

NOTARIES (INSPECTION) REGULATIONS 2014

INSPECTORS' REPORT FOR 2021

Background

During Covid lockdown periods, inspections were carried out on a 'remote' basis: provision of copy documents by Inspectees followed by audio-visual, or phone, conversations between an Inspectee and the Inspector concerned. This procedure was discussed in the annual meeting between the Master, and her Faculty Office team, and the Inspectors. It was agreed that, in certain circumstances, the procedure had advantages: not least in terms of the saving of time and expense in situations where an Inspector concluded that a face-to-face meeting with an Inspectee was not necessary. The procedure is to be continued in 2022 (and reviewed again at the Master's next annual meeting), with the following exceptions. It will not apply in any case where the Faculty Office informs an Inspector that inspection of a Notary's practice must be on a face-to-face basis; nor on inspections of the practices of Notaries carrying out Conveyancing and/or Probate work. In relation to these areas of practice, provision of copy documents prior to the inspection has been shown to be unmanageable. In addition, these practice areas are acknowledged to be potentially 'high-risk' and the view has been taken that inspections in person are essential.

Exceptions may also be made where, although a 'face-to-face' meeting is not strictly necessary it may be of advantage in a particular situation. An example is of an inspection carried out in 2021 of the practice of a Notary who only carried out pure Notarial work. This Notary was about to retire and asked if a colleague in his firm who was about to qualify could sit in on the inspection meeting for educational purposes. The request was granted and proved to be very useful.

Type of inspection	Remote	In person
Regulated activity	6	1
Probate	1– conducted before Covid regulations were relaxed	
Conveyancing		
Probate and Conveyancing		3
Trust work		1
Trust and Company work	2 (although these turned out to be pure Notarial work, with no involvement with the underlying transaction)	
Holds clients' monies		1
Complaint	2	
Spanish legal work by a dually qualified Notary		1

We are pleased to welcome Sanjay Gogia as a new Inspector from January 2022.

General observations

As in previous years, the majority of Inspectees were organised and delivered their documents or made their appointments promptly and presented the required paperwork in good order. In a few cases, this was not the case and one notary was very difficult to contact and sought to delay the inspection over a period of weeks. The Faculty Office was informed of this as it was an unusual situation and the inspector was concerned.

We are pleased to report that most of our inspections were well received and, in general, the Inspectees found the exercise useful and informative. Even the best run practices found something helpful to take away from the inspection. We received subsequent e-mails of thanks and updates from Inspectees, which suggest that our input was welcomed. We hope this is an indication that we are achieving those aims.

It is true that Inspectees who fully engage with the process gain greater benefit from our advice and enable us to provide a more detailed and relevant report to them and the Master.

Detailed review

The relatively small percentage of practices inspected does not allow us to draw any conclusions relating to the Profession as a whole. Nevertheless, certain trends did emerge.

Fees

Although most Inspectees referred to a chargeable hourly rate on their websites or in their T&Cs, they nearly all quote fixed fees for public certifying officer work. In the main, they invoice the fee quoted so they are clearly good at judging the right fee. Hourly rates seem to be falling away, partly because clients do not like them, which seems to be a trend reflected in solicitors' practices, and partly because public certifying work is predictable.

One practice to come out of the pandemic is invoicing in advance of a meeting and payment direct by BACS rather than payment in cash or cheque. More notaries also have credit card machines.

Offices

Possibly resulting from the enforced 'working from home' arrangements of the pandemic, more notaries seem to have retained their drive-through arrangements, either permanently or alongside office working. While this offers clients a good alternative to the traditional town centre office, with potentially longer opening hours, and has certain benefits for the less mobile or those with young children, it is perhaps a practice to be kept under review. Unless the notary has good facilities at home to allow proper discussion of the document and a secure and confidential location, this arrangement has the propensity to become a quick-fire signature service which could easily fall short of the quality of service we should deliver.

