



## **FACULTY OFFICE**

### **Minutes of the Meeting of the Advisory Board held remotely via Zoom conference on Tuesday 7<sup>th</sup> December 2021 at 11.00am**

**Present:** Mark Craig (Chair) (MC)  
Michael Heap (MH)  
Elaine Standish (ES)  
Christopher Vaughan (CV)  
Michael Lightower (ML)  
Jonathan Coutts (JC)  
Lesley Hurst (LH)  
James Barnes Miller (JBM)  
BSL :- Sarah Meeks (SM) and Anne Dellar (AD)

**In attendance:** Howard Dellar, Registrar Faculty Office (HJD)  
Ian Blaney, Deputy Registrar Faculty Office (ISB)  
Neil Turpin, Chief Clerk Faculty Office & Clerk to the Board (NDT)  
Lynne Boyer, Ecclesiastical Secretary in Faculty Office (minute taking) (LB)

## **Part I – open**

### **1. Apologies for absence**

All members of the Board were present with no apologies for absence

### **2. Minutes of the last meeting**

- a. Approval of minutes

The Board approved the minutes from the last meeting, which had been circulated in advance, subject to one amendment to the third paragraph of minute 5:

“NDT & ISB confirmed that for this coming year it was felt to be appropriate due to significant changes and the new LSAG Guidance having been introduced.”

NDT will ensure a revised version is circulated.

b. Confirmation of documents uploaded to website

NDT confirmed that the minutes and supporting papers had been uploaded. The amended minute will be uploaded once the above amendment has been made.

### **3. Matters arising not otherwise on the agenda:**

There were no matters arising.

### **4. Faculty Office updates**

There were no updates that were not otherwise on the agenda

### **5. AML/OPBAS matters**

It was reported that the Part 2c LSAG Guidance which relates specifically to notaries has been approved by the Treasury was now awaiting final sign off. The Guidance has been accepted without any substantive amendment and provides government backing that most of what a notary does on a day to day basis falls outside the AML regulations. MC indicated that if any lay members wanted any further specific information they could contact NDT or ISB.

### **6. LSB Governance Review – update**

Governance Manual

Draft 8 of the Faculty Office Governance Manual had been circulated to members of the Board. This forms part of the action plan agreed with the Legal Services Board following the ‘Well-led review’ inspection and its report which they published at the end of September. There are a number of appendices and policies as part of the manual which will be publicly available on the Faculty Office website. We plan to publish by the end of January, as set out in the action plan.

ML congratulated team and said it read very well. NDT confirmed that it will appear on the Governance pages of the Faculty website. In appearance it will look not unlike the Code of Practice so you can click through eg a headline indicating the content and click on that and it will take you to the relevant content and similarly through the policies which will accompany it. MC said a key principle in governance is to make everything available and transparent unless there is a compelling reason not to.

### **7. Recognition of Professional Qualifications**

Professional Qualifications Bill 2021

The Bill is intended to replace the EU Directive on the Mutual Recognition of Professional Qualifications between member states of the EU which fell away on the 1<sup>st</sup> January 2021 when the UK

left the EU. The Bill is the government's way of putting in place a process whereby professionals coming from other countries, not exclusively from the EU, can have a clear understanding of the basis upon which their overseas qualifications might be recognised in the UK. The legal professions are only a relatively small part of the bill – legal qualifications tend to have to be in the law of the particular country – but teaching and nursing qualifications for example are very much more transferrable so they form the thrust of the bill, although the legal professions are included in it.

The most recent iteration of the Directive excluded notaries who were “appointed by an act of government” but despite the Faculty Office's best efforts, we were never able to get a clear definition of what that meant in practice. The feeling was it excluded the vast majority of notaries in Europe and probably only had application between England & Wales and the Republic of Ireland. No such exclusions will be made once the bill becomes law and it will need to be made clear on the website the requirements for overseas notaries to be able to transfer those qualifications into England and Wales. In practice the Notaries Qualification Rules 2017 were “Brexit-proofed” and it should have a relevantly low impact once this Bill becomes law because we already have a clearly defined process under which overseas applicants can have their overseas notarial qualifications recognised. This is more for the Qualifications Board than the Advisory Board but the Faculty Office wanted to alert the Board to its existence.

ISB confirmed that our “Rule 8” set out that if a notary from a foreign jurisdiction wants to be admitted to practise in England and Wales they must satisfy the Qualifications Board that their qualifications are equivalent to those what we would expect of a domestic applicant and, if not, then they have to take an additional test or undergo an adaptation period which mirrored the Directive and conforms with the Bill. The legislation itself doesn't describe to any extent what the regulators ought to be doing, some of the detail will be in regulations issued by government; the Faculty Office do not believe that it is likely to be problematic but there may be some implications which will be kept an eye on.

JBM asked about the impact of the EU legislation and whether there was scope to create a level playing field. NDT noted that the original EU directive only applied between EU states and even that legislation wasn't a level playing field as essentially there was no real way in which English and Welsh qualified notaries could readily transfer their qualifications overseas. In practice, it is relatively unusual for notaries to switch between jurisdictions, even between the three separate legal jurisdictions within the UK. There had only been a handful of applications from overseas notaries wanting to qualify here in the last 10 years and we are not aware of any going in the opposite direction.

ML and ES (who have both served on the Qualifications Board) confirmed that the Qualifications Board dealt with all applications with care, knowing exactly what to ask for regarding what experience was needed and what modules and examinations might be required to ensure that applicants were adequately qualified to protect the public.

