



FACULTY OFFICE

**Minutes of the Meeting of the Advisory Board held
remotely via telephone conference
on Wednesday 23rd September 2020 at 11:00am**

Present: Mark Craig (Chair)	In	Howard Dellar
Jonathan Coutts	attendance:	Ian Blaney
Christopher Vaughan		Neil Turpin
Elaine Standish		Mili Bhanji
Michael Heap		Emily Fellows (<i>Minutes</i>)
Michael Lightowler		David Fowlis, Regulatory Policy Manager, LSB (<i>observing</i>)

PART I

Mark Craig welcomed David Fowlis to the Advisory Board meeting as an observer as part of the LSB's review of Faculty Office governance. The Board members and those in attendance introduced themselves to David who reciprocated.

1. Apologies

There were none.

2. Minutes of the last meeting

The minutes of the last meeting were circulated and unanimously approved.

3. Matters arising not otherwise on the agenda

There were none

4. Faculty Office updates

4(a) KPIs

The agreed KPIs and targets set in relation to Disciplinary proceedings, Inspections and Admissions had been published on the Faculty Office website. Data was being actively collected

on admissions so that publication of the KPIs could be made more efficient. It was hoped that the Admissions KPI data for 2020 could be published by the end of December 2020. The Board noted that these were introductory KPIs and would need to be reviewed and possibly expanded in due course.

4.(b) Consultations

(i) Practising Certificate Fees Consultation

The Faculty Office issued its annual consultation on Practising Certificate Fees in July 2020. This consultation closed on 31 July 2020. Approximately 9% of the profession responded to the consultation, which was an increase on last year. It was noted that 2019 was the first year of the new banding system which sought to distribute the fee burden more equitably in relation to a notaries' turnover. There was a short discussion of whether this spread was equitable in terms of regulatory demand on the Faculty Office. It was confirmed that this was not the case under the present system. Instead, the purpose was to ensure that those notaries who derived the least financial benefit from their notarial practice, paid the least. Other models could be explored in the future. The Faculty Office wanted the existing banding system to be bedded in before considering any more radical changes.

The majority of responders supported the proposal set out in the consultation and subsequently an application was made to the LSB for approval. The LSB recently approved the practising certificate fees application but expressed their concerns over the Faculty Office reserves policy and the rate at which the deficit was to be reduced. It was noted that the deficit was a structural and appeared as a result of an accounting year change 6 years ago. The Master remained committed to reducing the deficit and building up reserves. The Master would be seeking advice from the Board on ways to reduce the deficit and build reserves more quickly. It was anticipated that this would come before the Board in December 2020 when the Faculty Office would have a clearer idea of the level of income for 2020 following the practice certificate renewal period.

Jonathan Coutts and Christopher Vaughan expressed their contentment with the 2020 practising certificate fees for 2020 and expressed some concerns over building up reserves at a faster rate.

Mark Craig invited the Board members to submit any comments or responses to Neil Turpin in advance of the December meeting so that these could inform any paper presented to the Board.

To publish: The LSB decision notice on the practising certificate fees for 2020/21 would be published on the Faculty Office website as a supporting paper.

(ii) Notaries (Conduct & Discipline Rules) 2015

This consultation was ongoing and due to close by the end of October 2020. The purpose of the proposed amendments was to enable the Court of Faculties to hold remote hearings. The Faculty Office sought legal advice from the Commissary, HHJ Anthony Leonard QC, a senior Judge at the Old Bailey as to whether the existing Rules provided sufficient powers to hold remote hearings. The advice received was that the current Rules provided the possibility of holding a remote hearing but did not give the Commissary the power to require one. The Faculty Office felt that this would provide an unscrupulous party with the opportunity to unduly delay the hearing possibly increasing the risk to the public. The Faculty Office therefore proposed the amendments outlined in the consultation. It was also hoped this might provide a more cost-effective means of holding hearings in the future.

The Faculty Office were hoping for a good response to the consultation and were grateful to the Notaries' Society for highlighting the consultation to its members.

This matter would be returned to the Board following the conclusion of the consultation in October 2020.

4(c) Internal Governance Rules (IGRs)

The IGRs set out the requirements for regulators to act in an independent manner. The Faculty Office started off from a position of near compliance with the IGR but needed to create a lay majority on the Qualifications Board, which it had now done. The Faculty Office will continue to monitor its compliance with the IGRs. Statements of Independence had been issued to the relevant persons and were being received. No such statements were issued to the Advisory Board members as it was felt such a Statement of Independence would be contrary to the purpose of the Board as a forum in which the views of the profession could be aired and heard by the Master. The Faculty Office considered its work in achieving compliance with the IGRs to be a good learning opportunity and invited the Board to consider lay membership of the Advisory Board in further detail at item 8.

4(d) LSB Call for Evidence: Ongoing competence

The Faculty Office submitted a substantive response to this call for evidence which highlighted the CPE and inspections regime in particular. The Faculty Office were keeping a watching brief on this workstream and would return any proposals from the LSB to the Board in due course.

