

THE NOTARIES SOCIETY ANNUAL CONFERENCE 2014: THE MASTER'S ADDRESS

Mr President, Members of the Society, thank you for again inviting me to address your annual conference. I am accompanied by others from the Faculty Office, for whose work over the past year, which has been one of considerable pressure, I am indebted. What I am about to say will be posted next week on the Faculty Office website, which has been entirely refreshed since the last Annual Conference and is now, I believe, much more user-friendly. You should all find it a useful resource for the latest version of the various Rules and Regulations that govern your profession, and it includes a new section on recent disciplinary cases.

THE REGULATORY BURDEN

I have now been your approved regulator for rather more than five years, and this is the sixth time I have had the honour of addressing you. In that five year period, which also saw the introduction of the Legal Services Board as an over-arching regulator for all the legal professions, there has undoubtedly been an increase in the regulatory burden on you.

Last year I made certain predictions about the outcome of the then Ministry of Justice review of legal regulation. This turned out to be rather a damp squib, because the government has no appetite for legislation and the professions and their regulators were by no means in agreement as to the way forward. The LSB now has a new Chairman whose role seems likely to involve a winding-down, rather than ratcheting up, of the LSB's role in legal regulation. That is welcome. On the other hand there are still those,

including the LSB, who champion a single legal regulator for the different legal professions, which for reasons I mentioned last year would not be welcome to the Faculty Office or we believe to the notarial profession. On 14 July last we attended a rather unsatisfactory meeting of all the approved regulators with the Lord Chancellor to discuss the way forward; and on 2 October there is to be a meeting with the LSB and the approved regulators to see what common ground exists for changes to the relevant provisions of the Legal Services Act 2007. Any amending legislation cannot be brought forward until after the General Election, and would be dependent of course on the views of whatever political party or coalition will then be in power.

THE NOTARIAL PRACTICE COURSE

As I mentioned last year, there was a first-year intake to the new UCL course of 46 students in Autumn 2012, of whom 43 were progressing to year 2 in 2013/14. I am pleased to report that 35 have now passed their notarial examinations, and the Faculty Office is currently receiving a steady flow of applications for admission. Last year's first-year intake was 26, of whom 23 passed their first-year exams, and now progress to year 2. The first-year intake this September is again 26 confirmed, well sufficient to make the course viable for the provider.

ADMISSIONS

2 new general notaries have been admitted since last September and there are a further 22 applications dependent on successful completion of the new Office Practice Course

taking place on Saturday week (the comparable figure for 2012/13 was 15). In addition, 5 Overseas Notaries have been admitted in the same period (compared to 8 in 2012/13).

NUMBER OF NOTARIES

Last year I reported that the profession had slightly reduced in size. I then said that one task for your Society must surely be to ensure that this decline in numbers was reversed, and I know that a number of initiatives have been undertaken to inform university law students of the existence of the profession of general notary, as well as initiatives by your President and your Council to explore new avenues of work. I fear the decline in numbers has continued, 796 Practising Certificates having been issued since November 2013, compared with 812 the previous year,

BOARDS

The Qualifications Board has kept under review a wide range of matters, including certificates of exemption. During 2013/14 the Board considered 87 applications (compared with 83 the previous year) and issued 31 certificates of exemption (compared with 17 the previous year). It has been good to welcome to the Board Dr Geoffrey Rowell (who had a long academic career at Oxford University before becoming a Bishop) and Dr Nicholas Hatzis, a Senior Lecturer in law at City University. My debt to Dr Peter Smith who chairs the Qualifications Board continues. The Board has been refreshed by the addition of two additional practising notaries, Nicola Plant and James Couzens.

THE NOTARIAL ADVISORY BOARD

I asked the Advisory Board, under Colin Menzies' conscientious chairmanship, to concentrate this year on four topics: entity regulation (a matter of more concern to scriveners than to general notaries), the role and content of CPE, preparation of a Code of Conduct to supplement the new Practice Rules (and referred to in rule 5), and the contingency fund and the funding of disciplinary proceedings. All these topics are still very much "work in progress", and I shall be returning to the fourth topic in a few minutes time. The Board has also spent some time considering different regulatory models and what changes (if any) are appropriate for the special circumstances of notaries. There is one new member of the Board this year, Vidal Martin, who will I am sure make a significant contribution.

CONTINUING PROFESSIONAL EDUCATION

I reported last year that a significant number of notaries failed, almost all for extremely bad reasons, to complete their CPE in time, and the Faculty Office, on my instructions, has rigorously refused applications for waiver. I expressed the hope that in October 2013 there would be no repetition of what happened the previous year, and I am glad now to report a marked decrease in failures to complete CPE. As already mentioned, a review of CPE is underway, and account will be taken of the conclusions reached by the SRA and BSB, though the relevant circumstances are rather different, and I should warn you that requests, such as one I received very recently, that CPE should be limited to attendance at one event every five years, are most unlikely to be acceptable (to me or to the LSB).

