

# THE COUNCIL FOR LICENSED CONVEYANCERS

## Licensed Conveyancers' Probate Rules 2008

Made on 16 July 2008 by the Council for Licensed Conveyancers with the concurrence of the Secretary of State pursuant to Sections 21, 32 and 38 of the Administration of Justice Act 1985 and Section 53 and paragraphs 2, 3, 7 and 11 of Schedule 8 to the Courts and Legal Services Act 1990.

### Contents

1. Citation, Commencement and Interpretation
2. Application
3. Training
4. Continuing Professional Development
5. Licensing
6. Recognised Body
7. Indemnity
8. Conduct
9. Accounts Rules
10. Inspection and Disciplinary Consequences

### 1. Citation, Commencement and Interpretation

1.1 These Rules may be cited as the Licensed Conveyancers' Probate Rules 2008 and come into force on 30 November 2008.

1.2 In these Rules:-

unless the contrary intention appears, words importing the masculine gender include the feminine, words in the singular include the plural and words in the plural include the singular;

"the 1985 Act"

the Administration of Justice Act 1985;

"Council's Rules"

the Licensed Conveyancers' Probate Rules 2008 and all other rules made by the Council;

"Continuing Professional Development"

the minimum requirements of continuing education and training prescribed by these Rules;

"the Council"

the Council for Licensed Conveyancers established under section 12 of the 1985 Act;

"Durable Medium"

the means by which information is stored in a way accessible for future reference for no less than the period prescribed by the Council and which allows the unchanged reproduction of the information stored;

“Evidence of Probate Insurance”	evidence that a Practice is covered under the Probate Master Policy;
“Licence Year”	the period from 1 November to the following 31 October or such other 12 month period as the Council may determine;
“Practical Probate Training”	has the meaning given by rule 3.15;
“Probate Applicant”	any person who intends to apply for registration as a Probate student;
“Probate Candidate”	a Registered Probate Student who sits or intends to sit the Council’s Qualifying Probate Examinations;
“Probate Licence”	a licence issued by the Council to a Probate Practitioner to provide Probate Services; a “Full Probate Licence” and a “Limited Probate Licence” mean respectively a licence so endorsed under these Rules;
“Probate Master Policy”	the insurance policy authorised by rule 7.1;
“Probate Practice”	a Probate Practitioner who is a sole practitioner; two or more Probate Practitioners in partnership; a Recognised Body, each providing Probate Services to the public;
“Probate Practitioner”	any person holding a Probate Licence in force granted by the Council;
“Probate Services”	services limited to the drawing or preparation of any papers on which to found or oppose a grant of probate or grant of letters of administration and the administration of the estate of a deceased person;
“Qualifying Probate Examinations”	the methods of assessment and examination in accordance with the Council’s Probate syllabus as determined by the Council;
“Recognised Body”	a body corporate recognised by the Council under section 32 of the 1985 Act to provide conveyancing services to the public;
“Registered Probate Student”	a person who has registered as a student under rule 3.1.

1.3 Other expressions in these Rules shall, except where otherwise stated, have the meanings given to them by the 1985 Act and the Courts and Legal Services Act 1990.

## **2. Application**

2.1 Any application made to the Council under these Rules shall be in such form and shall be accompanied by such payment as is prescribed by the Council

from time to time.

- 2.2 Any application made or notice given to the Council shall be addressed to the Council's offices at 16 Glebe Road, Chelmsford, Essex, CM1 1QG or to such other address as may be designated by the Council.

### 3. Training

#### ***Registration Conditions***

- 3.1 A Probate Applicant will be accepted as a Registered Probate Student if to the satisfaction of the Council:-
- (a) he has submitted a duly completed form to the Council; and
  - (b) he is a fit and proper person to be registered as a student.
- 3.2 To enable the Council to make decisions under rule 3.1 it may require the Probate Applicant to support his application by a statutory declaration and may require the production of such other evidence as it sees fit.
- 3.3 The Council will give reasons for refusing any application.
- 3.4 A Probate Applicant who has not been accepted as a Registered Probate Student may within 28 days of being notified of that decision apply in writing to the Council for the application to be reconsidered.
- 3.5 The Council shall convene a meeting of the Student Registration Appeals Committee in accordance with its standing orders in force from time to time which is to include at least one lay member to determine the application.
- 3.6 The Council shall notify the determination to the Probate Applicant not more than three months following receipt by the Council of the application under rule 3.4.

