time. Should the notary not comply with requirements made or agreed, then the Registrar may refer the matter for investigation as

a disciplinary matter. The notary may appeal to the Master against the Registrar's exercise of an administrative power within seven days of notice of that act having been given to the notary. If the Master grants the appeal, the Master may:

- (a) cancel the exercise of the administrative power made by the Registrar,
- (b) remit the matter back to the Registrar with directions to reconsider the exercise of the administrative power, or
- (c) modify the administrative act, but not without first having given 21 days' notice to the notary and having given consideration to any representations made by the notary.

Where the Registrar has sought to apply the provisions but the Registrar considers that the administrative power or sanction has been ineffective or the notary has not complied the Registrar may refer the matter for investigation and the investigator may have access to and regard to all of the evidence obtained from the administrative stage.

Unlike the sanctions imposed by the disciplinary court there is no clear hierarchy of the seriousness of these measures, and it is less easy to set out the circumstances in which they will be applied. It is for the Registrar to determine which measure is proportionate to the situation and best designed to achieve the aim, which will normally be the protection of the public or remediating poor professional practice on the part of the notary. For example, where the notary's practice appears to have become a mess, with record keeping falling into disarray, it may be appropriate to enter into an action plan with agreed steps to be taken within specific timeframes. It might also be appropriate to require further training or supervision in such a case. Where a notary has breached a rule, such as part of the accounts rules, or has made a minor omission in relation to the money laundering regulations, it may be appropriate and salutary to issue a formal warning, or where more serious a public rebuke. The Faculty Office also publish enforcement guidance [\[link\]](#) which describes in broad terms how they approach instances of alleged weaknesses, negligence or wrongdoing in a notary's practice.

ANNEX 1

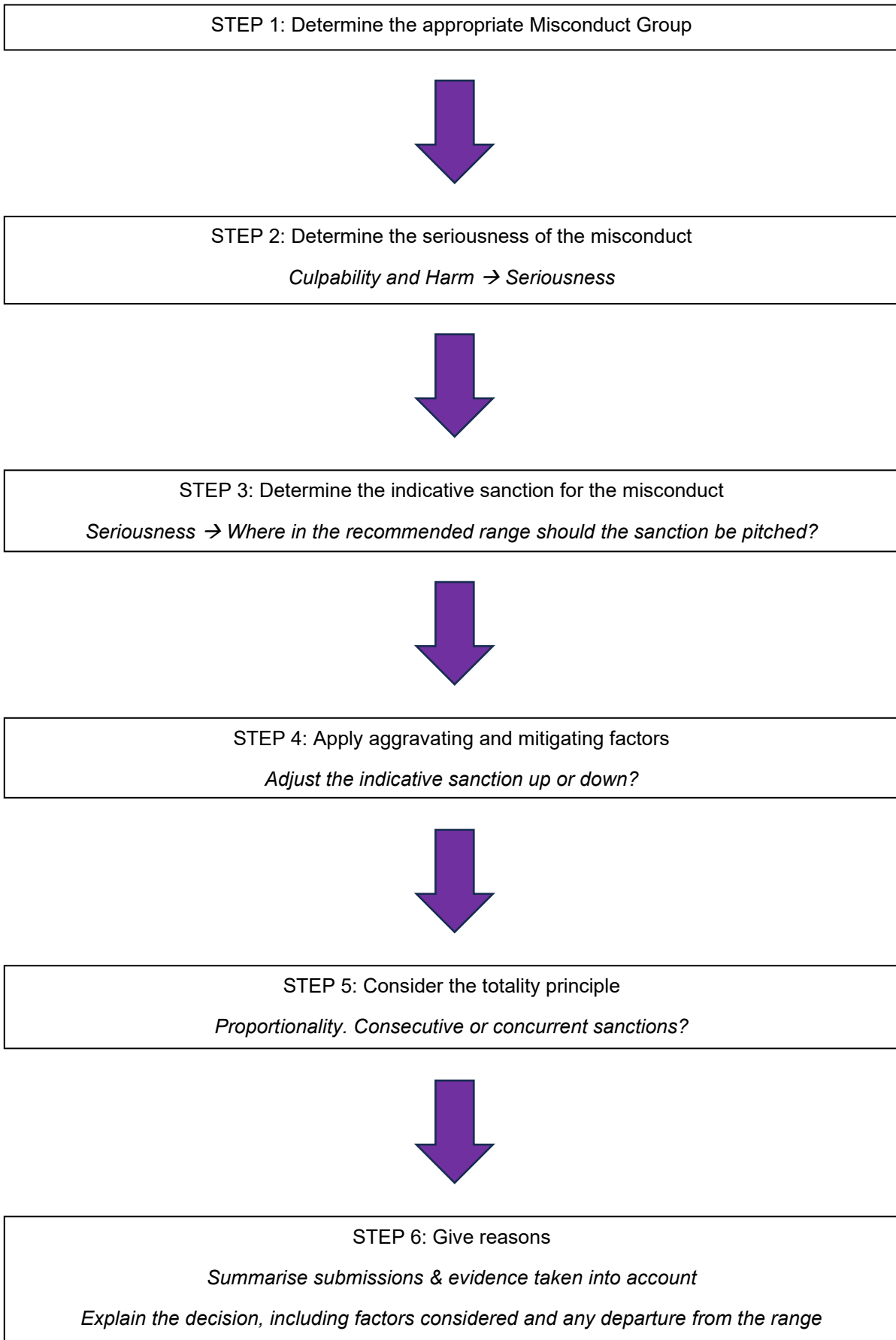
MISCONDUCT GROUPS

This section contains a summary flow diagram of the sanctioning methodology and the Misconduct Groups.

The twelve Misconduct Groups are:

- A Dishonesty and lack of integrity
- B Compromising independence, impartiality and acting unethically
- C Poor standard of service and formal obligations to clients
- D Financial matters
- E Criminal convictions
- F Anti-money laundering breaches
- G Misconduct of a sexual nature
- H Discrimination, non-sexual harassment and bullying
- I Behaviour towards others
- J Use of social media and other communications
- K Failure to comply with formal orders
- L Obligations to the regulator

METHODOLOGY FLOWCHART



A: DISHONESTY AND LACK OF INTEGRITY

Description of Group (Step 1)

This Group covers findings of misconduct which involve dishonesty and/or a lack of integrity. As has been outlined in this Guidance, any dishonesty or lack of integrity on the part of a notary is inherently serious.

Public interest requires, and the general public expects, that notaries are completely honest and are of the highest integrity. Dishonesty is incompatible with the duties placed on notaries to safeguard the interests of clients and their duty to act with integrity. Trustworthiness is “the basis of the position of a notary public”. If a notary is found to have lied to a client, or a member of the public, or intentionally misled by deeds or words, or if a document prepared by the notary contains a false certificate, or a similar act of dishonesty has been found by the Court to have been committed, it is a most serious matter.

