

The Notaries Society Annual Conference 2016

The Master's address

Madam President, Members of the Society, thank you for again inviting me to address your annual conference. In Wales, as opposed to England, I have no jurisdiction as Dean of the Arches, though as Master of the Faculties I have nominal responsibility for the issue of special marriage licences in Wales, and my notarial jurisdiction covers both Welsh as well as English notaries. Cardiff is a splendid city, and has the principal concentration of providers of legal services in Wales. Cardiff Castle is one of my favourite stately homes to visit, the Victorian elements built like so much else in Cardiff on the produce of Welsh coalfields.

I am accompanied by others from the Faculty Office, for whose work as always I am indebted. Howard Dellar, after several years of service as first Deputy Registrar and then Joint Registrar, is now in sole charge, following the retirement of Peter Beesley at the end of April. The day to day work at the Faculty Office falls to the highly experienced Stephen Borton and Neil Turpin. Ian Blaney, whom some of you will remember from when he was a clerk in the Faculty Office, has now been appointed Deputy Registrar, but is in London today, representing the Faculty Office at a meeting of legal regulators called by the Legal Services Board.

What I am about to say will be posted next week on the Faculty Office website, which I hope you continue to find a helpful resource, in particular for the latest version of the Rules and Regulations that govern your profession. More information is now being posted on this website, in the interests of greater transparency to which we are committed.

EXTERNAL APPRAISAL

Along with other legal regulators the Faculty Office's performance is reviewed every three years by the super-regulator, the Legal Services Board. In May 2016 the LSB issued its latest *Regulatory Standards Report*. All regulators were assessed against five regulatory standards: outcomes-focused regulation; risk assessment; supervision; enforcement and capability and capacity. The FO scored "satisfactory" on supervision and enforcement, and "undertaking improvement and work well underway" on the other three heads. The LSB's overall comment was that "The FO has made good progress across the regulatory standards....Whilst we consider there needs to be further focus on change, it is encouraging that progress is being made".

Further work was said to be needed in developing an understanding of the needs of consumers, greater transparency, a documented and structured approach to risk management, and ensuring a wide range of views are captured when reviewing regulatory arrangements. The terms of a regulatory standards action plan have been agreed between the LSB and the Faculty Office and is currently being implemented. Personally I was encouraged by the results of this appraisal, but there is never room for complacency.

PRIORITIES FOR 2016

Last January I set some priorities for the year, of which the most important so far as your Society is concerned were:

- 1) the finalisation and introduction of a Code of Practice for notaries, envisaged by rule 5 of the Notaries Practice Rules 2014
- 2) making progress towards entity regulation
- 3) investigating and achieving the reduction of any unnecessarily burdensome regulation.

Great progress has been made in respect of the Code of Practice, which is intended to be a user-friendly supplement to the other notarial rules. A significant debt is owed by the profession to the triumvirate who undertook the drafting, namely Ian Rogers, Elaine Standish and Nicholas Thompson. Following consultation with the two notarial societies, the Code has now been with the Legal Services Board for its approval for the last month. My hope had been to adopt the Code before this conference. This has not proved possible, but I am confident that the Code will be adopted very soon. I urge you all to study its provisions and pay regard to them in the conduct of your practices as notaries. Under rule 5.2 of the NPR, failure to have regard to the Code of Practice ‘may amount to “Notarial Misconduct”’.

Some progress has been made towards entity regulation, necessary not merely because traditionally scrivener notaries have operated through firms, but also because an increasing number of general notaries have also chosen to operate in this way. It now seems that we may need to ask the Lord Chancellor to make an Order under section 69 of the Legal Services Act 2007, which would also need a recommendation from the Legal Services Board. Entity regulation remains therefore very much work in progress.

The profession has not responded to my appeal at your last conference for suggestions for reduction of the regulatory burden. The alterations to rules 18 and 19 of the Notarial Practice Rules 2014, which I mentioned last year, are the only likely changes, together with a change to rule 3 of the Qualifications Rules to extend the pool of those who may apply to include chartered legal executives, and some tidying up in relation to rule 8 of the Qualifications Rules relating to qualifications for notaries from other jurisdictions wishing to practice in England and Wales.