#### ***Assessment and Qualifying Examinations***

- 3.7 The Council will determine the Probate syllabus
- 3.8 The Council may provide:-
- (a) for assessment and examination of various types and levels and at different times;
  - (b) for limiting the number of times Probate Candidates may attempt any Qualifying Probate Examination and the effect of failure to achieve the required standard;
  - (c) the maximum period during which Probate Candidates must successfully complete all Qualifying Probate Examinations and the effect of failure to do so within that time limit.
- 3.9 Qualifying Probate Examinations shall be held on such dates as the Council shall determine.
- 3.10 A Probate Candidate having presented himself for a Qualifying Probate Examination who, as a result of illness or exceptional circumstances,

considers that his performance in any examination has been adversely affected whether or not an answer is submitted may apply to the Council within 21 days of the examination concerned for a concession to be granted in respect of the consequences of such adversely affected performance. The Council may in its absolute discretion make such determination as it thinks fit and shall give reasons for such determination.

- 3.11 Without prejudice to its general discretion the Council may, in relation to the application of rule 3.10 to a Probate Candidate:-
- (a) grant a concession with or without conditions; or
  - (b) refuse the application
- 3.12 In order to make a determination under rule 3.10 the Council may: -
- (a) require the Probate Candidate to support his application by a statutory declaration and may require the production of such other evidence as they see fit;
  - (b) require the Probate Candidate to attend for interview or oral examination;
  - (c) take account of the results obtained by the Probate Candidate in the examination to which the application relates;
  - (d) require the Probate candidate to take such other steps as the Council may consider necessary.
- 3.13 A Registered Probate Student may be granted exemption by the Council from such of the Qualifying Probate Examinations provided for in these Rules as the Council may determine and subject to such terms and conditions as the Council may impose

### ***Practical Probate Training***

- 3.14 A Registered Probate Student must complete his Practical Probate Training and produce evidence to the Council that he is doing or has done so at such times and in such form as it may require.
- 3.15 Practical Probate Training required by rule 3.14 is that stage of training: -
- (a) when the Registered Probate Student is engaged in the provision of Probate Services for a period to be determined by the Council under the supervision of a person accepted by the Council as suitably experienced in the provision of Probate Services; and
  - (b) which in the opinion of the Council is current and relevant and of an adequate standard. The Council will judge the standard to be adequate if the Registered Probate Student has gained practical experience as certified in any 'Final Checklist for Practical Probate Training' which may be issued by the Council.

### ***Annual Registration***

- 3.16 A Registered Probate Student shall pay to the Council on the first day of September (or such other date as the Council may determine) in each year

such annual registration fee as the Council may prescribe.

#### **4. Continuing Professional Development**

##### ***Continuing Training***

- 4.1 Subject to rule 4.2 a Probate Practitioner must, in each licence year in which he holds a Limited Probate Licence or a Full Probate Licence, complete such Continuing Professional Development in such courses, lectures, seminars or other programmes or activities approved or run by the Council for the purposes of these Rules (known as 'Recognised Probate Courses') as the Council may require.
- 4.2 In respect of each licence year in which he holds a Probate Licence a Probate Practitioner shall inform the Council in such form as the Council may prescribe whether or not he has complied with the Council's requirements for Continuing Professional Development as they apply to him.
- 4.3 A Probate Practitioner must keep an up to date training record which on demand he shall send to the Council or produce to any person appointed by the Council.

##### ***General Provisions***

- 4.4 The Council may refuse to renew the Probate Licence of a Probate Practitioner or may issue the Probate Licence subject to conditions where he has failed to comply with rules 4.1 to 4.3.
- 4.5 In an individual case the Council may, where satisfied that the Probate Practitioner concerned has undergone sufficient Continuing Professional Development in the current year, vary the operation of these Rules in such ways as it thinks fit.
- 4.6 The Council shall have power to approve, for the purposes of these Rules, courses of study provided by educational institutions and other bodies.
- 4.7 The Council shall have power to require a Probate Practitioner to attend a stated course notwithstanding that he may at that time have satisfied the provisions of rule 4.1 for the current year.
- 4.8 The Council may provide its own courses of study for the purposes of these Rules and may make a charge to a Probate Practitioner who is obliged to attend or who applies to attend or undertake such a course.