Misconduct within this group covers a range of dishonest behaviours. The examples below are not exhaustive:

- Completing documents with false information or otherwise falsifying documents.
- Giving false or misleading declarations or certificates.
- Dishonestly concealing information.
- Lying.
- Fraudulent conduct.
- Dishonesty in connection with disciplinary proceedings (but dishonesty during current proceedings must form the basis of a new charge).
- Conduct that amounts to a criminal offence involving dishonesty such as theft, perjury, or fraud whether the subject of a conviction or not.
- Dishonest use of clients' money.

Seriousness (Step 2)

Case law indicates that, for legal professionals, proved findings of dishonesty should result in striking-off except where there are exceptional circumstances. In determining whether such circumstances apply, the Court should take into account the general factors set out at Annex 2. The factors listed below are particularly relevant in the context of dishonesty. They are already covered in the general factors but expanded upon here solely for emphasis.

In deciding whether there are exceptional circumstances that would not result in striking-off the most important factor to be given most weight in determining sanction is the nature and extent of the dishonesty and the degree of culpability.¹

¹ *SRA v James* EWHC Admin [2018] 2058

<p>Culpability</p> <ul style="list-style-type: none"> • The nature, scope and extent of the dishonest misconduct. • Whether the misconduct was a fleeting or momentary act/lapse of judgement or over a period of time. • Whether the dishonesty was calculated. • Whether the dishonesty was sophisticated and/or involved significant planning. • Whether, and to what extent, the respondent benefited from, or intended to benefit from, the dishonesty. 	<p>Harm</p> <ul style="list-style-type: none"> • Whether the dishonesty had an adverse effect on others including any client. • The extent to which public confidence in the profession is undermined. • The extent to which the misconduct “strikes at the heart” of the notary’s oath of office.
<p>Indicative Sanctions Range (Step 3)</p>	
<p>Seriousness</p>	<p>Indicative Sanctions</p>
<p>Upper range (significant culpability and significant harm)</p>	<p>Striking-off</p>
<p>Middle range (moderate culpability and moderate harm or significant culpability and limited harm or low culpability and significant harm)</p>	<p>Striking-off</p>
<p>Lower range (low culpability, limited or no harm)</p>	<p>Striking-off</p>
<p>Apply aggravating and mitigating factors (Step 4)</p>	
<p>Given that striking-off is indicated for all forms of dishonesty, no specific aggravating factors are listed below. Where the assessment of seriousness (Step 2) indicates that exceptional circumstances may apply, the Court should take into account the general factors set out at Annex 2 and the factors listed below.</p>	
<p>Aggravating factors</p>	<p>Mitigating factors</p>
	<p>Misconduct was a result of direct or indirect pressure and/or coercion from a third party.</p>
	<p>Actual deceit was so minor, fleeting and uncharacteristic that a lesser sanction might be appropriate.</p>
	<p>False or misleading certificate was as a result of carelessness or lack of understanding rather than deliberate.</p>
	<p>Notary self-reported and gave full and frank cooperation to the Faculty Office and the Court.</p>

Totality (Step 5)

Where there are multiple charges arising from one incident, separate incidents, or multiple examples of the same misconduct on different occasions over a period of time, the Court should ensure that the totality of the sanctions is warranted based on the cumulative seriousness of the charges. The Court will need to decide, where applicable, whether the sanction on each charge should run concurrently or consecutively.

B: COMPROMISING INDEPENDENCE AND IMPARTIALITY AND ACTING UNETHICALLY

Description of Group (Step 1)

This Group is intended to cover misconduct that relates to notaries failing in the core requirement to act independently and impartially. The Independence and impartiality of notaries is of paramount importance for the safeguarding of clients' interests. Independence encompasses the notary's ability to give independent advice to a client and to provide notarial services without fear or favour. Notaries may not give control of their notarial practice to a third party who is beyond the regulatory reach of their Regulator. An important aspect of impartiality is that a notary does not act for a person to whom they are closely related on business or personal grounds. Acting unethically is connected to these principles and comes within this Group. The Court should consider the overlap with Group A: Dishonesty and lack of integrity.

Misconduct within this Group covers, but is not limited to, the examples listed below:

- Acting in a conflict of interest or conflict of loyalty situation (such as acting for both parties where they do not share a common interest)
- Succumbing to pressure from an employer to act contrary to the interest of the notary's client or to provide notarial services to an employer
- Cutting corners on the due diligence required on a matter because of some external pressure, for example from a key client
- Acting for a client where you know or suspect that the instructions are being given under duress or undue influence and it would not be in the client's interest
- Entering into an exclusive arrangement with a provider of financial services or with a provider of financial services advice in contravention of Practice Rule 20.
- Referring clients to a particular person or business pursuant to an undisclosed commission arrangement or otherwise for undisclosed financial gain.
- Accepting or offering a bribe or permit an employee to accept or offer a bribe
- Other forms of unethical behaviour that would undermine trust and confidence in the profession of notaries

Seriousness (Step 2)

As well as the general factors affecting culpability and harm set out at Annex 2, the Court should also consider the following specific factors which may go towards determining the seriousness of the misconduct within this Group:

<p>Culpability</p> <ul style="list-style-type: none"> • Whether the conduct was for financial or other personal gain 	<p>Harm</p> <ul style="list-style-type: none"> • The actual harm caused, including financial loss • The impact on any matter of the client • The extent to which public confidence in the profession is undermined. • The extent to which the misconduct “strikes at the heart” of the notary’s oath of office.
<p>Indicative Sanctions Range (Step 3)</p>	
<p>The indicative sanctions range for this Group covers the full range of sanctions from advice as to future conduct through to striking off. The Court should consider whether it is appropriate to impose restrictions/conditions on practice in order to protect the public either in combination with other sanctions or as a stand-alone sanction.</p>	
<p>Seriousness</p>	<p>Indicative Sanctions</p>
<p>Upper range (significant culpability and significant harm)</p>	<p>Striking-off</p>
<p>Middle range (moderate culpability and moderate harm or significant culpability and limited harm or low culpability and significant harm)</p>	<p>Suspension for over 24 months to striking off²</p>
<p>Lower range (low culpability, limited or no harm)</p>	<p>Suspension for over 12 months to 24 months</p>
<p>Apply aggravating and mitigating factors (Step 4)</p>	
<p>As well as the general aggravating and mitigating factors set out at Annex 2, the Court should note the following specific factors that may be applicable to this group:</p>	
<p>Aggravating factors</p>	<p>Mitigating factors</p>
<ul style="list-style-type: none"> • Failure to observe particular requirements in the Practice Rules and Code of Conduct (particularly chapters on Integrity, Trust in the Office of Notary, Independence and Impartiality, Fees and Service Transparency and Conflicts of Interest). 	<ul style="list-style-type: none"> • Isolated incident in difficult or unusual circumstances • Undue influence or coercion from someone in a position of power such as an employer

² Where a suspension of more than three years is contemplated, serious consideration should be given to striking-off.

