

## NOTARIES (INSPECTION) REGULATIONS 2014

### INSPECTORS' REPORT FOR 2018

In 2018 we have inspected 20 notarial practices. Six of these were practices where the notary did conveyancing and/or probate work as a notary.

One Notary was warned by the Faculty Office that continued failure to cooperate with an Inspector in arranging an inspection meeting would be regarded as Notarial Misconduct. A date for the inspection was then arranged but this person cancelled this appointment before it took place with the intention of resigning from practice as a Notary before it took place. The situation was reported to the Faculty Office.

Apart from this person, as in previous years the notaries we inspected were helpful and considered the inspections as an opportunity to improve their practices.

Most of the work we inspected appeared to be being done quickly and efficiently. However we have concerns over:

- Very brief notarial acts eg. 'signed before me'; which does not state who or when has signed not the capacity in which it was signed when this was not a personal capacity.
- Issuing notarial acts which are almost valueless as evidence. eg. certifying that a document is a copy of a copy when the original document from which a copy is made has not been seen by the notary. In many countries documents with a notarial signature and seal have a high evidentiary value and we feel that they should not be used unless the document justifies notarial authentication, the problems with 'freemen' documents which are now not notarially authenticated are an example of this.
- Most of the multi-page documents we saw on inspection are satisfactorily secured but there are still some where the security is not satisfactory.
- We found one probate practice where matters were taking longer than we felt they should. This has been mentioned in previous reports and we are concerned that probate and estate administrations in a few practices are too slow.
- Although most of the practices we inspected are correctly identifying corporate bodies by number and place of jurisdiction there are still some notaries who are not doing this.

In general the inspected practices were being administered efficiently and the following specific points occurred to us:

- One notary produced an office manual in which were kept office documents relating to the administration of the practice such as data protection policy, money laundering review etc, which seems to us to be a good practice.
- The noting of fees quoted is very variable, the better practices made a note of quoted fees at the time they are quoted others do not and so render themselves liable to disputes as to what is quoted although we were not told of any matters where such disputes had occurred.
- All the practices were aware of the Anti Money Laundering Guidance 2018. Not many notaries had read it through at the time of our inspections. We were not told of any instances where a notary had reported a matter as suspicious nor in our limited inspections of particular matters did we find any suspicious matters which should have been reported.
- As in previous years there are still a few notaries who are not supplying the information required by rule 8 Notaries Practice Rules 2014 and some of those who do supply information are not doing so in the form required. In the latter cases it is usually only minor variations in the words used or because an out of date version of the form is being used and so any one wishing to complain would be signposted in the right directions.
- There are still considerable variations in the standard of software used for keeping records. Some is good other can be slow and badly organised so that it took longer for us to trace matters than should be desirable. We found that registers and protocol files kept in hard copy were generally easier to use than electronic records.
- Most of the inspected notaries had data protection policies we were able to look at and found satisfactory but there were still some notaries who had not created data protection policies. In the case of one Solicitor-Notary, the wording of the GDPR Privacy Notice for the business of

the solicitors of the firm was not appropriate to the Notary's notarial practice. In two separate cases notaries with websites had not posted their Privacy Notices on the site. This has been corrected by one Notary since the inspection.

- Some registers electronic or manual had entries which we felt were too brief ie. from the entries it was not possible to identify the particular document the subject of identification eg several entries simply stated 'Power of Attorney' without the parties or very brief description of its purpose.
- One notary had no protocol file although as he had not authenticated any public form documents he was not required to do so under the Practice Rules. However, almost all notaries now keep a protocol or similar file with copies of authenticated documents and we consider that this should now be accepted as best practice. Another notary was not keeping copies of certified documents. He is not obliged to do so but this particular inspection was concerning because there was a bill of £1130 for certifying copies of 113 documents ~~but~~ and it was not possible to verify exactly what had been done. The Inspectors bear in mind a case which became known to the Council of the Notaries Society a few years back, when there was a possibility that someone had tampered with a notarial document. Not only was it not bound properly, but the Notary had also not kept a copy and was therefore unable to prove what the document had contained when it left his office.
- In conveyancing and probate practices we are concerned that in some matters information had not been given to clients at the beginning of matters about fees, time required or work to be done. Nor were there notes on the files of attendances and management. To some extent this may be because so much work is now conducted by e-mails and similar but records of these generally seem to be kept in one central file, perhaps a reversion to letter books which were equally unsatisfactory.
- In most of the practices we inspected where there was use of a solicitors' office the Notaries concerned had taken some steps to ensure that clients know that the notarial practices are separate from that of the solicitors but some minor omissions were noted eg footers to e-mail messages so that they appeared to come from the solicitors.
- Only one if the practices we inspected sought feedback as to the client's opinion of the notarial service and even in this practice it was not receiving much response. Another notary had previously sought feedback but has now abandoned the practice as being of little or no value.
- Rule 23.5 of NPR 2104 requires notaries to notify passwords to their computer records to the Faculty Office. Many have not done so, some raised concerns as to how they could ensure their passwords were secure and we discussed with them the possibility of sending them in sealed envelopes. One notary for good reasons of security changes his password every month and another has access protected by his thumbprint.
- Information stored on the computer system of two notaries was encrypted. One of these notaries also offered clients the facility of encryption of e-mails which was accepted by most of the notary's clients. The same notary had received independent accreditation of the systems security under the Government Cyber Security Plan.
- In answering question 2 of the Questionnaire we have in many cases mentioned notaries' websites as a useful means for the public to find a notary. Several notaries have gone to a lot of trouble over the information on their particular websites to explain the function of notaries and the purpose of legalisation in general and the apostille in particular. However we have concerns as to their usefulness because there are many notaries' web-sites which offer notarial services over wide geographical areas so that the sites of individual notaries or those of notaries in a particular area can be difficult to find. Some websites give the impression that there is only one notary for a particular area who may be a long distance away from the place where one is needed. Search engines can be unhelpful, for example, in the case of one major city in the North of England where there are probably six practising notaries with web-sites only one of is shown on the first three or so pages of a google search and only three of the six are shown on the first six pages of a search, the rest of the search results relate to notaries beyond the expected catchment area for that city. There are also further problems if the place has the same name elsewhere in the world so that overseas notaries web-sites are shown which clutter up a search. We do not think there is any easy answer to this problem but it does reduce the usefulness of a website for finding a notary.

We were concerned about a matter where a notary had prepared a will for very wealthy client and on instructions from the client had included a substantial legacy for himself. We felt that the client should have been required to take independent legal advice about the legacy but this had not been done. It may be that notaries should be reminded in the Code of Conduct of the need to do this.

17<sup>th</sup>. December 2018

N. Harding

I.A.D. Martin

F.M. Pulvermacher