



FACULTY OFFICE

**Minutes of the Meeting of the Advisory Board held
remotely via video conference
on Wednesday 3 June 2020 at 11:00am**

Present: Mark Craig (Chair)
Jonathan Coutts
Michael Heap
Elaine Standish
Christopher Vaughan
Michael Lightowler

In attendance: Howard Dellar, Registrar Faculty Office
Ian Blaney, Deputy Registrar Faculty Office
Neil Turpin, Chief Clerk Faculty Office & Clerk to the Board
Emily Fellows, Trainee Solicitor in Faculty Office (minute taking)

Part I

1. Apologies

There were no apologies for absence.

2. Minutes of the last meeting

The minutes of the meeting held on 25 March 2020 were circulated and approved.

3. Matters arising not otherwise on the agenda

Code of Practice update

Work on updating the Code of Practice was almost complete with only one section on the "Administration of Oaths" outstanding awaiting Faculty Office input. The Faculty Office confirmed that they would respond as soon as possible. The delivery format was still to be

decided. As this work was updating and not redrafting the Code of Practice it would not be appropriate for consultation.

The project would be completed before the next meeting of the Advisory Board in September 2020 and it was hoped by 1 July to coincide with the launch of the new Faculty Office website.

Appointment of the new Master

Morag Ellis QC had been appointed the new Master of Faculties and would take up her duties on 8 June 2020 after Charles George's retirement. Michael Heap had been involved in the appointment process and all welcomed the appointment. It was confirmed that the Societies had been informed.

LSB call for evidence: Ongoing Competence update

The LSB had extended the deadline for responding to their Call for Evidence on ongoing competence in the profession from 15 May to 26 June 2020. A response was expected to be submitted from both Societies and the Faculty Office confirmed that they were on track to make their submission before the deadline. The issue of ongoing competence was anticipated to be a key issue going forwards.

To publish – the LSB Call for Evidence: Ongoing Competence will be published on the Faculty Office website as a supporting paper.

Internal Governance Rules update

The Faculty Office submitted their Certificate of Compliance which was acknowledged by the LSB. This was self-certification and a substantive response was still awaited from the LSB. The only area in which compliance had not already been achieved was in the lay majority of the Qualifications Board. This had now been attained with the appointment of expert advisors to the Board and two additional lay members. Implementation measures would be taken once a response was received from the LSB, these were not considered particularly onerous.

To publish – the application for a certificate of compliance will not be published as it contains information which may form part of an ongoing matter.

4. Increasing the size of the profession

A draft proposal prepared by Mark Craig had been circulated. The Board considered whether the proposal remained suitable particularly in light of Coronavirus and the impact anticipated on the income to the Societies and Faculty Office. The Board engaged in a detailed discussion of the proposal.

A large number of enquiries and applications for Certificates of Exemption had been received in recent months, though it was unclear how this compared to previous years. UCL had at least 40 students signed up for the course commencing in September 2020, approaching its current capacity.

No demographic data was able to be collected from the applications and enquiries but the impression from members of the Qualifications Board was of greater numbers of younger

applicants and those from more diverse cultural backgrounds. The UCL open day in 2019 also saw a younger demographic attending than in previous years.

The Board considered these to be encouraging indicators of a growing profession.

A serious issue identified by the Society of Scrivener Notaries was the work of consular agents purporting to conduct or offer notarial services without qualification as a notary or regulation by the Faculty Office. Based on observation and experience of dealing with business clients, Jonathan Coutts believed that most of the work was being conducted by staff at the consular agency and then "signed off" by a qualified notary. This commercial trend raised risk and quality concerns for the Faculty Office. Any "trespassing" by the unqualified could be acting as a disincentive to the number of people wanting to enter the profession.

Options for addressing this issue were discussed including gathering evidence of harm to the public and presenting this to the LSB as an issue applicable to all regulators; inspecting notaries involved in this work to ensure good quality of work and appropriately briefing the inspector; requesting all notaries to supply the total number of notarial acts conducted in the year when renewing their practising certificate to give an indicator of the quality of work conducted.

Michael Lightowler agreed to share an article he had written on this subject for "The Notary".

The current steps taken to encourage more to join the profession included visiting universities and career days (currently on hold due to the pandemic) and encouraging practising notaries to encourage others at CPE training courses.

It was suggested that a video or webinar promoting the profession be produced, to compensate for the lack of physical promotion able to take place because of Coronavirus. Ian Blaney agreed to approach the representative from UCL about the possibility assisting with the production of the video. Michael Lightowler was asked to spearhead the project.

To publish: the proposal paper drafted by Mark Craig will not be published on the Faculty Office website as it may form part of an ongoing matter.

To publish: the article in The Notary written by Michael Lightowler will be published on the Faculty Office website as a supporting paper

Advice to the Master: to investigate the production of a video promoting the profession and to investigate the potential risk from consular agents.

5. Covid-19

The Faculty Office had published guidance on remote notarisatation. Assistance in producing the guidance had been gratefully received from both Societies. Michael Clancy from the Law Society in Scotland had approached the Faculty Office regarding remote notarisatation. He had since obtained temporary legislation from the Scottish Parliament authorising remote notarisatation during lockdown.

The Board considered the question of whether the profession required any additional authority to conduct remote notarisatation. The Societies reported that they found the guidance very helpful but noted that remote notarisatation was a tool for a notary to use and not the solution to all issues faced by notaries. The majority of remote notarisatation conducted had been with repeat clients and it was not suitable for acts where questions of consent or capacity were raised.

The profession had been creative in conducting notarial acts during lockdown. It was noted that care still needed to be taken to comply with guidance in the UK and in the receiving jurisdiction. Michael Lightowler reported that he was preparing an article for "The Notary" on the risks of remote notarisation.

It was thought that remote notarisation could be a game changer for the profession. Work with the FCO was ongoing in regard to digital signatures and apostilles.

To publish: the Faculty Office Guidance on Remote Notarisation will be published on the Faculty Office website as a supporting paper.

To publish: the Law Society of Scotland advice paper will be published on the Faculty Office website as a supporting paper.

6. Faculty Office Website update

The new Faculty Office website is due to be launched on 1 July 2020. The Board received a report and images from the new website which was designed to improve navigation. The Board thanked Simon Foulkes and David Nason for the hard work they had put in to developing the new website.

To publish: the report presented on the new Faculty Office website will not be published as it forms part of an ongoing matter.

7. AML/ OPBAS

It was reported that the Faculty Office were currently being inspected by OPBAS in their role as Professional Body Supervisor. Due to the sensitive subject matter the report may not be suitable for circulation to the Board.

The Faculty Office conducted a review of a sample of 70 notaries' risk assessments which was published in April 2020 on the Faculty Office website. It was the Faculty Office's intention to repeat the exercise in 2021 and to request the AML policy and procedures from notaries at practice renewal.

To publish: the AML Risk Assessment Review Report will be published on the Faculty Office website as a supporting paper.

8. Any other urgent business

There was none.

9. Date of next meeting

23 September 2020

1 December 2020

Part II

There were no Part II agenda items.