	Immediate apology
Totality (Step 5)	
<p>Where there are multiple charges arising from one incident, separate incidents, or multiple examples of the same misconduct on different occasions over a period of time, the Court should ensure that the totality of the sanctions is warranted based on the cumulative seriousness of the charges. The Court will need to decide, where applicable, whether the sanction on each charge should run concurrently or consecutively.</p>	

C: POOR STANDARD OF SERVICE AND FORMAL OBLIGATIONS TO CLIENTS

Description of Group (Step 1)	
<p>This Group is intended to cover breaches of obligations placed on notaries under the Practice Rules and Code of Practice in relation to their clients or potential clients or persons placing legitimate reliance upon a notarial act.</p> <p>Misconduct within this Group covers, but is not limited to, the examples listed below:</p> <ul style="list-style-type: none"> • Failing to comply with client confidentiality obligations • Failure to provide regulatory information (eg price, complaints signposting) • Taking on cases where the notary lacks competence in the relevant area • Incompetence • Negligence • Delay • Failure to comply with legal undertaking given • The notary is not registered with the Information Commissioners Office as a data controller for their client's data • The notary's record keeping is such that it indicates the notary's office is not being kept in an organised manner • The notary's office is not properly supervised 	
Seriousness (Step 2)	
<p>As well as the general factors affecting culpability and harm set out at Annex 2, the Court should also consider the following specific factors which may go towards determining the seriousness of the misconduct within this Group:</p>	
<p>Culpability</p> <ul style="list-style-type: none"> • Whether the motivation for the breach was financial or for other personal gain • Whether the misconduct was motivated by the protected characteristic(s) of the client • Whether the breach involved a level of exploitation of the client • The extent of the risk posed to the client 	<p>Harm</p> <ul style="list-style-type: none"> • The level of distress and worry caused to the client • Inability of the client to find suitable alternative representation • The impact on the client's matter • The loss to the client • The extent of action required to remedy the consequences of the misconduct

<ul style="list-style-type: none"> Whether inadequate administration systems contributed to the misconduct 	<ul style="list-style-type: none"> Whether a single client or multiple clients affected The notary has made a mistake which is significant, either because it is a mistake that no notary ought reasonably to have made, or because it has significant repercussions for client or for the reputation of notaries The notary has made a series of mistakes which although trivial by themselves, amount together to a pattern of behaviour which shows a lack of competence or lack of regard to professionalism
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Indicative Sanctions Range (Step 3)

The indicative sanctions range for this Group covers the full range from advice as to future conduct through to striking-off. The Court should consider whether it is appropriate to impose restrictions/conditions on practice in order to protect the public either in combination with other sanctions or as a stand-alone sanction.

Seriousness	Indicative Sanctions	
Upper range (significant culpability and significant harm)	Suspension of over 12 months to striking-off ³	Conditions on practice (particularly in relation to conveyancing and probate)
Middle range (moderate culpability and moderate harm or significant culpability and limited harm or low culpability and significant harm)	Admonition to suspension of 12 months or less	Requirement to undergo training
Lower range (low culpability, limited or no harm)	Admonition Advice as to future conduct	Requirement to undergo supervision

Apply aggravating and mitigating factors (Step 4)

As well as the general aggravating and mitigating factors set out at Annex 2, the Court should note the following specific factors that may be applicable to this group:

Aggravating factors	Mitigating factors
Seniority of notary	Immediate apology to client or others

³ Where a suspension of more than three years is contemplated, serious consideration should be given to striking-off.

Length of any delay in carrying out work	Isolated act of inexperienced notary
Failure to respond to communications	"Moment of madness" which is out of character.
Significant or repeated acts of incompetence affecting the matter. Persistent breaches or part of a pattern of poor service	Misconduct arose as a result of technology failures and/or problems in staffing, outside the respondent's control
Lack of co-operation with attempts to remedy the breach	Health or other personal problems
Failure to take responsibility for actions	Rectified error
Totality (Step 5)	
<p>Where there are multiple charges arising from one incident, separate incidents, or multiple examples of the same misconduct on different occasions over a period of time, the Court should ensure that the totality of the sanctions is warranted based on the cumulative seriousness of the charges. The Court will need to decide, where applicable, whether the sanction on each charge should run concurrently or consecutively.</p>	
Notes	
<p>The workload of the respondent is not a relevant factor to take into account as notaries are required under the Practice Rules not to obtain instructions which compromise or impair or are likely to compromise or impair their proper standard of work or their ability to act in the best interests of the client.</p> <p>In addition, where a notary's office has not been properly supervised, or staff have been recruited without proper vetting a notary may be held responsible for the actions of members of staff.</p>	

D: FINANCIAL MATTERS

Description of Group (Step 1)	
<p>This Group covers misconduct arising from notaries' handling of financial matters, without an element of dishonesty or where dishonesty did not form part of the disciplinary charges. If misconduct in relation to financial matters has been charged as dishonesty, the Court should refer to A: Dishonesty. Financial misconduct in non-professional life is likely to fall under I: Behaviour towards others. For money laundering offences refer to F: Anti-money laundering breaches.</p> <p>Misconduct within this Group covers, but is not limited to, the examples listed below:</p> <ul style="list-style-type: none"> • Mishandling of client money. • Misconduct relating to fees including overcharging. • Breaches of the accounts rules. • Disregard around rules relating to fee sharing or referral fees. • Breaches of financial regulations (absent dishonesty). 	
Seriousness (Step 2)	
<p>As well as the general factors affecting culpability and harm set out at Annex 2, the Court should also consider the following specific factors which may go towards determining the seriousness of the misconduct within this Group:</p>	
<p>Culpability</p> <ul style="list-style-type: none"> • The respondent was in a position of trust for financial matters. • The misconduct enabled the misuse or misappropriation of funds by others. 	<p>Harm</p> <ul style="list-style-type: none"> • The harm or risk of harm to a financially vulnerable individual. • The extent of action required to remedy the consequences of the misconduct.

<ul style="list-style-type: none"> • Whether, and to what extent, the respondent benefited from, or intended to benefit from, the misconduct. • Notary should have known that breach was wrong because of clear guidance or rules (cf. breach was due to a complex situation or the application of the rule or guidance was unclear). 	<ul style="list-style-type: none"> • The quantum of loss to the client or other person and the impact on that person. 						
Indicative Sanctions Range (Step 3)							
<p>The indicative sanctions range for this Group starts at admonition and goes up to striking-off in the most serious cases. The Court should consider whether it is appropriate to impose restrictions/conditions on practice in order to protect the public either in combination with other sanctions or as a stand-alone sanction.</p>							
Seriousness	Indicative Sanctions						
Upper range (significant culpability and significant harm)	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px;">Suspension of over 12 months to striking-off⁴</td> <td style="width: 50%; padding: 5px;">Conditions on practice (particularly in relation to conveyancing and probate)</td> </tr> <tr> <td style="width: 50%; padding: 5px;">Admonition to suspension of less than 12 months</td> <td style="width: 50%; padding: 5px;">Requirement to undergo training</td> </tr> <tr> <td style="width: 50%; padding: 5px;">Admonition</td> <td style="width: 50%; padding: 5px;">Requirement to undergo supervision</td> </tr> </table>	Suspension of over 12 months to striking-off ⁴	Conditions on practice (particularly in relation to conveyancing and probate)	Admonition to suspension of less than 12 months	Requirement to undergo training	Admonition	Requirement to undergo supervision
Suspension of over 12 months to striking-off ⁴	Conditions on practice (particularly in relation to conveyancing and probate)						
Admonition to suspension of less than 12 months	Requirement to undergo training						
Admonition	Requirement to undergo supervision						
Middle range (moderate culpability and moderate harm or significant culpability and limited harm or low culpability and significant harm)							
Lower range (low culpability, limited or no harm)							
Apply aggravating and mitigating factors (Step 4)							
<p>As well as the general aggravating and mitigating factors set out at Annex 2, the Court should note the following specific factors that may be applicable to this group:</p>							
Aggravating factors	Mitigating factors						
Misconduct involved a deliberate disregard of applicable regulations/guidance	Misconduct was a result of direct or indirect pressure and/or coercion from a third party						
	Misconduct arose as a result of technology failures and/or problems in staffing, outside the respondent's control						
	Breach was minor.						
Totality (Step 5)							

