



## The Faculty Office of the Archbishop of Canterbury

### Registrar's Annual Report 2020 for the year ending 31 March 2020

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#### Size of the profession

In the practising year ended 31 October 2019, 778 notaries had a current practising certificate (751 to 31 October 2018) 24 notaries retired from practice and a further 7 were taking a career break. Sadly we were also advised that 3 notaries had passed away.

In the current practising year, 743 notaries took out a practising certificate; 16 notaries retired from practice and a further 4 were taking either sabbatical, parental or other leave for all or part of the year. A number of notaries who advised they were taking a sabbatical in the previous year have not yet returned to practise. We were also advised that 2 notaries had died.

During the course of the calendar year 2019 the Master admitted 28 new notaries – down from 40 in 2018 but this is beginning to keep pace with the numbers ceasing to practise either temporarily or permanently.

#### Regulatory work

In 2019/20 the Faculty Office continued to work on the LSB Action Plan responding to two regulatory performance assessments in August and November 2019. Of the four original areas for improvement highlighted by the LSB in August 2019 two were reassessed by the LSB as "outcome met". The Faculty Office continues to work hard on meeting the remaining outcomes.

The Faculty Office has taken steps to improve its transparency publishing minutes, agendas and papers of Advisory Board meetings and meetings with the Master. The Faculty Office has also published KPI data in three areas: Admissions, Inspections and Disciplinary cases. It is hoped that these KPIs will enable the Faculty Office to improve efficiency year-on-year. Just this month the Faculty Office launched its new Website which it is hoped will be more user-friendly for the public and the profession and all those that use the site.

During the course of 2019/20 the Faculty Office conducted a review of notaries websites to determine how the profession had responded to the rule changes introduced in December 2019 requiring certain information be displayed to the public. The results of this review are available on the Faculty Office website. A second desktop review looked at notaries' practice risk assessments and was conducted to ensure the profession's compliance with AML provisions and to gain further insight into the risks faced by notaries in their practice. The results of this review are also available on the Faculty Office website.

A working group was established in 2019/20 to consider the current qualification requirements and to make recommendations to the Qualifications Board and Advisory Board as to any changes. The working group met twice during the year and submitted their report to both Boards who accepted and endorsed many of their recommendations for consideration by the Master. The Faculty Office is working to implement the working group's recommendations in 2020.

In 2019/20 the Faculty Office commissioned a group of notary publics to produce a revised Code of Practice for the review of the Advisory Board and Master. This project has been completed and the revised Code of Practice will be available on the Faculty Office Website in July 2020.

#### **The Faculty Office as a professional body AML supervisor**

The Faculty Office has also been working hard to ensure continued compliance with requirements under the Money Laundering Regulations and an action plan agreed with OPBAS in September 2019. We had previously recognised that many notaries have an imperfect understanding of their AML obligations – in particular the precise requirements in the Money Laundering Regulations 2017 and under the Proceeds of Crime Act:

- Our requirement that all notaries submit their AML practice-wide risk assessments to the Faculty Office in the autumn of 2019 has helped encourage a more sophisticated approach and to move AML up the list of priorities. AML has featured prominently in CPE events, notably at the Notaries Society Conference of 2019.
- Inspections took place in 2019. They showed that there was still a lack of understanding amongst the notaries inspected on AML matters but inspectors were able to help notaries

who were not up to date with necessary risk assessments, policies and procedures on their feet. That was then followed by the obligation in the autumn to submit risk assessments to the Faculty Office.

- The Faculty Office implemented its risk assessment of every notary based upon a set criteria.
- The Faculty Office and inspectors attended the Annual Law Society AML conference in September 2019. That month there was the first annual internal training session for all Faculty Office on AML.
- AML has continued to be an agenda item for weekly management meetings and monthly Master's Senior Staff meetings.
- As has been mentioned, a published desktop review of notaries' practice risk assessments was conducted to ensure the profession's compliance with AML provisions and to gain further insight into the risks faced by notaries in their practice.
- The following communications and publications went out to notaries during 2019 and 2020:
  - (i) March 2019 – Guidance note on AML
  - (ii) January 2020 – Guidance on the revision to the MLR 2017.
  - (iii) April 2020 - UK Legal Sector Affinity Group (LSAG) advisory note re COVID.
  - (iv) April 2020 - Risk assessment review April 2020.
- The 5th Money Laundering Directive was implemented into UK law on 10th January 2020. A Guidance note was circulated to the profession on the key changes.
- OPBAS published a thematic review of Professional Body Supervisors, including the Faculty Office, in March 2020.

In terms of the current year:

- We aim to appoint a Risk, Compliance & Investigations Officer in September/October 2020. This will increase capacity and enable a more concentrated focus on risk and supervision. It should allow for a more continuous, sustained and interactive supervision and examination of risk.
- The inspectors who have been unable to physically inspect the offices of notaries will be conducting remote inspections until restrictions on travel and interaction have been removed.
- The inspectors questionnaire will include a new question on reporting requirements to Companies House (arising out of the amendment of the MLR 2017s and the implementation of 5 MLD).
- This autumn we will call in the policies and procedures of notaries relating to AML as well as their risk assessments and carry out a review of a sample of these.
- We intend to augment the AML part of the new website so it can serve as a "one-stop shop" for information on AML for notaries.
- The Legal Sector AML Guidance is being revised and we aim to have more guidance for notaries on what constitutes regulated work so that there is more clarity on whether the MLR 2017s apply to the notary or not.

