

A GUIDE TO FELLOWS AUTHORISED TO ADMINISTER OATHS

The Institute of Legal Executives (ILEX) is a prescribed body under Section 113 of the Courts and Legal Services Act 1990, so that it can confer on its members the powers of a commissioner for oaths. In accordance with the provisions of Section 113 (10) of the Act, Fellows exercising the powers shall use the title, *Commissioner for Oaths*.

Note: ILEX will become an approved regulator in relation to the administration of oaths under the Legal Services Act 2007, when the relevant part of the Act is implemented.

.I. 1995 No. 1676 OATHS LEGAL SERVICES

The Commissioners for Oaths (Prescribed Bodies) Regulations 1995

<i>Made - - - - -</i>	<i>4th July 1995</i>
<i>Laid before Parliament</i>	<i>4th July 1995</i>
<i>Coming into force</i>	<i>31st July 1995</i>

The Lord Chancellor, in exercise of the powers conferred on him by sections 113(1) and 119(1) of the Courts and Legal Services Act 1990(a), hereby makes the following regulations:-

1. These Regulations may be cited as the Commissioner for Oaths (Prescribed Bodies) Regulations 1995 and shall come into force on 31st July 1995.
2. The Institute of Legal Executives shall be a prescribed body for the purposes of section 113 of the Courts and Legal Services Act 1990 (administration of oaths and taking of affidavits).

Dated 4th July 1995 *Mackay of Clashfern, C*

To give effect to the Statutory Instrument, the Council of the Institute has enacted the following Bye-law, under the terms of its Articles:

1. ***Those Members of the Institute of Legal Executives who are Fellows of the Institute and who pay a full subscription to the Institute shall be authorised persons pursuant to Section 113 (1) (b) of the Courts and Legal Services Act 1990.***
2. ***Such persons may undertake the administration of oaths, the taking of affidavits, and otherwise exercise the powers conferred upon such persons by virtue of Section 113 of the Act.***

The powers conferred upon Fellows, by the Institute, to act as commissioner for oaths may only be exercised by those Fellows who have paid a full subscription. A register of Fellows of the Institute empowered to administer oaths will be kept by the Institute and will be restricted to those Fellows whose full subscription has been paid. Consequently, the right to exercise the powers of a commissioner for oaths will not be available to retired Fellows.

A Fellow who is in arrear with his/her subscription is not entitled to act as a commissioner for oaths and will be acting illegally if they do so. It is the responsibility of the Fellow to ensure that his/her subscription has been paid not later than the due date, which is **1 January each year**.

The Bye-Law will be strictly enforced. In order to avoid any possible embarrassment to Fellows, they should ensure that their subscriptions are paid by the due date.

ADMINISTERING OATHS

PRINCIPLE

When administering oaths and affirmations or taking declarations, a Fellow of the Institute of Legal Executives is under a duty to ascertain:

- (a) that the deponent is in the presence of the Fellow by enquiring whether the signature to the document before the Fellow is the name and in the handwriting of the deponent;
- (b) that the deponent is apparently competent to depose to the affidavit or declaration;
- (c) that the deponent knows he or she is about to be sworn or declared by the Fellow to the truth of the statement; and
- (d) that the exhibits, if any, are the documents referred to.

COMMENTARY

1. Only if the answers to the questions set out in the Principle are satisfactory may the oath be administered.
2. The Bye-Law relating to the administration of oaths made by the Council pursuant to the Articles of Association, enables every Fellow of the Institute of Legal Executives who pays a full subscription to exercise the powers of a commissioner for oaths.
3. Section 113 (10) of the Courts and Legal Services Act 1990, provides that every authorised person has the right to use the title >Commissioner for Oaths=. Fellows should use this description when administering oaths and affirmations or

taking declarations.

4. Responsibility for the contents of the affidavit or declaration rests with the deponent and the person who prepared it. There is a duty on the Fellow administering the oath to be satisfied that the oath is in a proper form and, upon the face of it, an oath which the Fellow is authorised to administer. If it comes to the Fellow=s notice that the affidavit or declaration is incomplete, for example because it contains blanks, the Fellow must refuse to administer it.
5. Although a Fellow is under no duty to read through the oath or declaration, if a Fellow has good reason to believe that the oath or declaration is false (even if that was unknown to the deponent), the Fellow must refuse to administer it.
6. It is improper for a Fellow to share any part of the fee received for administering the oath with any person, since the administration of oaths is a discharge of a public office. However, fees received in the course of employment can properly be taken by the employer.