⁴ Where a suspension of more than three years is contemplated, serious consideration should be given to striking-off.

Where there are multiple charges arising from one incident, separate incidents, or multiple examples of the same misconduct on different occasions over a period of time, the Court should ensure that the totality of the sanctions is warranted based on the cumulative seriousness of the charges. The Court will need to decide, where applicable, whether the sanction on each charge should run concurrently or consecutively.

Notes

The Court should consider, if the misconduct is related to the provision of conveyancing and/or probate or holding client monies, whether the notary should be restricted from providing those services as they carry a high risk to the public.

E: CRIMINAL CONVICTIONS

Description of Group (Step 1)	
<p>This Group covers criminal convictions that do not fall under any other Misconduct Group.</p> <p>The paramount consideration for the panel when considering cases in this Group is what sanction is necessary for the maintenance of public confidence and trust in the profession, in the light of the offending behaviour and conviction. The sanction should not be a second punishment for the actual criminal offence which has been committed.</p> <p>Generally, a notary should not be permitted to resume practice until the satisfactory completion of the criminal sentence.</p> <p>Misconduct within this group covers, but is not limited to, the examples listed below: In relation to individuals:</p> <ul style="list-style-type: none"> • Drink driving • Dangerous driving • Drunk and disorderly • Drug possession and supply 	
Seriousness (Step 2)	
<p>As well as the general factors affecting culpability and harm set out at Annex 2, the Court should also consider the following specific factors which may go towards determining the seriousness of the misconduct within this Group:</p>	
<p>Culpability</p> <ul style="list-style-type: none"> • The seriousness of the offence leading to the conviction. • Whether the offence included conspiring with others. • Whether the offence involved a victim. • Whether the offence was motivated by the protected characteristics of the recipient. 	<p>Harm</p> <ul style="list-style-type: none"> • The numbers of people directly affected by the offence • Potential for serious damage to public confidence in the profession
Indicative Sanctions Range (Step 3)	
<p>The indicative sanctions range for this Group covers admonition through to striking-off. The Court should consider whether it is appropriate to impose restrictions/conditions on practice in order to protect the public either in combination with other sanctions or as a stand-alone sanction.</p>	
Seriousness	Indicative Sanctions

Upper range (significant culpability and significant harm)	Suspension of over 12 months to striking-off ⁵
Middle range (moderate culpability and moderate harm or significant culpability and limited harm or low culpability and significant harm)	Suspension of 12 months or less
Lower range (low culpability, limited or no harm)	Admonition
Apply aggravating and mitigating factors (Step 4)	
As well as the general aggravating and mitigating factors set out at Annex 2, the Court should note the following specific factors that may be applicable to this group:	
Aggravating factors	Mitigating factors
Whether the offence was a one off or there is a history of such behaviour	Conviction is spent
Conviction attracted a custodial sentence	Evidence of rehabilitation or associated treatment
Respondent failed to report the conviction promptly	
Offence involved dishonesty or the notary did not act with integrity when the matter came to the attention of the police.	
Totality (Step 5)	
Where there are multiple charges arising from one incident, separate incidents, or multiple examples of the same misconduct on different occasions over a period of time, the Court should ensure that the totality of the sanctions is warranted based on the cumulative seriousness of the charges. The Court will need to decide, where applicable, whether the sanction on each charge should run concurrently or consecutively.	

⁵ Where a suspension of more than three years is contemplated, serious consideration should be given to striking-off.

F: ANTI-MONEY LAUNDERING BREACHES

Description of Group (Step 1)	
<p>This Group covers breaches of the Money Laundering Regulations 2017, the Proceeds of Crime Act 2002, sanctions and anti-terrorist financing laws. It is assumed that where a breach of the statutory regime for economic crime results in a criminal conviction, that E: Criminal convictions, will be referred to instead.</p> <p>Misconduct within this group covers, but is not limited to, the examples listed below. It may be that each of the examples on its own will not warrant a finding of misconduct but that a combination of breaches or persistent and wilful failure will do.</p> <ul style="list-style-type: none"> • No firm-wide risk assessment • No AML policies, controls and procedures • No client risk assessments (new and/or ongoing) • No AML training and this is reflected in the quality of the firm's compliance with the regulations • No review of adequacy and effectiveness of AML policies, controls and procedures • No system for recording and submitting suspicious activity reports • AML records not retained in accordance with the regulations • AML policies, controls and procedures not being applied once in place • Client risk assessments inadequate • Client due diligence inadequate • Unacceptable gaps in documentation • Some AML policies, controls and procedures but out of date or lacking clarity • Failure to demonstrate compliance with remedial work required by the Regulator 	
Seriousness (Step 2)	
<p>As well as the general factors affecting culpability and harm set out at Annex 2, the Court should also consider the following specific factors which may go towards determining the seriousness of the misconduct within this Group:</p>	
<p>Culpability</p> <ul style="list-style-type: none"> • The extent to which the notary has failed to consider and apply clear guidance or warnings given • The extent to which the Legal Services Affinity Group guidance has been complied with 	<p>Harm</p> <ul style="list-style-type: none"> • Whether proceeds of crime are actually involved • Type of work the notary does or their client base or the jurisdiction in which they work is higher risk for AML • Notary conducts conveyancing and/or probate work or handles client monies

<ul style="list-style-type: none"> • Whether breach is endemic, persistent or part of a pattern • The length and number of breaches • Whether misconduct is a criminal offence and, if so, a custodial sentence has been imposed • The size of the notary's practice • Taking a tick-box approach rather than engaging thoroughly with the requirements • Attaching greater importance to commercial gain than complying with legal obligations 	
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Indicative Sanctions Range (Step 3)

The indicative sanctions range for this Group starts at admonishment and goes up to striking-off in the most serious cases. Cases where the notary has been convicted and needs to serve a custodial sentence will normally warrant striking-off. The Court should consider whether it is appropriate to impose restrictions/conditions on practice in order to protect the public either in combination with other sanctions or as a stand-alone sanction.

