

INSPECTORS' REPORT FOR 2019

By the date of this Report, we had inspected 12 Notarial Practices and four more inspections are pending. Two further inspections have had to be put on hold as investigations are pending into the practices concerned. Overall, four of the Notaries carry on Conveyancing and/or Probate work as a Notary.

As has generally been the case in previous years, the Notaries whose practices we inspected were very co-operative in quickly arranging dates for inspections and making appropriate facilities available to us on the days of the inspections.

In general, the work done by the Notaries whose practices we inspected was of a high standard and the Notaries gave an efficient service to their Clients; despite, in the case of some Solicitor-Notaries, being under pressure from the demands of their Solicitors' practices. Most Notaries were flexible in their working hours to accommodate their Clients. Most Notaries had offices that provided good, or excellent, accessibility and other facilities for Clients with disabilities. One firm provided 'induction-loop' facilities in its meeting room.

All the Notaries whose practices we inspected had websites. Most were informative and most – but not all – were easy to use. A common factor in relation to the websites of some Solicitor-Notaries was that information in relation to Notarial practices was given in a manner that was not clearly separate from the related Solicitors' firm or practice, and was 'tucked away' on a page relating to the Solicitors' 'Business Services' (or similar). Similarly, on some websites, or the pages relating to Notarial services, it was not made clear that the Notary was regulated through the Faculty Office in the provision of these services. It is fair to record, however, that when attention was drawn to these issues, the Notaries concerned either made, or put in hand, appropriate changes to the design of their websites.

All the Notaries whose practices we inspected had good, and consistent, procedures for verification of Clients' identities and addresses; and for retention of copies of documents they inspected for these purposes. The Notaries were not consistent in the length of time they retained these copies. As the GDPR provides personal data is "kept in a form which permits identification of data subjects for no longer than is necessary for the purpose for which the personal data are processed"¹, we think it would be appropriate for the Profession to be given authoritative guidance on what is 'necessary' in situations where the ID document was not itself the notarised document, or attached to a notarised document (and so covered by the provisions of either rule 24.3 or rule 24.4 of the Notaries Practice Rules 2019).

Whilst most of the Notaries whose practices we inspected used the Model GDPR Privacy Notice and Agreement with Suppliers published by The Notaries Society for the use of its Members, some Solicitor-Notary Practices used GDPR documentation (provided, for example, as part of Lexcel accreditation) which was not really appropriate to the Notarial Practice.

Security measures taken by the Notaries whose practices we inspected were generally good. Seals and hard copy registers and other records were locked away when not being used. So far as electronic protection was concerned, all the Notaries – at a minimum – protected their computer systems by the use of passwords and anti-virus and anti-malware software. Many Notaries used forms of encryption. Several Notaries engaged the services of outside IT Consultants for the maintenance of their systems, including security

¹ GDPR, Article 5, 1(e)

features and back-up and disaster-recovery procedures. One firm is certified under the Government's 'Cyber Essentials' Scheme'.

Most of our Inspections took place in the early part of the year. At the time of those Inspections six Notarial Practices had developed their own Anti-Moneylaundering Policies and documentation (in three cases with the assistance of outside Consultants). Three other Notaries either had adopted, or were in the process of adopting, policies and documents published by The Notaries Society for the use of its Members.

Only two of the Notaries inspected had had occasion to make reports to the National Crime Agency in the last three years. (One further Solicitor-Notary had made a report but in the capacity as a Solicitor).

We have these additional comments from our Inspections:

- Not all Notaries made searches in the Individual Insolvency Register against Clients who were individuals and one Notary felt it unnecessary - because of the high-profile of certain major corporate Clients who provided very regular Notarial work, and the stability of their Boards of Directors – continually to make searches in respect of them every time work was carried out. The Notary commented to the Inspector concerned that doing searches on each occasion and making a charge for them could not be justified. This is not an approach with which we can agree. The time taken to search on the Companies House and/or London Gazette websites is minimal and the searches are free. We understand that persons undergoing the UCL Notarial Practice course are advised to make these searches and, where relevant, to search the Individual Insolvency Register (also free). Whilst there is no specific provision in relation to this matter in the Code of Practice and it is therefore for an individual Notary to make his or her own risk assessment in relation to the need to make searches in a particular instance, we recommend doing so as a matter of general practice.

Separately, the same Notary commented that the Notary's understanding was that documents received at Companies House took about two weeks to be processed before they reach the file of the particular company; so that searches in respect of Officers and other filings would not necessarily be up-to-date. The Inspector concerned contacted the Customer Care Manager at Companies House and was told that the situation *"varies greatly depending on depending on a) the document type filed and b) the method used for filing it. With most electronic filings it is pretty instant. If our systems don't require any manual intervention for any reason, it will be on the record as soon as it's filed. If it does require manual intervention (for a human to check the data), our processing target for electronic is 24 hours. In terms of paper filings, for general filings (accounts, officer details etc) I would allow generally 8 working days apart from peak filing times (Sept & Dec) when this could be a good few days longer. If the filing is for something more complex (Overseas Registrars Functions etc), the processing times could well be around the 2-week mark"*.

- Some Notaries published out-of-date or incorrect versions of the Complaints Procedure on their websites.
- Some Notaries who were Partners in, or Consultants to, Solicitors' Practices did not have separate registrations with the Information Commissioner's Office in respect of their Notarial work. The consequence of not doing so is that a non-Notary Data Controller technically can require access to data relating to Notarial Clients. This is not appropriate in our view. Again, it is fair to record that when the attention of the Notaries concerned was drawn to the matter, separate ICO registrations were made promptly.

- We are very influenced by a case which came to the notice of the Council of the Notaries Society a few years ago. In that case, the document had not been bound and it was eminently possible that it had been tampered with. The case was compounded by the fact that the Notary concerned had not kept a copy of the document (which was in the public form) and therefore (quite apart from considerations of professional conduct) he was unable to prove what had been in the document when it had left him. We therefore consider the matter of proper record-keeping to be of the utmost importance, and are happy to give advice in the course of an inspection to inspectees, if it is necessary. Again, it is fair to record that when attention was drawn to this matter, the advice was gratefully accepted.
- One case was encountered where, although the Notary concerned bound his documents, this was done by using the corners of the Solicitors' practice. This insufficient separation of practices was drawn to his attention, and changes were promised.
- Some Notaries keep handwritten Notarial Registers. We found that in some cases, the handwriting was not very legible! This could give rise to problems if a third party had to refer to the Registers.
- Not all Notaries retained copies of emails or letters containing quotations for fees and disbursements or a Diary (or some other means of record) where quotations had been given verbally.
- As has been mentioned in previous Annual Inspection Reports, whilst most Notaries whose practices we inspected are correctly identifying corporate bodies by their registration numbers and countries of incorporation, other Notaries were still not doing so. We consider this practice to be an important self-protection measure for Notaries to take in these days of heightened A-ML concerns.

December 20, 2019

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