#### **5. Licensing**

- 5.1 No person shall be entitled to apply for a Probate Licence for the first time unless he has or is immediately entitled to a licence to practise as a licensed conveyancer and has either:
  - (a) (i) passed the Qualifying Probate Examinations;
  - (ii) completed the Practical Probate Training; and
  - (iii) in respect of any period exceeding three months following the conclusion of his Practical Probate Training, provided to the satisfaction of the Council evidence of having undergone

relevant probate experience; or

- (b) has demonstrated to the satisfaction of the Council, in accordance with such terms and conditions as it may prescribe, that he has the relevant educational and professional qualifications and experience in the provision of Probate Services

5.2 Every Probate Licence shall be either a Full Probate Licence or a Limited Probate Licence and shall be in such form as the Council may prescribe.

5.3 An applicant for a Limited Probate Licence shall deliver or cause to be delivered to the Council's offices:

- (a) a written application in the form prescribed by and obtained from the Council, correctly completed and signed by the applicant;
- (b) the fee of £75.00 made payable to the Council;
- (c) evidence that he is a member of, or otherwise subject to, a scheme which has been established (whether or not exclusively) for the purpose of dealing with complaints about the provision of Probate Services; and
- (d) any contribution which the Council may require an applicant to make to any fund or funds as to professional indemnity and compensation maintained by the Council by virtue of section 21(3) of the 1985 Act; and
- (e) any report, certificate or other document as the Council may require.

5.4 In addition to the requirements of rule 5.3 an applicant for a Full Probate Licence shall deliver or cause to be delivered to the Council's offices:

- (a) evidence of appropriate and current insurance cover as required by rule 7.3; and
- (b) such further or composite contribution which the Council shall require an applicant to make to any fund or funds as to professional indemnity maintained by the Council by virtue of Section 21(3) of the 1985 Act; and
- (c) in the case of an application for a Full Probate Licence while a Limited Probate Licence is current, the additional fee payable; and
- (d) where applicable, evidence that the Applicant has satisfied the requirements of rule 4.3.1 Licensed Conveyancers' Conduct Rules 2005.

5.5 An application for a Probate Licence shall be deemed to have been made on the day on which the applicant has complied with rule 5.3 and, if appropriate, rule 5.4.

5.6 In considering an application for a Probate Licence the Council may require the applicant to attend for interview.

5.7 If the Council is not satisfied that rule 5.3 or rule 5.4 as the case may be has been fully complied with or, with or without having interviewed the applicant, that the applicant is a fit and proper person to be granted a licence, it may

refuse an application for a licence.

- 5.8 A Probate Practitioner must as a condition of being issued with a Probate Licence comply with:-
- (a) these Rules; and
  - (b) the Licensed Conveyancers' Designated Professional Body Rules 2004;
- 5.9 A Probate Practitioner may, when applying for a Probate Licence, apply in addition for a duplicate Probate Licence which, if issued, shall be free of charge. A Probate Practitioner may at any other time apply to the Council for a duplicate Probate Licence on tendering the fee payable and the Council may issue such a Probate Licence.

### **Endorsement of Probate Licences**

- 5.10 The Probate Licence issued to a Probate Practitioner shall remain the property of the Council until it has expired.
- 5.11 Any Full or Limited Probate Licence may, at the time of its grant or subsequently, be endorsed with such conditions as the Council thinks fit to impose. Any such conditions imposed may be removed by the Council at its discretion at any time.
- 5.12 Where any conditions are imposed, amended or removed during the currency of a Probate Licence, the Probate Practitioner shall immediately upon request submit his Probate Licence to the Council for endorsement, amendment or removal. The Council shall also record in the register maintained under section 19 of the 1985 Act the endorsement or amendment of the Probate Licence, or the removal of the endorsement of a Probate Licence.
- 5.13 When, during the currency of a Probate Licence, the Council agrees to the removal or amendment of all or any of the conditions imposed, those conditions shall remain effective until the Probate Licence is delivered to the Council's offices together with the fee payable.
- 5.14 When, during the currency of a Full Probate Licence, the Probate Practitioner either ceases to comply with rule 7 or for any other reason ceases to be eligible to hold a Full Probate Licence, he shall immediately surrender the Full Probate Licence and any duplicate Probate Licence issued to him by delivering them or causing them to be delivered to the Council's offices.