Seriousness	Indicative Sanctions	
Upper range (significant culpability and significant harm)	Suspension of over 12 months to striking-off ⁶	Conditions on practice (particularly in relation to conveyancing and probate) Requirement to undergo training
Middle range (moderate culpability and moderate harm or significant culpability and limited harm or low culpability and significant harm)	Suspension of 12 months or less	
Lower range (low culpability, limited or no harm)	Admonition Advice to future conduct	Requirement to undergo supervision

Apply aggravating and mitigating factors (Step 4)

As well as the general aggravating and mitigating factors set out at Annex 2, the Court should note the following specific factors that may be applicable to this group:

Aggravating factors	Mitigating factors
Attempts to conceal the misleading	Immediate apology and immediate attempt to correct a misleading impression

⁶ Where a suspension of more than three years is contemplated, serious consideration should be given to striking-off.

	Isolated incident in difficult or unusual circumstances
	Rectifying error
Totality (Step 5)	
<p>Where there are multiple charges arising from one incident, separate incidents, or multiple examples of the same misconduct on different occasions over a period of time, the Court should ensure that the totality of the sanctions is warranted based on the cumulative seriousness of the charges. The Court will need to decide, where applicable, whether the sanction on each charge should run concurrently or consecutively.</p>	
Notes	
<p>The Court should consider whether the breach is sufficiently serious to warrant restricting the notary's practice so that they may no longer conduct work falling within the Money Laundering Regulations 2017 or in relation to the conduct of conveyancing/probate or the handling of client monies.</p>	

G: MISCONDUCT OF A SEXUAL NATURE

Description of Group (Step 1)	
<p>This Group covers misconduct of a sexual nature. Misconduct of this type should attract serious sanctions not only to reflect the nature of the behaviour but to send a clear signal that it is entirely inappropriate and will not be tolerated in the notarial profession. Such misconduct can take place in many ways including but not limited to: verbally, physically, in writing (any form including social media), by phone or via images.</p> <p>Misconduct within this Group covers a range of behaviours, many of which could amount to criminal offences, whether or not there has been a criminal conviction. The examples below are not exhaustive:</p> <ul style="list-style-type: none"> • Unwanted behaviour of a sexual nature, of any kind, that violates a person’s dignity or creates a hostile working environment • Sexual assault • Sexual bullying • Victimising an individual for refusing to engage in activities of a sexual nature. • Sexual misconduct involving the abuse of children 	
Seriousness (Step 2)	
<p>As well as the general factors affecting culpability and harm set out at Annex 2, the Court should also consider the following specific factors which may go towards determining the seriousness of the misconduct within this Group:</p>	
<p>Culpability</p> <ul style="list-style-type: none"> • Misconduct took place in a professional context • Misconduct took place in front of others • Specific targeting of an individual • Abuse or exploitation of a vulnerable person or child • Using position to pursue inappropriate relationship 	<p>Harm</p> <ul style="list-style-type: none"> • Causing fear, humiliation and/or anxiety • Impact on working life/career of those affected by the misconduct • Impact on mental health/wellbeing, whether physical or psychological, of those affected by the misconduct. • Injury to feelings

<ul style="list-style-type: none"> • Misconduct directed at a person in a vulnerable situation or place • Misconduct occurred against a background of requests to stop. • Intention to humiliate • Administration of, or intention to administer, drugs to the victim • Removal or moving aside of clothes (actual or attempted) • Penetration by body part or other object. • Contact with bare skin • Sexual touching (over or under clothing). • Grooming of the victim • Use of violence or threats of violence • Use of a weapon • Other degradation, for example recording or photographing the misconduct 	
Indicative Sanctions Range (Step 3)	
<p>The indicative sanctions range for this group is from over 12 months suspension to striking-off. The Court should consider whether it is appropriate to impose restrictions/conditions on practice in order to protect the public in combination with other sanctions.</p>	
Seriousness	Indicative Sanctions
Upper range (significant culpability and significant harm)	Striking-off
Middle range (moderate culpability and moderate harm or significant culpability and limited harm or low culpability and significant harm)	Suspension over 24 months to striking-off ⁷
Lower range (low culpability, limited or no harm)	Suspension over 12 months up to 24 months Conditions on practice Requirement to undergo training
Apply aggravating and mitigating factors (Step 4)	
<p>As well as the general aggravating and mitigating factors set out at Annex 2, the Court should note the following specific factors that may be applicable to this group:</p>	
Aggravating factors	Mitigating factors

⁷ Where a suspension of more than three years is contemplated, serious consideration should be given to striking-off.

Placed on Sexual Offenders Register	Conduct was unintentional but misjudged
Behaviour includes breach of any relevant order (such as restraining order)	
Sharing images/recording of the misconduct	
Totality (Step 5)	
<p>Where there are multiple charges arising from one incident, separate incidents, or multiple examples of the same misconduct on different occasions over a period of time, the Court should ensure that the totality of the sanctions is warranted based on the cumulative seriousness of the charges. The Court will need to decide, where applicable, whether the sanction on each charge should run concurrently or consecutively.</p>	
Notes	
<p>The Court should always consider whether restrictions on practice, training and/or conditions should be imposed to protect the public/prevent a repetition of the conduct. Examples include restricting the areas in which the respondent can practise, ordering the respondent undertakes diversity and inclusion training and/or preventing the respondent from acting as a notary supervisor.</p> <p>The Court should also consider whether or not it is appropriate for the respondent to be able to practise during any period of registration on the Sex Offenders Register.</p>	

H: DISCRIMINATION, NON-SEXUAL HARASSMENT AND BULLYING

Description of Group (Step 1)	
<p>This group covers misconduct arising from unlawful discrimination, non-sexual harassment and bullying. For guidance on sanctions for sexual harassment, the Court should refer to G: Misconduct of a sexual nature. Misconduct of this type should attract serious sanctions not only to reflect the nature of the behaviour but to send a clear signal that it is entirely inappropriate and will not be tolerated in the notarial profession. Such misconduct can take place in many ways, whether directly or indirectly, including but not limited to face to face, verbally, in writing (any form including social media), by phone or via images or by encouraging or instructing any other person to do so.</p> <p>Misconduct in this Group covers a wide range of behaviours. The examples below are not exhaustive:</p> <ul style="list-style-type: none"> • Discrimination, whether direct or indirect, against individuals or groups in the provision of services/allocation of work/treatment of colleagues/employment/recruitment. • Deliberate failure to make reasonable adjustments • Complicity in discrimination by others • Unwanted conduct, which has the purpose or effect of violating an individual’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for an individual • Bullying – offensive, intimidating, malicious or insulting behaviour that undermines, humiliates, denigrates or injures the recipient • Persistent, unwanted attention to a person • Behaviour that amounts to stalking e.g. following a person, watching or spying on them or forcing contact with them through any means, including social media 	
Seriousness (Step 2)	
<p>As well as the general factors affecting culpability and harm set out at Annex 2, the Court should also consider the following specific factors which may go towards determining the seriousness of the misconduct within this Group:</p>	
<p>Culpability</p> <ul style="list-style-type: none"> • Misconduct took place in a professional context • Misconduct occurred against a background of requests to stop 	<p>Harm</p> <ul style="list-style-type: none"> • Causing fear, humiliation and/or anxiety • Impact on working life/career of those affected by the misconduct

<ul style="list-style-type: none"> • Misconduct directed at a person in a vulnerable situation or place • Misconduct took place in front of others. • Intention to humiliate • Misconduct motivated by the protected characteristic(s) of the victim 	<ul style="list-style-type: none"> • Impact on mental health/wellbeing, whether physical or psychological, of those affected by the misconduct. • Injury to feelings
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Indicative Sanctions Range (Step 3)

The indicative sanctions range for this group is from over 12 months suspension to striking-off. The Court should consider whether it is appropriate to impose restrictions/conditions on practice in order to protect the public in combination with other sanctions.