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8. **C OMISSIONERS FOR OATHS FEES**

The following fees are prescribed by the Commissioners for Oaths (Fees) Order 1993/2297.

- For taking an affidavit, declaration or affirmation, for each person making the same £5.00
- And in addition, for each exhibit therein referred to and required to be marked or for each schedule required to be marked. £2.00

The fees are inclusive of value added tax where payable.

The same fees are chargeable by authorised persons (as defined by the Courts and Legal Services Act 1990 s 113) when acting as commissioners for oaths:
Commissioners for Oaths (Authorised Persons)(Fees) Order 1993/2298.

CIRCUMSTANCES WHERE AN OATH SHOULD NOT BE ADMINISTERED

PRINCIPLE

A Fellow should not administer oaths and affirmations nor take declarations in a proceeding in which the Fellow or the firm by whom the Fellow is employed is acting for any of the parties, or is otherwise interested.

COMMENTARY

1. The Principle is contained in the Solicitors= Act 1974, Section 81 (2). This applies equally to Fellows of the Institute of Legal Executives by virtue of the

Institute=s Code of Conduct and a similar provision applies to commissioners for oaths by the Commissioner for Oaths Act 1889, Section 1 (3). It applies to both contentious and non-contentious matters.

2. Because the administering of oaths and affirmations and the taking of declarations involves the discharge of a public office, the Principle would, for example, prevent a Fellow from administering oaths and affirmations or taking declarations in the following circumstances:
 - (a) A Fellow should not take affidavits and declarations relating to a local authority=s business where the Fellow is a member or employee of that local authority;
 - (b) a Fellow should not take affidavits regarding proofs in bankruptcy when acting for/or in the employ of the firm acting for that proving creditor or regarding the winding up of an estate when acting for the personal representative of the testator;
 - (c) a Fellow who is employed part-time in a solicitor=s firm (or by another Fellow) must not administer oaths for a client of that employer;
 - (d) a Fellow who is in the full or part-time employment of a company ought not to administer oaths in matters in which the company is concerned;
3. It is not necessarily improper for a Fellow to administer an oath to his or her spouse, who is also a Fellow, arising out of a matter connected with that spouse=s practice or employment as a Fellow. It should nevertheless be borne in mind that, whilst there is nothing inherently unprofessional in this, doubts may arise as to the impartiality of the Fellow administering the oath and this may lead to a challenge to the admissibility of the affidavit.

However, Fellows should not administer an oath to his or her spouse arising out of a personal matter to that spouse (for example, a claim for damages for personal injury suffered by that spouse) if, by reason of their personal relationship, it could be said that the Fellow administering the oath has an interest in the proceedings.

PRACTICAL POINTS

SWEARING AN OATH

The normal method of swearing an oath or making an affidavit is for the deponent to hold the Bible (or other appropriate holy book) and to say aloud:

I swear by Almighty God that this is my name and handwriting and that the contents of this my affidavit are true (if there are exhibits add: and that these are the exhibit/s referred to).@

Variations of this wording may be preferred by followers of religions other than Christianity or Judaism.

A person who objects (on whatever grounds) to taking an oath is entitled to affirm. The deponent should say:

I, {full name}, do solemnly, sincerely and truly declare and affirm that this is my name, etc.@

A person making a statutory declaration should say:

I solemnly and sincerely declare that this my name, etc.@

THE ATTESTATION CLAUSE

The jurat or attestation clause should be completed by the commissioner to show the **date** on which, and **place** where, the oath or declaration was taken. The commissioner should add his or her signature below the jurat or attestation clause (adding his or her name in block capitals if the signature is unclear), and indicate the capacity in which he or she is acting, i.e. >Commissioner for Oaths=.

Any amendments in the text of the affidavit or declaration should be initialled in the margin by the commissioner, who must also sign the certificates identifying any exhibits.

The wording of the jurat will need to be varied for special circumstances, for example if the deponent is blind, illiterate or does not speak English. Precedents can be found in the usual practitioner texts.

More detailed information on Administration of Oaths can be found in 'Execution of Documents' by Anderson and Warner, published by the Law Society.



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