

Policy on Execution of Deeds

Policy Category:	General
Subject:	Execution of documents deemed to be deeds via Seal or Power of Attorney
Approving Authority:	Council/Finance Committee
Responsible Officer:	Senior Vice-President (Operations)
Responsible Office:	Procurement Services
Related Procedures:	
Related College Policies:	
Effective Date:	November 2020
Supersedes:	New
Next Review:	July 2024

I. Purpose & Scope

This policy describes the use of the Common Seal of the College and the designation of Powers of Attorney as means by which documents deemed to be deeds may be executed.

II. Definitions

Common Seal of the College (the “Seal”) means the official seal used by King’s College London to show that a legal document has been authenticated and approved.

“Power of Attorney” means a formal appointment by which the College (the donor) gives an authorised member of staff (the attorney) the power to act on the College’s behalf and in their name e.g. to execute deeds on behalf of the College.

“Deed” means a written document which is executed with the necessary formality (that is, more than a simple signature), and by which an interest, right or property passes or is confirmed, or an obligation binding on some person is created or confirmed.

III. Policy

1. Requirement for a Deed

1.1. In general, the circumstances under which a deed may be required include:

- a) conveyances of land, or of any interest in land and certain mortgages;
- b) leases of land for terms over three years;
- c) assents, legal charges of land and transferring title to property; or
- d) the grant of powers of attorney.

1.2 A deed may also be preferred where:

- a) there is doubt about whether there is adequate consideration (i.e. the price paid by one party in exchange for a benefit from the other, for example where a guarantee is given by a third party);
- b) the parties to a contract wish to take advantage of an extended period to bring an action for breach of contract (12 years under a deed as opposed to 6

- years under a normal contract);¹or
- c) a contract is subsequently varied or otherwise amended and it is not clear that all the parties are providing fresh consideration.
- 1.3 It is conventional to use a deed where:
- a) there are indemnities against certain tax liabilities;
 - b) there is an assignment of intellectual property;
 - c) there is a release of a security; or
 - d) a guarantee is given to a bank for amounts previously advanced.
- 1.4 At King's, deeds may be executed in two ways:
- a) under Seal (see 2 below); or
 - b) by an authorised person under Power of Attorney (see 3 below).

2. Seal of the College

2.1 When the Seal should be used

- 2.1.1 The Seal may be used in the execution of documents deemed to be deeds. Usually such documents would describe themselves as a deed.
- 2.1.2 The use of the Seal is not necessary for agreements entered into by the College which are not in the form of a deed, i.e. most of the agreements (simple contracts) to which the College is a party.
- 2.1.3 The Seal may also be affixed to agreements and documents where its use is:
 - a) required by the law of other countries (e.g. where an agreement with an international partner states that it is to be covered by the law of another jurisdiction rather than English law, and that country's law requires the use of a seal); or
 - b) desirable for ceremonial reasons.

2.2 Authentication

- 2.2.1 When the Seal is affixed to deeds and documents (other than College Diplomas) it must be authenticated by the two signatures of:
 - a) the Senior Vice-President (Operations) or designate; and
 - b) the President & Principal or other member of the College Council designated by the President & Principal
- 2.2.2 Any document purporting to be an instrument made or issued by or on behalf of the College which has had the seal affixed and has been authorised in accordance with 2.2.1 shall be treated as a deed unless the contrary is shown.

2.3 Recording use of the Seal

The Senior Vice-President (Operations) shall maintain a record of instances where the Seal has been used, which shall be available for inspection by members of the College Council.

¹¹ This provision should only be invoked when absolutely necessary and is expected to be used rarely. The six-year limitation period should be adequate for commercial agreements as the six-year limit does not engage until after a defect or problem has been identified.

2.4 Custody of the Seal

The Senior Vice-President (Operations) has custody of the Seal and is responsible for its proper safekeeping and use.