Seriousness	Indicative Sanctions
Upper range (significant culpability and significant harm)	Striking-off
Middle range (moderate culpability and moderate harm or significant culpability and limited harm or low culpability and significant harm)	Suspension over 12 months to striking-off ⁸
Lower range (low culpability, limited or no harm)	Admonition Conditions on practice Requirement to undergo training

Apply aggravating and mitigating factors (Step 4)

As well as the general aggravating and mitigating factors set out at Annex 2, the Court should note the following specific factors that may be applicable to this group:

Aggravating factors	Mitigating factors
Misconduct includes breach of any order	Immediate apology
Deliberate behaviour for personal gain	
Includes element of incitement to others to discriminate against another	
Intention to humiliate	

Totality (Step 5)

Where there are multiple charges arising from one incident, separate incidents, or multiple examples of the same misconduct on different occasions over a period of time, the Court should ensure that the

⁸ Where a suspension of more than three years is contemplated, serious consideration should be given to striking-off.

totality of the sanctions is warranted based on the cumulative seriousness of the charges. The Court will need to decide, where applicable, whether the sanction on each charge should run concurrently or consecutively.

Notes

The Court should always consider whether restrictions on practice, training and/or conditions should be imposed to protect the public/prevent a repetition of the conduct. Examples include restricting the areas in which the respondent can practise, ordering the respondent undertakes diversity and inclusion training and/or preventing the respondent from acting as a notary supervisor.

I: BEHAVIOUR TOWARDS OTHERS

Description of Group (Step 1)	
<p>This Group covers unacceptable behaviour towards others. This is a wide Group intended to cover personal behaviour of notaries towards others that is not encompassed by the other Groups. It covers serious rudeness and threatening behaviour through to violence towards others both in professional and non-professional life.</p> <p>Misconduct within this Group covers a wide range of behaviours, which will vary in gravity. The examples below are not exhaustive:</p> <ul style="list-style-type: none"> • Serious rudeness in professional life • Inappropriately aggressive or threatening behaviour in professional life • Violent behaviour (non-sexual) towards others, whether or not resulting in a criminal conviction 	
Seriousness (Step 2)	
<p>As well as the general factors affecting culpability and harm set out at Annex 2, the Court should also consider the following specific factors which may go towards determining the seriousness of the misconduct within this Group:</p>	
<p>Culpability</p> <ul style="list-style-type: none"> • Misconduct directed at a person in a vulnerable situation or place • Abuse of power/position • Misconduct occurred against a background of requests to stop • Misconduct motivated by the protected characteristic(s) of the victim • Intention to humiliate • Use of violence or threats of violence • Use of weapon • Other degradation, for example recording or photographing the misconduct 	<p>Harm</p> <ul style="list-style-type: none"> • Misconduct caused humiliation and/or fear • Impact on working life/career of those affected by the misconduct • Injury caused to victim whether physical or psychological • Injury to feelings

Indicative Sanctions Range (Step 3)		
The indicative sanctions range for this Group covers the full range from reprimand to striking-off. The Court should consider whether it is appropriate to impose restrictions/conditions on practice in order to protect the public either in combination with other sanctions or as a stand-alone sanction.		
Seriousness	Indicative Sanctions	
Upper range (significant culpability and significant harm)	Suspension of over 12 months to striking-off ⁹	Conditions on practice (particularly in relation to conveyancing and probate)
Middle range (moderate culpability and moderate harm or significant culpability and limited harm or low culpability and significant harm)	Admonishment to suspension of 12 months or less	
Lower range (low culpability, limited or no harm)	Admonishment Advice to future conduct	Requirement to undergo supervision
Apply aggravating and mitigating factors (Step 4)		
As well as the general aggravating and mitigating factors set out at Annex 2, the Court should note the following specific factors that may be applicable to this group:		
Aggravating factors	Mitigating factors	
Misconduct resulted in a criminal conviction or court order	Immediate apology	
Previous criminal convictions for similar behaviour	Response to extreme or sustained provocation	
Misconduct includes breach of any order	Isolated incident in difficult or unusual circumstances	
Lack of co-operation with the police	Element of self-protection or protection of others/property	
Conduct directed to public sector workers such as court staff		
Totality (Step 5)		
Where there are multiple charges arising from one incident, separate incidents, or multiple examples of the same misconduct on different occasions over a period of time, the Court should ensure that the totality of the sanctions is warranted based on the cumulative seriousness of the charges. The Court will need to decide, where applicable, whether the sanction on each charge should run concurrently or consecutively.		

⁹ Where a suspension of more than three years is contemplated, serious consideration should be given to striking-off.

Notes

The Court should always consider whether restrictions on practice, training and/or conditions should be imposed to protect the public/prevent a repetition of the conduct. Examples include restricting the areas in which the respondent can practise, ordering the respondent undertakes diversity and inclusion training and/or preventing the respondent from acting as a notary supervisor.

J: USE OF SOCIAL MEDIA AND OTHER COMMUNICATIONS

Description of Group (Step 1)	
<p>This Group covers misconduct arising from inappropriate communications, the content of which is shared, intended to be shared or it was reasonably foreseeable would be shared with a third party. This Group primarily covers inappropriate use of any type of social media e.g. social network and media sharing sites. However, it is not limited to use of such media and covers all forms of communications, e.g. email and text, where the content is shared. The misconduct can occur in communications made by a notary in both their professional and non-professional life.</p> <p>Inappropriate communications to one individual which is not shared will fall under other Misconduct Groups depending on the nature of the content, for example: G: Misconduct of a sexual nature; H: Discrimination, non-sexual harassment and bullying or I: Behaviour towards others.</p> <p>Where the misconduct is of a sexual nature, the Court should refer to G: Misconduct of a sexual nature. Where the misconduct amounts to harassment or unlawful discrimination, the Court should refer to H: Discrimination, non-sexual harassment and bullying.</p> <p>Misconduct within this Group may occur within a range of contexts. The examples below are not exhaustive:</p> <ul style="list-style-type: none"> • Posting or sharing gratuitously offensive material online • Making abusive remarks to or about others on social media • Breaching confidentiality in communications of any kind, including sharing images • Inappropriate use of social media to approach client/professional colleague outside professional relationship 	
Seriousness (Step 2)	
<p>As well as the general factors affecting culpability and harm set out at Annex 2, the Court should also consider the following specific factors which may go towards determining the seriousness of the misconduct within this Group:</p>	
<p>Culpability</p> <ul style="list-style-type: none"> • The degree to which the content is abusive/offensive • Extent to which the material is disseminated • Role in escalation of arguments online • Deliberate, calculated attempts to offend or being reckless as to whether offence is caused 	<p>Harm</p> <ul style="list-style-type: none"> • Offence, humiliation or fear caused to a named individual(s) or persons otherwise identifiable • Impact on working life/career of those affected by the misconduct • Impact on mental health/wellbeing, whether physical or psychological, of those affected by the misconduct