4(e) New Faculty Office website

Mark Craig had been in close contact with Simon Foulkes and David Nason who spearheaded the project for the Faculty Office. Their hard work in making information more accessible and user friendly was acknowledged and appreciated by the Board. The Board also highlighted the need to keep the website updated and under constant development. The Board were invited to pass along any glitches or issues with the website to assist in this development work.

Following advice from the Advisory Board and discussions with the Master the term "customer" which was initially used on the website had been changed to "for the public" and "consumer".

5. LSB Action Plan update

The LSB regulatory standards action plan highlighted three areas for improvement within the Faculty Office. One of these was in connection with the standard of Rule change applications. The Faculty Office had not had to recently submit any applications for a Rule change but were keen to implement improvements to such applications in due course.

The other areas for improvement concerned the Faculty Office governance or "well-led" criteria. The LSB were conducting an in-depth review of Faculty Office governance and decision making processes. The Faculty Office were working with David Fowlis and others from the LSB to demonstrate progress made in these areas. The Faculty Office were optimistic for a good outcome and anticipate evidence catching up with improved processes in due course.

Christopher Vaughan reported that the Notaries' Society were keeping the profession informed of the improvements the Faculty Office were making in this respect.

A report from the LSB was anticipated in early 2021.

Mark Craig invited Board members to provide any comments to Neil Turpin in advance of the December meeting.

6. Code of Practice – update

The Code of Practice has been updated and published on the Faculty Office website. Particular thanks were given to Elaine Standish and her co-authors for the hard work put into updating this guidance. The Code had been uploaded in a different format which should enable the Faculty Office to access and update the guidance more frequently and in a more efficient way. The Code of Practice was not a Rule change but merely an update to guidance issued for the profession.

The Faculty Office requested any feedback on the updated Code, in particular any formatting or snagging issues.

7. Gender Neutral Rules

When the Notaries Practice Rules were revised in 2019 to improve transparency requirements the language used was not gender neutral and reliance was still placed on the Interpretation Act 1978. The Faculty Office received a small number of complaints about the lack of gender neutral language used in the Rules requesting a shift to more gender neutral language.

The Board considered a paper on proposals to revise the Rules to use more gender neutral language. The Board considered four options:

- Option 1 – Embed and publish a policy of using gender neutral language from this point onwards by updating the language as and when additional changes to Rules are proposed.
- Option 2 – Draft the Notaries (Gender Neutral) Rules requiring gender neutral language to be read into the Rules. This would achieve a similar outcome to the Interpretation Act.
- Option 3 – to apply to the LSB for an Exemption Direction Waiver to change the language of all the existing Rules. This would require the Faculty Office to produce a significant impact risk assessment. The LSB had indicated an inclination to accept such an application. This would take a considerable amount of time and resources.
- Option 4 – to generate a single Rule book containing all of the notaries Rules. This would require a huge amount of time and resource to develop.

It was noted that even if "the Master" was considered a gender specific term (despite the present and a former Master being female), it would need to be retained because of the nature of the title.

The Chief Clerk expressed a desire to respond quickly to the feedback received from elements of the profession urging more gender neutral language and so recommended Option 3 to the Board. Option 1 would take a long period of time so that the rules would be gradually replaced with gender neutral versions and Option 4 would be beyond the resources of the Faculty Office at this time.

The Board entered a detailed discussion on the matter. The Board unanimously agreed that it was important to make a shift towards more gender neutral language and welcomed the paper prepared by the Faculty Office.

The Board were interested in the approach of other regulators and it was agreed that this would be investigated. The Board expressed concern over the large workload the Faculty Office currently had and cautioned against applying a disproportionate amount of resource into revising the Rules.

The advice to the Master was that Option 3 would be the preferred option of the Board if resources were not lacking, that is applying for an exemption direction waiver from the LSB and revising all the rules to gender neutral language. However, due to the heavy workload of the Faculty Office at the present the advice of the Board was to pursue Option 1, the publication of a gender neutral policy, for the time being, and to make any new rules in a gender neutral manner. It was considered that reformulating existing rules in a gender neutral way would take up significant time to ensure that it is done properly and to avoid failures in drafting.

To publish: the Gender Neutral language briefing paper would be published on the Faculty Office website as a supporting document.

Advice to the Master: Pursue Option 1 and publish a gender neutral policy of drafting rules on the Faculty Office website and to make new rules using gender neutral language.

8. Lay membership of the Advisory Board.

The Faculty Office were keen to capitalise on the apparent benefits of the increase in lay-membership of the Qualifications Board by advertising for two additional lay members to be in attendance at the Advisory Board. The Faculty Office were keen to hear more of the consumer perspective on the Advisory Board.

The Board expressed no objection to the appointment of two lay attendees but were keen to ensure that the right consumers were appointed. A concern was raised that a one-off notarial user might not have sufficient breadth of insight into the profession and a business or corporate notarial consumer might not represent the vast majority of consumers that access notarial services.

