

NOTARIES (INSPECTION) REGULATIONS 2014

INSPECTORS' REPORT FOR 2020

Inspections were carried out on a 'remote' basis this year: examination of Notaries' documents followed by either an audio-visual, or a telephone, discussion between an Inspector and the Notary. Two inspections that were unable to be completed in 2019 (which were of practices of Notaries carrying on Conveyancing work) were finalised in 2020. A further inspection of the practice of a Notary carrying on Probate work will be completed once lockdown restrictions permit. Fourteen inspections from the 2020 schedule were completed by March 2021. Eight of these were arranged on the basis that the Notary concerned was carrying on Conveyancing and/or Probate work but, on inspection, that was found not to be so: the work was not – or was no longer – being done in the capacity of a Notary.

One inspection was cancelled because of the illness of the Notary concerned and a family member.

In general – but unfortunately not in every case – the Notaries whose practices we inspected were very prompt and co-operative in making available copies of the documents requested by the Inspectors (either electronically or hard copies) and by providing supplementary information.

The work done by most Notaries whose practices we inspected was of a high standard and an efficient service was provided to their Clients. Some Solicitor-Notaries told Inspectors that they were under pressure from the demands of their Solicitors' practices and from increasing regulatory matters. One Notary decided to retire from Notarial work at the end of October 2020 as a result.

All Notaries whose practices were inspected were flexible in their working hours to accommodate their Clients and most of them provided home visits. Most of the Notaries had offices that provided good, or excellent, accessibility and other facilities for Clients with disabilities. Two provided 'induction-loop' facilities in meeting rooms.

Most Notaries whose practices we inspected gave quotations for fees and disbursements in, or confirmed by, emails or letters at the outset of transactions, or once it had become clear exactly what work was required. Exceptions were in cases where Clients had – in the words of one Notary – 'walked in off the street and paid on the day'. Most Notaries provided information about, or comparable to, 'Key Stages of Work and Timescales' but, of these, not all complied strictly with the requirement [Practice Rule 8.1.2] to provide this information to a Client in writing as soon as reasonably practicable after receiving instructions.

Most of the Notaries whose practices we inspected had websites. Most were informative and most – but not all – were easy to use. As we stated in our report for 2019 in relation to the websites of some Solicitor-Notaries, we found 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. The email ‘footers’ of one firm did not contain any regulatory statement at all: either in relation to the Faculty Office or, in respect of its Solicitors’ practice, the SRA.

A number of Notaries had not incorporated the (small) change that was made by the Faculty Office in 2020 at the end of the prescribed form of the Complaints Procedure. They can, perhaps, be excused for being unaware of the change as, although it had been posted on the Faculty Office website, one (equally unaware) Inspector noticed that the change had not been made in the version posted on the Notaries Society’s website. The Inspector found on enquiry that the Society had not been told of the changed wording. The Notaries concerned made immediate changes their Complaints Procedure wording.

All the Notaries whose practices we inspected had good, and consistent, procedures for verification of the identities and addresses of private Clients and the representatives of corporate Clients; and for retention of copies of documents that they inspected for these purposes. Again as we said in our Report for 2019, Notaries were not consistent in the length of time these copies were kept. The UK GDPR has retained the provision that personal data is “kept in a form which permits identification of data subject **for no longer than is necessary** [our emphasis] for the purpose for which the personal data are processed”¹. We repeat our previous comment that 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 the notarised document, and so covered by the provisions of either rule 24.3 or rule 24.4 of the Notaries Practice Rules 2019.

The firm of Solicitors in which one Notary was a Partner had published a form of Privacy Policy that was inappropriate to Notarial work.

This year, we have obviously not been able to inspect physical security measures adopted by the Notaries whose practices we inspected in respect of their registers, hard copy records and seals. We have, however, been told by Notaries that they are locked away out of office hours. Some Notaries now only keep electronic copies of their registers and records. So far as electronic protection is concerned, [all] the Notaries whose practices we inspected protected their computer systems by the use of passwords and anti-virus/anti-malware software. Some Notaries used forms of encryption. Some engaged outside Consultants for the maintenance of their systems, security features and back-up and disaster-recovery procedures. Three Notaries practised in firms that are certified under the Government’s ‘Cyber Essentials’ Scheme.