<ul style="list-style-type: none"> • Content involves a child or other vulnerable person • Persisting in inappropriate use of social media/digital communications even when requested or warned to stop • Repetition or escalation of abusive/offensive comments including in response to others • Misconduct across multiple platforms or means of communication • Misconduct motivated by the protected characteristic(s) of the victim • Intention to humiliate • The respondent or their client benefitted, whether financial or otherwise, from the misleading 	<ul style="list-style-type: none"> • Potential for damage to a person's reputation • Intrusion into another's private life • Potential for serious damage to public confidence in the profession
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Indicative Sanctions Range (Step 3)

The indicative sanctions range for this Group covers the full range from reprimand to striking-off. The Court should consider whether it is appropriate to impose restrictions/conditions on practice in order to protect the public either in combination with other sanctions or as a stand-alone sanction.

Seriousness	Indicative Sanctions
Upper range (significant culpability and significant harm)	Suspension of over 12 months to striking-off ¹⁰
Middle range (moderate culpability and moderate harm or significant culpability and limited harm or low culpability and significant harm)	Admonishment to suspension of 12 months or less
Lower range (low culpability, limited or no harm)	Admonishment Advice to future conduct

Apply aggravating and mitigating factors (Step 4)

As well as the general aggravating and mitigating factors set out at Annex 2, the Court should note the following specific factors that may be applicable to this group:

Aggravating factors	Mitigating factors

¹⁰ Where a suspension of more than three years is contemplated, serious consideration should be given to striking-off.

Behaviour resulted in a criminal conviction or court order	Early recognition of harm caused and efforts to remedy it, e.g. removal/deletion/retraction of content or the issuing of a public apology
Behaviour includes breach of any order	Ill health causing confusion or disinhibition
	Response to extreme or sustained provocation
	Isolated incident of short duration with low risk of repetition
Totality (Step 5)	
Where there are multiple charges arising from one incident, separate incidents, or multiple examples of the same misconduct on different occasions over a period of time, the Court should ensure that the totality of the sanctions is warranted based on the cumulative seriousness of the charges. The Court will need to decide, where applicable, whether the sanction on each charge should run concurrently or consecutively.	

K: FAILURE TO COMPLY WITH FORMAL ORDERS

Description of Group (Step 1)	
<p>This Group is intended to cover failures to comply with formal orders made at the end of proceedings by any body, tribunal or court which place a personal obligation on a notary (whether in that person's capacity as a notary or otherwise).</p> <p>Examples of breaches within this group include, but are not limited to, failures to comply with:</p> <ul style="list-style-type: none"> • Judgments and orders of courts • Orders, directions and sanctions imposed by the Court of Faculties • Orders, directions and sanctions imposed by other regulatory bodies such as the Solicitors Disciplinary Tribunal • Formal determinations of the Legal Ombudsman 	
Seriousness (Step 2)	
<p>As well as the general factors affecting culpability and harm set out at Annex 2, the Court should also consider the following specific factors which may go towards determining the seriousness of the misconduct within this Group:</p>	
<p>Culpability</p> <ul style="list-style-type: none"> • Whether the misconduct occurred due to a mistake • Whether the non-compliance with the order or determination was for personal or other advantage • The extent of the non-compliance with the order or determination • The extent of the attempts to comply with the order 	<p>Harm</p> <ul style="list-style-type: none"> • The extent to which the non-compliance impacts on clients or other individuals • The cost and inconvenience caused to any individual of attempting to enforce compliance • The effect of the non-compliance on proceedings. • Financial loss caused to any individual.

<ul style="list-style-type: none"> Whether the misconduct is due to an inability to comply for good reason 	
Indicative Sanctions Range (Step 3)	
<p>The indicative sanctions range for this Group range from admonishment to striking-off. The Court should consider whether it is appropriate to impose restrictions/conditions on practice in order to protect the public either in combination with other sanctions or as a stand-alone sanction.</p>	
Seriousness	Indicative Sanctions
Upper range (significant culpability and significant harm)	Suspension of over 24 months to striking-off ¹¹
Middle range (moderate culpability and moderate harm or significant culpability and limited harm or low culpability and significant harm)	Suspension of over 12 months to 24 months
Lower range (low culpability, limited or no harm)	Admonishment
Apply aggravating and mitigating factors (Step 4)	
<p>As well as the general aggravating and mitigating factors set out at Annex 2, the Court should note the following specific factors that may be applicable to this group:</p>	
Aggravating factors	Mitigating factors
The order or determination was intended to protect the public	Misconduct arose as a result of technology failures and/or problems in staffing, outside the respondent's control
Compliance remains outstanding in whole or in part	
Failure to comply risks undermining the deterrent effect and effectiveness of the court	
Attitude of the notary shows contempt such as deliberate failure to comply or unwillingness to engage with the court	

¹¹ Where a suspension of more than three years is contemplated, serious consideration should be given to striking-off.

Notary had previously received the benefit of the doubt and the Court now needs to apply a tougher sanction	
Totality (Step 5)	
Where there are multiple charges arising from one incident, separate incidents, or multiple examples of the same misconduct on different occasions over a period of time, the Court should ensure that the totality of the sanctions is warranted based on the cumulative seriousness of the charges. The Court will need to decide, where applicable, whether the sanction on each charge should run concurrently or consecutively.	