## Complaints

During the course of 2019/20 the Faculty Office received 7 complaints against notaries public, 5 of these were resolved within the period whilst 2 more complaints remain outstanding to be resolved in 2020. Of the 5 complaints resolved in 2019/20 only 2 resulted in disciplinary hearings; one notary being struck off and another receiving an admonishment.

We received no formal complaints against the Faculty Office within this period.

### **Advisory Board**

The Advisory Board met on four occasions in the period covered by this report under its Chair, Mark Craig. The major items on the agenda were increasing the size of the profession, the LSB regulatory performance assessment, AML/OPBAS matters and the Professor Mayson Independent Review of Legal Services Regulation.

### **Qualifications Board**

The Qualifications Board met on four occasions in the period covered by this report. During 2019 the Board considered 79 applications for Certificates of Exemption (75 in 2018), 17 were issued full Certificates, a further 61 conditional Certificates were issued and only 1 Certificate was refused (52 in 2018). In addition to scrutinising applications for Certificates of Exemption the Board also considered the report of the working group on professional qualifications (mentioned above) and the application for a certificate of full compliance with the LSB Internal Governance Rules.

In order to achieve full compliance with the LSB IGR all boards carrying out a regulatory function are required to have a lay chair and a lay majority<sup>1</sup>. During the period covered in this report the Qualifications Board achieved a lay majority of members. The Board agreed to appoint two additional lay members and two current members agreed to step into new roles as advisors.

### **New/Revised Rules**

There were two new rules which came into force in 2019; the Notaries Practice Rules 2019 which came into force on 2 December 2019 replacing the Notaries Practice Rules 2014 and the Notaries (Post-Admission Supervision and Training) Rules 2019 with accompanying fee order which came into force on 1 June 2019 & 30 August 2019 respectively, replacing the Notaries (Post Admission) Rules 2009 (as amended) and accompanying fee order.

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<sup>1</sup> The LSA 2007 defines a "lay person" in Sch 1 para 2(4)(5)  
<http://www.legislation.gov.uk/ukpga/2007/29/schedule/1>

The Notaries (Conduct and Discipline) Rules 2015 were amended to include provision for publication on the Faculty Office website of various decisions of the Court of Faculties and an additional requirement for all notaries to inform the Faculty Office if there are charged with a criminal offence, and giving the Registrar powers of suspension in such cases. This came into force on 2 September 2019.

#### Financial

This report covers the year from 1 April 2019 to 31 March 2020 representing the fourth complete year of our amended accounting year end. You will recall that the Faculty Office had historically operated a calendar year accounting period.

The accounts for the regulatory arm of the Faculty Office are attached and show a shortfall on the year of £33,194. In line with the costs transparency requirements of the LSB, budgets for the years ending 31 March 2021, 2022 and 2023 have been prepared and are also attached; these budgets anticipate a surplus in the current financial year and projected surpluses for each of the following two years. It will be appreciated that a lot of assumptions have been made in preparing these budgets (during times of unprecedented economic uncertainty brought on by the Covid Pandemic) particularly therefore around projected numbers of notaries and potential expenditure but we have tried to be as accurate as possible and also to err on the side of caution. Only time will tell if our projections are correct.

We have recently published a consultation on the practising certificate fees for the practising certificate year commencing in the autumn based upon the new regime introduced in October 2019. This consultation is currently ongoing.

There is, as ever, significant pressure on the budget including significant extra spend on the Legal Choices project in order that it is able to fulfil the role for which it was established and as a direct result of the BSB withdrawing from the project. As I reported last year, OPBAS are now being funded by a levy on the Professional Body Supervisors, of which the Faculty Office is one. Last year this was an annual expense of £5000. Additionally, the Home Office and HM Treasury have announced plans for a levy on, amongst others, the Professional Body Supervisors to fund improvements to the suspicious activity reports (SARs) regime although no finalised details of how this will work or, more importantly, how much is being sought have yet been released.

The 2019/2020 accounts for the Faculty Office Contingency Fund are also attached and I am pleased to report a surplus on the year of £25,343. This fund exists to provide cover for costs arising from disciplinary cases which are otherwise not recoverable from the notaries concerned. A substantial proportion of the 'debt' I reported last year (some £17,000) has now been settled following the service of a Statutory Demand but approximately £3000 is still outstanding ). Last year's surplus coupled with this year's surplus does mean that the Master is in a position not to require the payment of a contribution into the fund (last year the contribution was £20). However, with two Nominated Notaries currently appointed there is likely to be at least some call on the Fund in the coming year.

### Inspections

The inspections of notaries' records and practices under the Inspections Regulations continued in 2019 and a further 14 notaries (19 in 2018) had their practices inspected by the two inspectors. This number is down on previous years in part due to inspector ill-health during 2019 but it is intended that there will be a catching up of inspections left undone. As in previous years, a number of those inspected also carry out Conveyancing and/or Probate in their capacity as notaries and those areas of their practices were included in the inspections. The inspectors' report on the 2019 inspections is available to view on the Faculty Office website.

Tony Martin and Nigel Harding carried out the inspections in 2019. Janet Goode was appointed by the Master as an additional inspector in January 2020. It remains the Master's intention to appoint an additional inspector to assist with the inspections of those notaries who carry out conveyancing and probate.

### In conclusion

Once again the Faculty Office has had a busy period in 2019/20, not only dealing with the day to day regulation of the notarial profession but also in addressing issues raised both by the two 'oversight' bodies, the LSB and OPBAS, and the various Government departments with whom we engage including BEIS, the MoJ, the Home Office and HM Treasury. The Faculty Office continues to be extremely grateful for both professional Societies' support of its work and for the support which they provide to the profession.

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**HOWARD DELLAR | REGISTRAR**

FACULTY OFFICE

10 July 2020