RULES

Last year I reported the making of the Notaries (Practising Certificates) Rules 2012. Since the last AGM, the Notaries (Qualification) Rules 2013 have been made, requiring completion of the Office Practice Course, requested by your Society and also containing provisions aimed at those who defer commencement of practice for so long a period that their notarial practice qualifications have become stale. I have also made the Notaries Practice Rules 2014 and the Notaries (Inspections) Regulations 2014. I particularly draw your attention to the General Principles set out in rule 4, which are indicative of the more “outcomes-focused” approach we are now adopting, and to the provision for the electronic storage of documents in rule 23. Rule 3.2 clarifies that:

“A notary in possession of a valid practising certificate ...may issue notarial acts in the public or private forms intended for use in England and Wales and in any other jurisdiction”.

This is slightly less ambitiously worded than some of your officers had hoped, but will I hope prove of value in disputes with some of your continental colleagues. The observant among you will have noticed that Rule 20 was missing. But its new wording covering investment business has now been agreed by the LSB and I have made an order bringing it also into force.

INSPECTIONS

The new inspections procedures are contained in the Practice Rules and the Inspections Regulations. When I had outlined these to last year's annual conference, there was some lively questioning from the floor of the Faculty Office representatives, particularly

relating to a notary's duty of confidence to clients, and how this might conflict with the then proposed inspections. The position is now put beyond doubt by rule 24.2 of the Practice Rules 2014 which provide that:

“The records which may be inspected...shall include all documents in the notary's possession relating in any way to his practice as a notary, whether or not they also relate to non-notarial matters...”

It will be in vain for any notary to pray in aid confidentiality, since, as Lord Denning MR said in *Parry-Jones v Law Society* [1969] 1 Ch at p6-7:

“the solicitor [the position of a notary being no different] must obey the law, and in particular he must comply with the rules made under the authority of statute for the conduct of the profession. If the rules require him to disclose his client's affairs, then he must do so”.

The first Inspections took place in May this year, and so far 17 have taken place, 16 involving general notaries and 1 involving a scrivener notary. The total number of inspections by the end of the year will be 20, and the number of inspections in 2015 will be the same. Whilst a number of small irregularities have been brought to light, I am pleased to say that no serious causes of concern have been identified. I am grateful to the two experienced general notaries who have conducted the inspections, and to all those whose practices have been inspected for their willing cooperation. My impression is that this has been a generally positive and helpful experience for those inspected.

COMPLAINTS

Complaints against notaries continue to be few. In 2013 the approved procedure for service complaints operated by the scrivener notaries had 2 complaints (none in 2012). One was dismissed, but the other went on to become the most expensive case yet heard in the Court of Faculties. The equivalent Notaries Society procedure had 16 complaints (11 in 2012) of which 7 were either not pursued or withdrawn by the complainants; 3 were resolved between the notary and the client direct; 1 was referred to the Faculty Office for the appointment of a nominated notary, leaving just 5 to be the subject of formal decisions by the Society following an investigation. 4 of the formal decisions by the Society led to dismissal of the complaint, and in 3 of these cases the complainant pursued the complaint with the Legal Ombudsman who upheld the Society's decision. In addition the Faculty Office had 5 telephone calls or emails from dissatisfied customers, 2 of whom decided to proceed no further, 1 was settled after brief correspondence with the notary concerned, 1 is currently the subject of misconduct proceedings in the Court of Faculties, and the fifth is on hold pending the outcome of a criminal prosecution of the (now retired) notary. Only one case has been heard by the Court of Faculties since the last annual conference (involving a scrivener notary and to which I have already alluded), where the complaint was upheld. However, in that case the Contingency Fund was ordered to make a very considerable contribution to the overall costs in an amount totaling £72,059.66, which means that the Fund stands in need of immediate replenishment. With the benefit of invaluable advice from the Commissary, Judge Anthony Leonard QC, I am proposing to amend significantly the rules relating to disciplinary cases, partly aimed at ensuring that costs which are potentially recoverable

from the contingency fund are kept to a minimum. I regret to say that there are another 3 disciplinary cases in the pipe-line, this time all involving general notaries.

THE COST OF REGULATION

The levy paid to the LSB (including the OLC element) in 2013 was £25,976 (compared to £36,699 in 2012). Happily, there was a surplus of £20,119, compared with a small deficit in 2012 of £3,534, so that the accumulated surplus of unrestricted funds stood at £12,203 at the end of 2013 (compared to the figure the previous year of £7,084). I refer to unrestricted funds because last year's surplus of £20,119 included £15,000 collected in advance to cover the cost of inspections in 2014. I am pleased to tell you that the Practising Certificate fee, which has been subject to annual increases in recent years, can be held at £450 for the current year. I regret that, for reasons already explained, the contribution to the Contingency Fund will double from £40 to £80, the target remaining to have a Contingency Fund of about £100,000 to cover the cost of disciplinary hearings. In April 2013 there were increases in the appointment fees to £575 for England and Wales appointments and £625 for Overseas Notaries, and there will be no increases this year. We shall continue to do all we can to minimise costs at our end.

I end with the hope that today's conference here in what we ecclesiastical lawyers term the Northern Province will be as stimulating and informative, as the programme suggests it will be.

Charles George QC
12 September 2014