L: OBLIGATIONS TO THE REGULATOR

Description of Group (Step 1)	
<p>This Group is intended to cover non-compliance with the formal obligations to the Faculty Office as the regulator.</p> <p>Misconduct within this Group covers, but is not limited to, the examples listed below:</p> <ul style="list-style-type: none"> • Holding out as a notary when not entitled to do so • Any failure to report information as required by the Practice Rules e.g. bankruptcy and criminal convictions • Failure to report misconduct by self • Failure to co-operate with the Regulator and other regulators including the Legal Ombudsman • Breach of practising requirements e.g. failure to obtain a practising certificate, insurance or comply with Continuing Professional Education requirements • Poor practice administration/management 	
Seriousness (Step 2)	
<p>As well as the general factors affecting culpability and harm set out at Annex 2, the Court should also consider the following specific factors which may go towards determining the seriousness of the misconduct within this Group:</p>	
<p>Culpability</p> <ul style="list-style-type: none"> • Deliberate concealment or attempted concealment of misconduct • The duration and scope of non-engagement with the Regulator • Whether there was a foreseeable risk to the public or consumer interest • Whether the conduct was for financial or personal gain • The extent of the delay in making a report and/or providing information • Extent of failures of practice administration/poor management 	<p>Harm</p> <ul style="list-style-type: none"> • Whether the breach harmed or risked harming the public • Whether the misconduct had an adverse impact on a third party • The extent to which the misconduct has caused delay in the Regulator taking action • The extent to which the Faculty Office has had to expend resources on trying to make the respondent meet their obligations

<ul style="list-style-type: none"> • Whether the misconduct was motivated by the protected characteristic(s) of prospective notaries • Whether prospective notaries or supervised notaries were exploited 	<ul style="list-style-type: none"> • The extent to which clients, or potential clients, were, or could have been harmed, by the non-compliance.
Indicative Sanctions Range (Step 3)	
The indicative sanctions range for this Group covers the full range from advice as to future conduct through to striking-off. The Court should consider whether it is appropriate to impose restrictions/conditions on practice in order to protect the public either in combination with other sanctions or as a stand-alone sanction.	
Seriousness	Indicative Sanctions
Upper range (significant culpability and significant harm)	Suspension of over 12 months to striking-off ¹²
Middle range (moderate culpability and moderate harm or significant culpability and limited harm or low culpability and significant harm)	Admonishment to suspension of 12 months or less
Lower range (low culpability, limited or no harm)	Admonishment Advice as to future conduct
Apply aggravating and mitigating factors (Step 4)	
As well as the general aggravating and mitigating factors set out at Annex 2, the Court should note the following specific factors that may be applicable to this group:	
Aggravating factors	Mitigating factors
Failure to take remedial action when asked by the Regulator to do so	Attempts made by the respondent to comply
Lack of response to warnings	Misconduct occurred some time ago and has not been repeated since
General attitude of non-cooperation with the Regulator	Misconduct arose as a result of technology failures and/or problems in staffing, outside the respondent's control
Totality (Step 5)	
Where there are multiple charges arising from one incident, separate incidents, or multiple examples of the same misconduct on different occasions over a period of time, the Court should ensure that the	

¹² Where a suspension of more than three years is contemplated, serious consideration should be given to striking-off.

totality of the sanctions is warranted based on the cumulative seriousness of the charges. The Court will need to decide, where applicable, whether the sanction on each charge should run concurrently or consecutively.

Notes

Failures to report or respond will normally be accompanied by other disciplinary charges and these should be sanctioned under the relevant Misconduct Group.

“Holding out” is the shorthand term to describe a notary who is not entitled to practise presenting themselves to others in a way that would lead people to believe that they are entitled to practise and offer legal services as a notary.

ANNEX 2

GENERAL FACTORS: CULPABILITY AND HARM; AGGRAVATING AND MITIGATING FACTORS

This Annex lists the general factors that should be used to assess seriousness of the misconduct (Step 2 – Culpability and Harm) and in applying aggravating and mitigating circumstances (Step 4).

The lists are non-exhaustive but are intended to cover the most common factors that might be applicable in relation to all types of proved misconduct.

The factors are not set out in priority order or in any hierarchy; the applicability and importance of any one factor will vary from case to case.

Culpability

- Whether the misconduct was intentional or reckless
- The respondent's motivation for the misconduct
- Whether the respondent attempted to conceal the misconduct and/or lay blame elsewhere
- Whether the misconduct involved elements of planning
- Whether the misconduct was committed inadvertently or through misunderstanding
- Whether the misconduct was a one-off incident, sustained/repeated or attempted to be repeated or part of course of conduct
- The extent to which the respondent acted in breach of a position of trust/power/authority*
- The extent to which there was a disparity in seniority or experience between the respondent and the victim*
- The extent to which the respondent had control over and/or responsibility for the circumstances giving rise to the misconduct
- The extent to which the misconduct occurred due to lack of effective supervision
- Whether the misconduct involved taking advantage, exploitation, or targeting of a vulnerable person
- Whether the respondent caused, encouraged and/or coerced others to be complicit
- Whether the misconduct involved acting in combination with others
- Whether the respondent took a leading role in group conduct
- Whether the respondent put their own interests above that of the client
- Whether the actions of others contributed to the misconduct
- Whether the victim was targeted
- Whether the harm could have reasonably been foreseen
- Extent of the respondent's involvement (if conduct undertaken with others)
- Whether the respondent attempted to prevent reporting of the conduct
- Whether the misconduct involved using a position of actual or perceived power, authority or seniority

- Whether the misconduct amounted to, or could have amounted to, the commission of a criminal offence (whether or not there has been a conviction)

**These culpability factors may be particularly relevant to sexual misconduct, discrimination and harassment and behaviour towards others.*

Harm

- The extent of the actual harm caused
- The risk that further harm could have been caused
- The risk of harm where no actual harm occurred
- The number of people/organisations adversely affected or potentially affected
- The impact on the public confidence in the legal profession
- The harm caused to vulnerable individual(s)
- Whether the misconduct involved, or resulted in or could have resulted in, an adverse impact on the administration of justice
- The extent of the remedial work required as result of the misconduct
- The duration, or potential duration, of the harm

Aggravating factors

- Previous disciplinary finding(s)/criminal conviction(s) for similar offences
- Previous disciplinary findings of any type particularly where the breaches show an unwillingness to comply with the Code of Practice
- Lack of remorse
- Lack of insight
- Failure to follow clear and unambiguous guidance given by the Faculty Office or another appropriate authority
- Failure to cooperate or engage or act in any other way that frustrates the administration of the disciplinary processes (but see also personal circumstances and health issues mitigation below)
- Failure to attend Court without a reasonable explanation
- Failure to self-report
- The likelihood of repetition
- Whether drug or alcohol misuse was linked to the misconduct (where linked to the respondent's health this could be a mitigating factor)
- The respondent's level of professional experience
- Misconduct motivated by, or demonstrating, hostility based on a protected characteristic

Mitigating factors

- Whether the respondent admitted the misconduct, particularly at an early opportunity
- Whether the respondent promptly self-reported the misconduct

- Whether the respondent demonstrated genuine remorse
- The extent to which the respondent co-operated with investigation
- Whether voluntary steps were taken, or attempted, to remedy or rectify the breach
- Whether the respondent attempted to prevent recurrence
- Whether the respondent acted having taken professional or expert advice on the conduct
- The respondent's level of professional experience
- Whether the misconduct is unlikely to be repeated
- The respondent's personal circumstances, work circumstances, or health issues, that may have influenced the behaviour e.g. physical or mental health issues, toxic working environment, bereavement, relationship breakdown**
- Previous good character/absence of regulatory findings**
- Good references (only of limited applicability and very much dependent on the nature of the offence and the role and identity of the referee)**

*** These areas of mitigation, particularly in relation to sexual misconduct, discrimination and harassment and the use of violence, need to be treated with caution in the regulatory context.*