MH noted that there are wider issues in relation to professional qualifications and it was important that the Faculty Office's voice is heard and that channels are in place to ensure that the ability to maintain standards are not sacrificed in order to secure trade deals, for example. It is vital that a clear difference between economic and professional purposes is maintained. NDT confirmed that the Faculty Office are regularly in touch with officials in both the Ministry of Justice and Department of Business Energy and Industrial Strategy in this connection.

## **8. Professional Indemnity Insurance Cover**

### **a. Cyber Crime**

The Board considered a paper prepared by the Faculty Office setting out the issues. Cyber crime is an increasing risk and the extent to which Professional Indemnity Insurance policies cover the risk vary. From a regulatory perspective, the key issue is that consumers (clients) of legal services are not prejudiced in the event that they suffer a loss as a result of the loss of their data or money as part of a cyber attack on the notary whom they instructed. The Prudential Conduct Authority have urged insurers to clarify in their policy wording the extent to which cover is available and the LSB have expressed concerns that the proposed standard wording issued by Lloyds of London effectively reduces the risks covered which may be to the detriment of consumers. The SRA have consulted on an amendment to its Minimum Terms and Conditions of Insurance to address the issue.

The Faculty Office requires notaries to have a minimum sum insured (currently £1m) but it does not currently stipulate minimum terms save that the notary must maintain insurance “against civil liability for professional negligence incurred by the Notary in connection with his or her practice as a Notary” and “against financial loss suffered by a third party in consequence of any dishonest or fraudulent act or any omission by the Notary in connection with his or her practice as a Notary”. It is therefore up to the individual notary to ensure that their policy provides adequate cover for the risks associated with their practice and a failure to do so would amount to misconduct.

A very substantial number of notaries also qualified as solicitors and many take their insurance through their solicitors’ firm. Clearly, if the amendment to the SRA’s minimum terms are approved then the position regarding cyber crime will be clarified.

The issue for the Faculty Office is whether it should issue guidance on the risks which a policy should or must cover in a stand alone PII policy or whether it should stipulate in rules a set of Minimum Terms and Conditions along the lines that the SRA do.

ES confirmed that the Notaries Society would welcome some minimum terms and conditions to ensure consistency of cover and to clarify expectations including as regard cyber risks cover. ML noted that this would also assist members given the increasing demands for digital tools including the creation of electronic signatures. LH and JBM agreed that a set of clear minimum terms are a good idea.

#### b. North America

Tony Martin, a notary who is also a New York attorney had provided a helpful note to the Board on the issues surrounding cover for notarial work destined for the US and Canada (but, given the detail it contains on some individual cases, it will not be published). The Faculty Office would welcome the Board’s opinions about whether we need to give specific guidance to the profession in relation to the issue of PII cover and whether they go into any minimum terms arising from the discussion above.

The issue is that many PII policies have geographical limits which exclude North America and, specifically, claims brought in the US or Canada and there appears to be a lack of clarity as to whether a policy which excludes the US/Canada means that a notary in England & Wales could or should notarise documents in this jurisdiction but destined for the US/Canada. If a claim is brought in England & Wales the PII policy would cover the notary/consumer but if the claim was commenced in the US/Canada, a policy with a geographical limit would not provide cover.

The SRA minimum terms require worldwide cover but do permit an exclusion for exemplary or punitive damages awards in the US/Canada. Therefore, any notary who relies on their solicitors' firms PII cover is likely to have cover for work destined for the US.

ES (the Notaries Society Education Officer) confirmed that Tony Martin teaches a module on dealing with US documents both as part of CPE courses and on the compulsory education days for newly qualified notaries and advises that notaries need to check their cover if they are intending to deal with documents for the US and Canada. If the Faculty Office are to set minimum terms if dealing with US documents then it should include this type of cover. The Notaries Society policy is to say if you are not covered you should not notarise documents destined for the US.

Board members were broadly supportive of establishing a set of Minimum Terms and Conditions for PII cover to ensure adequate consumer protection but were also conscious of the need to ensure that notaries are not required to 'gold-plate' their cover by requiring insurance that was not necessary for the particular nature of their practice. They noted that increased cover inevitably results in increased costs which would need to be passed on to consumers or might result in a reduced supply and reduced competition in the event that insurance premium became uneconomical.

The Faculty Office staff will consider with the Master whether the issues can be adequately covered by way of Guidance or whether more formal Minimum Terms and Conditions would be more appropriate.

## **9. Law-Tech/AI**

The Chair requested that discussion of this standing item be carried forward to the next meeting unless anyone had anything urgent. A paper on digital signatures/digital ID may be brought to the next meeting.

## **10. Any other urgent business**

None, but the Chair will be in touch with LH and JBM to pick up any issues from them arising from this meeting.

The Chair requested that the agenda for the March 2022 meeting include a significant open forum session to enable members of the Board to have an open strategic-level discussion on matters affecting the profession and consumers of notarial/other legal services offered by the profession. Board members would have the opportunity to contribute areas for discussion in this session, which is to be for around an hour.

## **11. Dates of next meeting**

Tuesday 15<sup>th</sup> March at 11am

Tuesday 14<sup>th</sup> June at 11am

Tuesday 13<sup>th</sup> September at 11am

Tuesday 6<sup>th</sup> December at 11am

Part II – closed items

None.