Use of consular agents

During the pandemic, many Inspectees switched to using consular agents for Apostilles and legalisation, rather than submitting documents personally to the FCO. This was because priority was being given to documents being submitted via agents. This has continued post-pandemic. We do not see this trend reversing as those Inspectees using this route confirm they are very satisfied with the service.

Updates on improvements on previous concerns

- The publicity and notifications from the Faculty Office and the Notaries Society regarding the issue of the insurance seem to have had a good effect. Most Inspectees had proper insurance and understood the difference between worldwide and excluding North America. However, one Notary whose practice was inspected had not understood the terms of the Notary's PI policy and, as a consequence, had notarised

documents for the USA without insurance. Another Notary had been advised (incorrectly) by Brokers that cover for the USA and Canada was not necessary in relation to the work carried out by that Notary. This advice would have seriously compromised the Notary's position in the event of a claim. The Notary consulted other Brokers following a discussion with the Inspector and arranged appropriate insurance.

- Inspectees were also generally well informed and aware of the requirements for AML compliance and had taken steps to ensure their practices had the right policies, checklists and ID checks in place. This may be due in part to the requirements of annual AML training.
- Perhaps as a result of more Inspectees being home with more time on their hands during the pandemic – or possibly needing to create more space at home, there has been a shift to digital record keeping and more Inspectees confirmed they use or are planning to use Notarysafe. This change is to be welcomed in view of the logistics of storing physical documents. However, few had registered their passwords with the Faculty Office.

Areas of concern and recommendations

Certain issues remain on the agenda from previous years and there is a new, and worrying, concern regarding isolation within the profession.

Corporate clients

Corporate ID is still unevenly applied and those Inspectees using their own form of register do not usually record company numbers or countries of incorporation for companies. We quote from the 2020 report which continues to apply: 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... 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.

Contact and communication across the profession

- A common theme emerged, even since the relaxing of pandemic regulations, of inspectees reporting feeling isolated and having infrequent contact with other notaries. Apart from the mental health implications of this, which are being addressed by the Notaries Society, it also means that notaries easily lose touch with current practices and facilities and new regulations. Several welcomed the return of the annual conference as being their only chance of contact with other notaries and feedback from inspections highlighted how much Inspectees enjoyed the rare opportunity of discussing their work with another notary.

- Checking how notaries stay up to date is a key feature of the inspections.

Notarytalk seems to have lost followers since the change to the new platform which is not as easy to use (in that it no longer sends emails at the time of the initial enquiry and now requires positive action of the part of the Notary to log on) and some Inspectees had fallen off its database. The new update emails may reverse that trend, although they are never as immediate as in the previous incarnation.

Notary News, the update leaflet e mail sent by the Notaries Society, is popular. In addition, the return of the Notaries Society travelling seminars, reaching out to all parts

of the country, can help to address this problem. Certainly the inspections have shown that the Notaries Society's online webinars have filled a huge gap in maintaining training for notaries. These have proved so popular that they will continue to be available as part of the Society's future education offering, which is to be welcomed.

- The Inspections have also highlighted how the availability of Notaries varies drastically in different parts of the country. This exacerbates the problems of isolation in that it hampers the ability of notaries to refer work to others at times of holidays or extreme workload. This impacts on the quality of service we provide to the public in terms of accessibility and expertise. In some areas of the country the numbers of notaries are low, which has only been made worse by the pandemic which saw a large number of notaries retire from practice. In one Inspectee's case, a town of five notaries was depleted to just one full time and one part time notary, placing extreme strain on those still practising to deal with all the work. This particular notary was close to breaking point in trying to meet the client demands.
- It is hoped that the plans of the Notaries Society to establish more regional groups will help solve this issue by putting local notaries in touch with one another. The Faculty Office might consider actively monitoring the geographical spread of notaries across counties and seek to work with the Notaries Society to assist those in remoter regions to set up regional groups.

June 2022

Faculty Office Inspectors for 2021



I.A.D. Martin



N.P. Harding



J.A. Goode