NOTARIAL BOARDS

The Qualifications Board and the Advisory Board have continued their helpful work under the chairmanship of respectively Dr Peter Smith and Colin Menzies. The former will retire after almost two decades of invaluable work at the end of December, and I am delighted to have secured the services of Rob Chambers, Professor of Private Law at KCL, to succeed him. In 2015/16, the Qualifications Board considered 61 applications (compared to 82 the previous year) and issued 28 certificates of exemption, (compared to 42 the previous year). A further 16 certificates of exemption were issued to applicants who had successfully completed the additional modules which the Board had required of

them. In addition to time spent on the Code of Practice and entity regulation, the Advisory Board carried out valuable work in relation to diverse matters such as the storage of notarial records and consumer engagement. I am looking to increase lay representation on the Advisory Board. I repeat my thanks to all those (notaries and non-notaries alike) who have served on the two boards during the past year.

CPE

Elaine Standish and her team, as well as other providers, have continued their valuable work in this area. No changes are currently envisaged.

RULES

After the major rule changes in 2014 and 2015 (the NPR 2014 and the C&D Rules 2015), there have been no new rules this year. Minor amendments should follow later this year, and I propose to make regulations designating county archives for record-storage, subject to conditions, under NPR 25.1.3. Early this year when attending a lecture on the history of the Jews in Sicily, new light was thrown for me on the importance of retention of notarial records by my recent discovery that Sicilian notarial records of the early modern period are a new and so it would seem still only partly tapped historical archive.

INSPECTIONS

There has been a successful third year of Inspections. In a few cases the regulatory information about fees and complaints was not being supplied to clients satisfactorily, and particularly for probate and conveyancing matters, where further information needed to be supplied as the matter progressed, and there was one case where record keeping was very poor. Generally, however, there were few causes for concern, and the Inspectors praised the willingness of many notaries to work outside usual office hours and at places other than the notaries' office. Their annual report is now on the Faculty Office website and I strongly recommend you all to read it, since there are a number of practical recommendations by which your practices might be improved. At the end of the year Robert Pickford will retire and I am very grateful to him, and his fellow Inspector, Michael Pulvermacher, for masterminding the new system in a way which I believe has served the interests of notaries as well as the public interest.

COMPLAINTS

Happily complaints against notaries continue to be few. In 2015 the approved procedure for scrivener notaries again had no complaints. The equivalent Notaries Society procedure had 12 approaches (compared to 10 in 2014), of which only 2 were the subject of formal adjudication by the President and Vice-President, and a further 2 were passed to the Faculty Office for the appointment of a Nominated Notary. The remaining eight, whilst initially termed "complaint", were really more in the nature of enquiries which were "resolved" by the Society's Secretary. The Faculty Office had 2 telephone calls or emails from dissatisfied clients, which were passed to the Society and are therefore

included in the above figures. No cases have been heard by the Court of Faculties since the last annual conference. There are 2 matters in respect of which Nominated Notaries have been, or will shortly be, appointed, but no decision has yet been taken as to whether these will become formal disciplinary cases to be determined by the Court of Faculties. Regrettably I had cause to strike from the Roll of Notaries one notary in Gibraltar. It is welcome that the New Zealand Society of Notaries is considering the introduction of new disciplinary procedures.

THE NOTARIAL PRACTICE COURSE

39 students began the first year of the UCL course in Autumn 2015 (compared to 21 in 2014), and of these 34 have now moved on to the second year of the course. 48 students have commenced the first year course this Autumn. This is a record intake, and a delighted UCL are putting additional resources in place to meet the demand. 28 students successfully completed the second year of the course (compared to 24 in 2015), and around half of these have now been formally admitted as notaries.

ADMISSIONS

16 new general notaries have been admitted since last September (the comparable figure for 2014/15 was 35). In addition 5 Overseas Notaries have been admitted in the same period (compared to 7 in 2014/15). I take the opportunity to welcome the steps being taken in New Zealand and in Guernsey better to prepare candidates for admission.

