



FACULTY OFFICE

Minutes of the Meeting of the Advisory Board held remotely via Zoom conference on Tuesday 21st September 2020 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)

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 and welcome Lesley Hurst, new lay member

Apologies were received from James Barnes-Miller (who had hoped to join before the end of the meeting) and Mili Bhanji (MB) who was attending an Anti-Money Laundering Conference.

MC welcomed new lay member Lesley Hurst who then briefly introduced herself as Deputy Director of Education for the Diocese of Chichester in which role she has experience of instructing lawyers and therefore brings a consumer focus to the Board

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 correction – Christopher Vaughan had not been present.

b. Confirmation of documents uploaded to website

NT confirmed that all items identified for publication at the last meeting had been uploaded on to the Faculty Office website.

3. Matters arising not otherwise on the agenda:

- a. Post Office Trade Marks – HJD reported that the matter had been referred to the Legal Services Board for their information but no further action had been taken by the Faculty Office. ML reported that the Notaries Society had taken legal advice but that there were no viable grounds for opposing the application. A copy of the legal advice would be made available to the Faculty Office on a confidential basis. The Notaries Society have also raised the matter with the Foreign Commonwealth & Development Office (FCDO) who have confirmed that they would not be affixing apostilles to any documents certified by the Post Office which gives some degree of comfort. MH suggested that the issue be raised with the relevant junior Minister of State given the serious regulatory issues which might arise.

4. Faculty Office updates

a. Additional KPI

MC reported that the Master had decided to introduce a new KPI around diversity and retention the final detail of which would be finalised by the next Master's Council Meeting.

5. AML/OPBAS matters

ISB reported that MB and he had attended the Law Society's Annual AML Conference this morning. A Government Minister had indicated that new legislation was in preparation aimed at releasing some of the burden on the regulated sector whilst, at the same time, strengthening the UK's anti-money laundering defences including measures to seize crypto-assets, to enhance information sharing and the introduction of an Economic Crime Levy to fund a reform of the SARS reporting platform. AML is a constantly evolving area which is why the Master is introducing a compulsory element to the CPE requirement for 2021/22 requiring at least one hour being spent on AML learning.

Notary members of the Board expressed concern that this not become an annual requirement pointing to the LSAG Guidance which recognizes the nature of notarial services and that, as set out in the Part II Guidance specific to notaries, the majority of notarial work is not caught by the Money Laundering Regulations. A compulsory element on AML annually would put a heavier burden on notaries than it does solicitors.

NDT & ISB confirmed that for this coming year it was felt to be appropriate due to significant changes and outside guidance was introduced. The provision would be reviewed annually but in the light of likely further legislation being introduced a continuing requirement could not be ruled out. ISB noted that the LSAG Guidance had tried to make the position clearer but it is still something of a grey area with changes expected in the next few years and POCA/AML would likely continue to be a 'red flag' for all lawyers

6. LSB Governance Review – update and action plan (paper attached – please note this paper is embargoed until 31st October 2021 or until its earlier publication by the LSB)

MC referred to the LSB Governance review, an embargoed version of what was hoped to be the final version of the LSB's report having been circulated to Board members along with a copy of the Faculty Office's proposed Action Plan. The LSB had indicated its intention to launch the review in March 2020, it formally began in September 2020 and should publish its findings by the end of September. Whilst the time taken to complete the review had been very disappointing, the current (final) version of the report is significantly more positive than earlier drafts and the Faculty Office welcomed the LSB's willingness to acknowledge the positive work that had already been undertaken to meet their concerns. The co-operative nature of the relationship between the LSB and FO comes out in the report. The primary thrust of the report is that the FO has an approach to governance in practice which is appropriate and based on practices developed by custom over many years but not evidenced by written policies and procedures and therefore lacked the transparency expected of good governance. HJD acknowledged the enormous amount of work already undertaken by MC and the FO team – we still have clear tasks to be done that need to be gone through one by one.

MC acknowledged a huge effort had been made by the team. It remained a very critical report but the LSB had accepted the majority of the points made by the FO and the tone of the report had shifted considerably. The action plan that we see is now approved. There were two very minor changes being made with the Faculty Office logo being added at the top and a small numbering change was made.

Working parties

MC indicated that there may well be moments where NDT or HJD will ask for some input from one or two members of the Board to finalise particular action points and requested members of the Board to make themselves available.

Notary members of the Board noted that the tone of the report had been softened and did recognize the progress the FO had made; most of the required actions relate to governance procedures and internal policies, but if their input is needed they will provide it. However, concerns were expressed around the cost. The LSB requirements will need a lot of time and money to be spent on them and this will need to be paid for somehow alongside clearing the notarial deficit. It was felt that this would inevitably impact on the cost of the Practising Certificate and, ultimately be passed on to consumers. It was dispiriting as it was felt that what underlies the report is the LSB's lack of understanding of notaries and the services they provide. Noting the requirement for the FO to engage more with consumers, they were unclear how this could be achieved because consumers come and go and most are just one offs although notaries do have some regular clients. Looking ahead the most crucial things are the recruitment of new notaries to keep the profession growing. They suggested that a SWOT analysis would be a good starting point for the required horizon scanning. It was becoming clear that there were more examples of remote notarisation trying to cut corners and they urged the Advisory Board to address this regularly. The Internet provides access to advice from outside the UK without the level of (or any) regulation and these are threats to the profession they feel ought to be considered on a regular basis and as a threat to the profession as a whole.

MC is confident that the action plan will deliver what LSB want to see – clear, transparent and consistent decision making.

7. Law-tech/AI – Launch of Lawtech Sandbox

NDT drew Board members attention to the Lawtech Sandbox which is a platform for testing and promoting new legal technology products. The Lawtech Sandbox has backing of the LSB but not direct involvement. If anyone has any innovative ideas or anyone from the wider profession there is potential funding to help develop those ideas/ projects.

8. Any other urgent business

NDT raised an issue which was concerning the LSB around the possible removal of cover for cyber-crime in PII policies which could leave consumers unprotected. The FO would be gathering information on this as part of the annual practising certificate renewal round to seek to discover the extent of the problem. It was suggested that the LSB, in its capacity as oversight regulator, ought to take up its concerns with the FCA as oversight regulator for the insurance industry. NDT requested that notarial members of the Board let him know if they become aware of this as an issue with notarial PII policies.

No other urgent business had been notified.

9. Date of next meetings for 2021/22

The next meeting would be on Tuesday 7th December 2021 at 11.00am

NDT indicated that this would take place in person at 1 The Sanctuary and would be followed by lunch unless Covid restrictions are tightened again.

The following dates were agreed for meetings in 2022:

Tues 15th March at 11am

Tues 14th June at 11am

Tues 13th September at 11am

Tues 6th December at 11am

Tues 12th July 2.30pm – a possible date of the Annual Forum

Part II – closed items

There were none