### ***Fees Payable in Respect of Licences***

- 5.15 Fees payable under the provisions of these Rules shall (unless otherwise provided) be such as are prescribed by the Council for Licensed Conveyancers' Fees Rules in force at the time of application.

## **6. Recognised Body**

- 6.1 The Council may issue a certificate of recognition to a Recognised Body to provide Probate services in accordance with these Rules provided:
- (a) at least one director of that Recognised Body has a Probate Licence or is a person or within a class of persons in respect of which the Council

gives express approval;

- (b) the objects clause in the Memorandum shall include the provision of Probate Services; and
- (c) the fee payable as specified in the Council for Licensed Conveyancers Fees Rules is paid.

6.2 The Council for Licensed Conveyancers' Recognised Bodies Rules have effect in relation to Recognised Bodies as if the references to Conveyancing Services included references to Probate Services.

6.3 In addition to the circumstances specified in the Council for Licensed Conveyancers' Recognised Bodies Rules the recognition of a Recognised Body shall automatically cease in the event that rule 6.1(a) no longer applies.

## **7. Indemnity**

7.1 The Council is authorised to take out and maintain with Authorised Insurers a Probate Master Policy and to arrange for the issue of Evidence of Probate Insurance to Probate Practices.

7.2 Each Probate Practice shall:-

- (a) pay the applicable annual premium in order to take out and maintain cover under the Probate Master Policy; and
- (b) comply with such terms of the Probate Master Policy and Evidence of Probate Insurance as apply to him.

7.3 No Probate Licence will be issued to a Probate Practitioner unless the applicable Evidence of Probate Insurance for his Probate Practice has been produced to the Council.

7.4 The Council shall be entitled to:-

- (a) require a Practice which has Evidence of Insurance to produce to it such information as it may demand concerning any Claim;
- (b) exchange information concerning any Claim with the Authorised Insurers, their representatives or the insurance brokers for the Probate Master Policy; and
- (c) receive notification from the Authorised Insurers or those brokers when any Evidence of Probate Insurance is avoided.

7.5 (a) In this rule "Claim" means a claim or circumstance defined by the Probate Master Policy; and

- (b) "Authorised Insurers" has the meaning given by section 21(5) of the 1985 Act.

## **8. Conduct**

8.1 The Council's Conduct Rules and Guidance Notes apply to Probate Practitioners in the provision of Probate Services save that where they appear:

- (a) "Conveyancing Services" is substituted by "Probate Services"; and

(b) "Licensed Conveyancer" is substituted by "Probate Practitioner".

8.2 Guidance Note 7 – Conveyancing Files to the Conduct Rules is deemed to relate to Probate Files, so far as is applicable.

## **9. Accounts Rules**

9.1 So far as is applicable, the Licensed Conveyancers' Accounts Rules 2008 apply to Probate Practitioners in the provision of Probate Services and in addition any transactions relating to any activity which is not regulated by the Council must not be recorded on a ledger or accounts system maintained in accordance with the Council's Rules.

## **10. Inspection and Disciplinary Consequences**

10.1 In order to monitor compliance with these Rules, a Probate Practice must at the time and place fixed by the Council produce to any person appointed by the Council all information held on a Durable Medium relating to that Probate Practice (to include its records, papers, files and financial accounts) reasonably required to enable the preparation of a report to the Council.

10.2 A report made following an inspection under rule 10.1 may be used as part of any investigation under section 24 of the 1985 Act.

10.3 If it appears to the Council that there has been a contravention of any of the Council's Rules a Probate Practitioner is liable to disciplinary proceedings and sanction under sections 24 and 26 of the 1985 Act and a Recognised Body is liable to disciplinary proceedings under schedule 6 of the 1985 Act.