THE SIZE OF THE PROFESSION

In the period since November 2015 799 Practising Certificates have been issued, compared to 813 in 2014/15, but another 12 admissions are anticipated, so numbers remain about the same. In other words the broad picture is one of constant numbers, with admissions keeping pace with retirements, sabbaticals or deaths. I am hopeful that the record number starting the UCL course this Autumn may mean that in two years time I can report an increase in the size of the profession, something for which we have all been hoping for some time. The work being done with university students by Michael Lightowler and Iain Rogers deserves continuing support.

REGULATORY THREATS

There are three threats which deserve mention. The first is the continuing ambition of Scottish notaries to be able to practice in England and Wales without any authorisation from, or regulation by, the Faculty Office. I referred to this matter last year. The Law Society for Scotland now hopes to achieve express statutory authorisation for such Scottish notaries, claiming that the present system is uncompetitive – I refer those who are interested to what the Law Society of Scotland set out in its recent submission to the *Legal Services Market Study* which is being carried out by the Competition & Market Authority.

Second ICAEW, the body responsible for regulating accountants as well as representing their interests, is seeking additional regulatory powers to enable it to regulate notaries employed in accountancy firms. The ICAEW's application is currently being considered by the Legal Services Board and has been opposed by both the Faculty Office and the two notarial societies. Whether there are in fact any firms of accountants who wish to employ notaries or otherwise engage in notarial activities remains obscure.

The third development is the proposals are set out in the LSB's new report, *A Vision for legislative reform of the regulatory framework for legal services in England and Wales*, published on 12 September, stimulated in part by the Interim Report (July 2016) of the Competition and Market Authority's study. I am certain that the Faculty Office will not be alone in resisting certain aspects of these proposals, which include confining regulation to "specific high risk activities", ending regulation "based on professional title", for example, barrister solicitor or notary, and creating "a single regulator covering the whole market", presumably the LSB itself in re-invigorated form in place of existing legal regulators. With the exception of one short mention, there is no analysis of the international aspect, a matter important for the Bar and absolutely critical for public notaries, as will be explained to the new Lord Chancellor if your President, the Chairman of the Society of Scrivener Notaries and I can obtain an audience with her.

THE COST OF REGULATION

This is rightly of concern to all notarial practitioners, who foot the bill, and indirectly also to consumers of notarial services. Those of you who wish to examine in detail the income and expenditure of the Faculty Office in relation to notarial regulation, including trends in unit costs of regulation relative to the size of the regulated community year by year from 2010, are referred to the LSB's Report, *Cost of regulation: transparency of reporting The Faculty Office* (February 2016).

The levy paid to the LSB (including the OLC element) in 2015 was £25,538 (compared to £25,389 in 2014). Happily, there was again a surplus in the annual Faculty Office Notarial Account (this time of £7,720, reduced compared to £21,326 in 2014), so that the accumulated surplus of unrestricted funds stood at £32,249 at the end of 2015 (compared to the figure of £28,529 at the end of 2014. For the past three years, the Practising Certificate fee has been held at £450. I fear it must increase this November to £490. However, there is a silver lining. In 2014 and 2015, the contribution to the Contingency Fund was £80, and this year the figure will reduce to £20, because there is now a Contingency Fund in excess of £100,000, sufficient we hope to cover the cost of disciplinary hearings. Taking together (as the LSB does) the total of the Practice Certificate fee and the Contingency Fund contribution, that total will fall by £20 from last year (that is from £530 to £510).

For the third year running there will be no increase in appointment fees (£575 for England and Wales appointments and £625 for Overseas Notaries). We shall continue to do all we can to minimise costs at our end, in line with the LSB's view that the cost of legal services should wherever practicable be reduced..

I end by thanking your President for all she is doing for notaries and for a constructive relationship with the Faculty Office, and I look forward to an informative conference which she and her Council have arranged for us all, and to the opportunity of meeting some of you at this conference, and especially younger members on whom the future of your profession depends.

Charles George QC
23 September 2016