Some of our inspections of Notarial practices in the 2020 schedule were completed in the early part of 2021 by which time Part 1 of the draft updated LSAG Anti-Money Laundering Guidance for the Legal Sector had been published. All the Notaries whose practices we inspected said that they had read the new Guidance and one had received training in respect of it. All Notaries whose practices we inspected had Anti-Moneylaundering Policies and documentation: most of which are based on policies and documents published by the

¹ Article 5, 1(e)

Notaries Society for the use of its Members. However, one firm of Solicitors in which a Notary was a Partner had published a manual on AML which – although excellent – made no specific reference to Notarial work. Separately, one Notary had an AML policy document but had not completed risks assessments in relation to all Clients/matters.

On more than one inspection, an inconsistency was found in internal documents: a risk being shown as ‘medium’, whereas the corresponding comments described it as ‘low’. The explanation was that a potential risk at medium level did exist but that, on the basis of the due diligence carried out and because the Notary concerned was only acting as a Public Certifying Officer, the risk was in practice ‘low’.

In another instance, the Faculty Office had been informed that a Notary was carrying out company formation and trust work. However, on the inspection of that Notary’s practice it emerged that the Notary had notarised paperwork for a corporate Client’s incorporation of an overseas subsidiary and, separately, for a Client’s overseas family trust. In these cases, this Notary had acted purely as a Public Certifying Officer, with no involvement in the underlying transactions.

None of the Notaries inspected had made reports to the National Crime Agency in the last three years. All Notaries were aware of the obligation to report inconsistencies that they might find in relation to PSC information filed at Companies House but none had had cause to do so.

Our major concern in relation to some practices has been in relation to the keeping of records. Similar concerns were expressed by the then Inspectors in their report for 2017 and in the report for 2019. In more than one case in 2020, it was found that what had been kept was not a copy of the of the final signed, sealed and bound Notarial Act and that there was no reasonable explanation for this. In our report for 2019 we referred to a case that was reported to the Notaries Society several years ago and we make no apology for mentioning it again. It was alleged that a Notary had made a mistake in the notarised document but that it also appeared possible that some pages in the document had been removed and others substituted. (The document concerned had only been secured by a staple). Had the Notary kept a copy of the document as notarised – which despite it being in public form the Notary had not – that Notary would have been in a better position to counter the allegations that were made.

On inspections in 2020, parts of the handwritten registers of some Notaries were found to be barely legible. Again, this is a problem that has been referred to in previous years’ Reports. Similarly, in their report for 2017 the then Inspectors recorded that in in relation to the registers of three Notaries, they had had difficulty in establishing what the Notaries had authenticated, as the recorded detail was too brief – for example simply referring to ‘power of attorney’ without any other information. The same situation was found on the inspection of the registers of two Notaries in the 2020 schedule.

And again, as stated in previous years’ reports, we have found that not all Notaries whose practices we inspected are recording in their Notarial certificates the jurisdiction of incorporation of corporate Clients and the registration number. (In some, but not by any

means in all, situations the information was given in the notarised document itself). Previous Inspectors' reports have highlighted the consequences of failure to do so: possible confusion with struck-off companies or companies with the same name in other jurisdictions. There is also the fact that – for good and sufficient reasons – companies within the same group may go through a process of 'exchanging names' and, to avoid possible confusion, registered numbers should be recorded. It is also, as we said in our 2019 Report, an important self-protection measure for Notaries to take in these days of heightened A-ML concerns.

Most of the Notaries whose practices we inspected in the 2020 schedule stated that, in relation to corporate Clients, they made on-line searches at Companies House to confirm that the company concerned is still in existence and that the signatory named in a document to be notarised is a Director of the company. The (more up-to-date, and free) facility relating to solvency of corporate entities available on the London Gazette website seems not, however, to be generally used; nor are the facilities on the Government's Individual Insolvency Register. (Two Notaries who told their Inspector that they did not make solvency searches in relation to companies or bankruptcy searches in relation to individuals subsequently contacted the Inspector to say that they were now doing so). Some Notaries who made solvency or other searches kept copies of them on their files; others did not.

It will be apparent that number of matters in this Report have repeated Inspectors' comments in previous years. We feel that to help address them, it would be appropriate for the Faculty Office to ask the Notaries Society to publish on its website the current form of Questionnaire used on Inspections so that the Society's Members are fully aware of what will be expected of them. The Society might also be asked to encourage Members to read the annual Inspectors' reports that are published by the Faculty Office.

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