In order to formally appoint two new lay members the Advisory Board Rules would need to be amended via a rule change application. In the meantime it was suggested that the lay members could attend meetings as non-members. There was a further suggestion of updating the Advisory Board Rules further or exploring alternatives such as Terms of Reference rather than Rules.

The advice to the Master was to seek the approval of a suitable advertisement for lay members to initially sit in attendance on the Advisory Board whilst pursuing a conversation with the LSB regarding any further Rule changes that might be required.

Advice to the Master: Seek approval of a suitable advertisement for lay members, initially to sit in attendance and to engage in a conversation with the LSB regarding any future Rule changes.

9. AML/OPBAS

The Faculty Office welcomed Mili Bhanji to the team as Risk, Compliance and Investigations Officer and Deputy Chief Clerk. Mili would help to increase the Faculty Office capacity in AML and other compliance regulation.

The Faculty Office intended to request AML risk assessments and policies from notaries when applying to renew their practising certificates. The intention would be to conduct a desk-based review using the information gathered in due course.

The Money Laundering and Terrorist Financing (Amendment) (EU Exit) Regulations 2020 had been laid before Parliament. The Legal Sector Affinity Group revised guidance was in the final stages of preparation and due to be lodged with the Treasury for approval in 2020.

The OPBAS inspection conducted in June 2020 was largely positive and constructive discussions were had with OPBAS regarding the Faculty Office action plan. The Faculty Office had produced a new action plan which was currently under review by OPBAS.

Further consideration of the OPBAS findings report was had and is recorded in PART II of the minutes not suitable for publication.

To publish: the OPBAS finding report would not be published on the Faculty Office website as this contained confidential information which could be useful for criminal organisations.

10. Mayson Review

Professor Stephen Mayson had published his independent review of legal services regulation. The Board noted that Professor Mayson's proposals would require significant legislative change which the Government had expressed a reluctance to pursue.

The advice to the Master was to maintain a watching brief on any further developments.

Advice to the Master: maintain watching brief over any future developments.

11. Internal Markets Bill

One of the purposes of this Bill was to create a level playing field within the UK between Scotland, England, Wales and Northern Ireland by ensuring that qualifications were recognised throughout the UK mirroring current EU legislation, and that there would be no obstacles to the free movement of goods and services within the UK.

It was noted that there had been a "carve out" for legal regulators considering the qualifications. This preserved the status quo for the notarial and other legal professions.

The "carve out" for the free movement of legal services was also limited but the Bill had provided an insufficient definition of legal services which did not include notarial activities and some other key activities such as conveyancing. Ian Blaney had contacted BEIS to raise these concerns and received the response outlined in the paper provided to the Board.

The Committee of the whole House of Commons met on 22 September 2020 and an amendment had been included to exempt notarial services. Whilst this was considered progress further work was needed to provide exemptions for conveyancing, commission of oaths etc. and to include a definition of notarial services if possible.

The Board thanked the Faculty Office for bringing this to their attention and for responding so quickly on behalf of the profession.

The Board recalled similar issues with recognising Scottish notaries in the past which had been countered by obtaining counsel's opinion. The Board shared the concern of the Faculty Office in ensuring that proper regulation of the profession was maintained.

To publish: the Internal Markets Bill paper would be published on the Faculty Office website as a supporting paper.

Advice to the Master: to continue discussions with the Government in ensuring appropriate protection for the public in the regulation of notaries in the UK.

12. New Technology and AI

Michael Lightowler provided a report and shared an article from *The Notary* on the progress of developing remote notarisation within the profession.

The concern of the Faculty Office echoed by the profession and the Board was to ensure that the Rules and practices of the profession kept pace with technology.

It was felt that the Covid-19 pandemic had helped to accelerate the adoption of new technology within the profession. NotarySafe was being used more widely by notaries to store their notarial acts and that an electronic register was due to be launched later in September 2020.

NotarySign was an ongoing project, with Adobe as partners, to allow the notarisation of documents electronically. A webinar was due to be conducted before the next Advisory Board meeting explaining the system. Further work was ongoing with the Foreign Office to develop electronic apostilles. This work was in early stages of development.

The primary concern with the development of this new technology was the diverse approaches and practices emerging across the UK which resulted in anomalies not present in traditional notarisation. It was felt important to develop practices and policies in conjunction with colleagues in Scotland and Northern Ireland to counteract this.

The advice of the Board was that the matter be raised with the Master to gain her support for the progress being made in this arena.

To publish: the relevant article in *The Notary* would be published on the Faculty Office website as a supporting paper.

Advice to the Master: Consider the matter as raised at the Advisory Board and to acknowledge any support from the Master for these developments.

13. Any other urgent business

There was none.

14. Date of next meeting:

1 December 2020

PART II – Closed matters

1. OPBAS report findings & FO action plan

Not for publication.