3. Power of Attorney

- 3.1 In the alternate to executing under Seal, authorised members of staff may execute deeds under Power of Attorney.
 - 3.1.1 Executing a deed under Power of Attorney removes the requirement for the Seal to be affixed and for authentication (as set out at 2.2. above).
 - 3.1.2 Executing a deed under Power of Attorney enables the document to be executed in the same way as a simple contract i.e. with the attorney's sole signature.
 - 3.1.3 When executing a deed under Power of Attorney the attorney should explicitly state within the document that they are executing the deed under a Power of Attorney granted by King's College London.
 - 3.1.4 It is possible the other party to a deed may wish to inspect the relevant King's Power of Attorney, to ensure the power is valid and the deed will be properly executed. In those circumstances it would usually be appropriate for the executed Power of Attorney document to be shared with the other party.
 - 3.15 Before exercising power of attorney and executing a deed, the attorney who will be signing should first notify the Senior Vice-President (Operations).
- 3.2 Powers of Attorney are granted to staff in specific roles by the President & Principal on the recommendation of the Senior Vice-President (Operations).
- 3.3 The number of Powers of Attorney granted at any given time is at the discretion of the President & Principal but should be no more than is needed to carry out the College's business.
- 3.4. Powers of Attorney may be limited in scope by category or type of transaction, monetary value of the agreement/contract, or both.
- 3.5 Powers of Attorney must be granted and formalised using the form attached hereto as Appendix A and reviewed by the College's General Counsel.
- 3.6 When granting Power of Attorney to a member of staff, the Power of Attorney document must be executed under Seal, following the procedure set out at section 2 of this policy.
- 3.7 A copy of each executed Power of Attorney must be filed and maintained by Procurement Services.
- 3.8 Powers of Attorney will be time-limited as appropriate for the nature of the transactions for which they are granted, but will normally be for a three-year period at which time they will be reviewed and a determination made as to whether they are renewed.
- 3.9 Powers of Attorney will cease automatically if the holder ceases to be in the specific role for which it was granted.

3.10 The list of Powers of Attorney will be reviewed by the Senior Vice-President (Operations) at least every three years.

4. Review

This policy will be reviewed at least every three years.

Power of Attorney

This power of attorney is made on [REDACTED] by King's College London a body incorporated by royal charter in England and Wales (Registered Number RC000297) and whose registered office is at King's College London, The Strand, London WC2R 2LS ("Principal").

1 Appointment and powers

1.1 The Principal appoints [NAME OF ATTORNEY] of King's College London, The Strand, London WC2R 2LS as its attorney (Attorney) and in the Principal's name or otherwise and on its behalf to:

1.1.1 consider, settle, approve, sign, execute, deliver and/or issue all deeds which the Attorney in [his OR her OR its OR their] absolute discretion considers desirable in connection with or incidental to the matter or matters set out as follows:

(a) [TBC]

1.1.2 take any steps or do anything which the Attorney in their absolute discretion considers desirable in connection with the implementation and/or execution of the matter or matters set out in paragraph 1.1.1.

1.2 The Attorney shall not have the power to appoint any persons to act as a substitute attorney for the Principal nor allow such persons to exercise one or more of the powers conferred on the Attorney by this power of attorney.

2 Duration

This power of attorney shall expire and cease to have effect on the earlier of:

2.1 receipt by the Attorney of written notice of the Principal revoking this power of attorney;

2.2 11.59pm on the day before the [NUMBER] anniversary of the date of this power of attorney;

2.3 the date on which the Attorney's job title in respect of [his OR her OR its OR their] employment with the Principal changes (which, for the avoidance of doubt) on the date of this power of attorney is [TITLE]; and

2.4 the date on which the Attorney ceases to be an employee of the Principal.

3 Ratification

The Principal undertakes to ratify and confirm whatever the Attorney does or purports to do in good faith in the exercise of any power conferred by this power of attorney.

4 **Validity**

This power of attorney will be conclusively binding on the Principal in favour of third parties who have not received notice of its revocation. This clause does not apply in respect of any actions taken by the Attorney outside the scope of this power of attorney.

5 **Governing law and jurisdiction**

This power of attorney and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it, its subject matter or its formation shall be governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this power of attorney or its subject matter or formation.

This agreement has been entered into as a deed on the date stated at the beginning of it.

Executed as a deed by
[NAME]

.....

Principal

a duly authorised signatory
of King's College London

in the presence of:

Signature of Witness:

Name of Witness:

Address of Witness: