

**Minutes of the Meeting of the Advisory Board held
on Tuesday 6th December at 11.00am at 1 The Sanctuary, Westminster and via Zoom**

Present (in person): Michael Heap (MH), Acting Chair
Jonathan Coutts (JC)
Lesley Hurst (LH)
Elaine Standish (ES)
Christopher Vaughan (CV)

(via Zoom): Clare Curtis-Thomas (CCT)
Michael Lightowler (ML)
Christopher Mathews-Maxwell (CMM)

In attendance: Howard Dellar, Registrar (HJD)
Ian Blaney, Deputy Registrar (IB) (via Zoom)
Neil Turpin, Chief Clerk (NT)
Ola Oladije, Legal Advisor (OO)

PART I – OPEN ISSUES

1. Apologies

Apologies had been received from Mark Craig (MC), Chair. NT reported that James Barnes-Miller had tendered his resignation from the Board due to increased work commitments. The Acting Chair noted the Board's thanks to James (and his BSL interpreters) for his contributions to the Board. The Faculty Office will look to recruit a new disability champion to the Board as soon as possible

2. Minutes of last meeting

- a. The minutes of the meeting held on 13th September 2022 had been circulated and approved by all present (subject to the correction of two grammatical/typographical errors to the final paragraph of item 6).
- b. NT confirmed that the Agenda, Minutes and supporting papers would be uploaded to the Faculty Office website by close of business today.

3. Matters arising not otherwise on the agenda

- a. LSB proposed regulatory performance framework – a copy of the LSB's revised framework and its accompanying sourcebook (guidance) had been circulated for Board members information. CCT enquired whether the two LSB statements of policy referred to later in the Agenda are related and NT confirmed that the Faculty Office's progress against the requirements set out in the statements of policy would be assessed as part of the revised regulatory performance framework which, as noted by CMM, place additional burdens on the Faculty Office resources.

4. Faculty Office updates

- a. Faculty Office Business Plan – delivery action plan. A copy of the Business Plan (Master’s Priorities) action plan had been circulated to members of the Board. HJD took the Board through the action plan providing a brief update on some elements:

(Item 1) Entity Regulation and Section 69 Order: it was noted that significant progress had been made in recent months with the MoJ, having been given added impetus by the sanctions imposed on Russia and Belarus, and following a helpful intervention from the LSB. There is work to be done explaining the scope of the entity regulation project.

(Item 3) Discipline system review: a date had been set for a meeting with the Commissary and the Master in mid-January as part of the listening and consultation exercise. The Board noted that, with very few cases, detailed conclusions were difficult to reach but lessons are learned from every case. There is a clear need to review the role of the Nominated Notary and one result might be a move away from using only qualified Notaries to investigate and prosecute a case.

(Item 6) Reserves: it was noted that the building up of an operating reserve for the Faculty Office was on-track. The three-yearly advance budgets have been prepared taking into account inflationary pressures.

(Item 7) Diversity: it was reported that OO had been appointed as Diversity Champion for the Faculty Office and in that role had attended her first Equality, Diversity & Inclusion (EDI) Forum hosted by the LSB. The main areas of focus are to seek greater harmonisation of the EDI data collected by Regulators and the work of the Social Mobility Task Force. In this connection CV & ES confirmed that the Notaries Society had made 3 x £2000 bursary awards to students on year 2 of the Notarial Practice Course at UCL from a total of 7 applicants.

(Item 9) Wellbeing: HJD reported that he had met with the CEO of LawCare and, among other issues in a wide-ranging discussion, the idea of the creation of a panel to offer support (as distinct from legal advice) to lawyers who are the subject of disciplinary complaints funded by regulatory/representative body donations.

(Item 10) Rule of Law: a date has yet to be finalised for the lecture by Sir Keith Lindblom. It will take place at St Matthew’s Church Westminster (and via Zoom) to be followed by a reception at the Faculty Office’s offices at 1 The Sanctuary.

(Item 11) Legal Choices: HJD confirm that he was continuing to serve as Chair of the Legal Choices Governance Board for a further year. His 3-year term as Chair would then come to an end another Regulator would take over as chair. He hoped that it might be possible that the BSB would re-join Legal Choices.

- b. Disclosure and Barring Service (DBS) Certificates – amending SI. IB reported that the MoJ had given us notice of its intention to lay an amending Statutory Instrument to extend the categories of exempt bodies entitled to seek information on ‘spent convictions’ under the Rehabilitation of Offenders Act 1974. Most, though not all, of the other frontline Regulators are already exempt bodies for this purpose. A short notice and, necessarily, short response time consultation was undertaken in October which received support from the Notaries Society and no adverse response. IB had also had contact from the CEO of Unlock National Association of Ex-Offenders, commonly referred to as Unlock, an independent United Kingdom-based charity, established in 2000 to campaign for the equality of reformed offenders who had

offered to assist the Faculty Office to develop its policies, procedures and controls in the event that an exemption is granted.

Currently, the Faculty Office is only *entitled* to request a Basic DBS Certificate which only discloses unspent convictions. If an exemption is granted we would be entitled to obtain a Standard Certificate (which discloses all convictions) or an Enhanced Certificate which includes details of inclusions on Barred Lists of people not permitted to work with Children and/or Vulnerable Adults. IB confirmed that the Faculty Office is not seeking to 'gold-plate' its requirements but would take a risk-based approach to requiring Standard or Enhanced Certificates as necessary and within both our financial and practical resources.

5. Legal Services Board Statements of Policy

- a. Empowering Consumers: a copy of the Statement of Policy had been forwarded to members of the Board. The Faculty Office had prepared a 'gap analysis' indicating where it believes that work remains to be done to achieve all of 'outcomes' expected of Regulators by the LSB. It was noted that much of the work in this area stems from the Competition and Market Authority's (CMA) report into the legal services market from 2016 and further review in 2020 which found that there was a lack of information transparency enabling consumers to make informed choices as regard their legal services supplier. Whilst some progress has been made, the LSB requires further work to be done, particularly around publishing of disciplinary information and Legal Ombudsman findings in way which makes it easy for consumers to find and understand and the promotion of online review platforms (a 'Trip Advisor' for legal services providers) to assist consumers to make informed decisions. The Faculty Office has contacted the operators of the Review Solicitors site and are making arrangements for them to talk to the Board to provide detail on how their site works and whether it could be extended to incorporate Notaries given that, with such a small profession, a bespoke site for Notaries would be unlikely to be cost effective for an operator.
- b. Ongoing Competence: a copy of the Statement of Policy and the LSB information request had been forwarded to members of the Board. There are four required outcomes and a series of more detailed expectations against each outcome. The Board noted that with very few complaints, just one upheld LeO decision in the last four years and only one notified claim through a PII policy in the last 10 years there was little evidence of an ongoing competency problem in the notarial profession. Members were also reminded of Professor Stephen Mayson's address to the Notaries Society Conference at which, *inter alia*, he expressed surprise that none of the regulators had sought a Judicial Review of the LSB's proposals in this area given the statutory requirement for regulatory activities to be proportionate and targeted only at cases in which action is needed. The Board expressed concern that imposing additional burdens on the profession and on the Faculty Office appeared to be disproportionate in the absence of any evidence of a problem. The Master has requested that a suitable draft response to the LSB information request be prepared before Christmas and this would be shared with the Board by email for comment in good time for the submission deadline of 31st January 2023.

6. Law-tech/AI

NotarySIGN and the E-Apostille - a note prepared by ML had been circulated in advance of the meeting. NotarySIGN had been formally launched at the Notaries Society's annual conference in September and this was followed by a presentation from the FCDO in relation to the e-Apostille. Since then, there has been a healthy interest from notaries in NotarySIGN and over 150 e-Apostille applications have been processed by the FCDO. In due course, the FCDO should be able to provide a breakdown of applications lodged by notaries, other legal practitioners and industry. It was noted that Companies House are developing digital format documentation capable of direct submission to the FCDO for legalisation which might impact on the need for notarial input. ML commented that he suspected that the GRO might follow the same route in due course.

7. Guidance on Remote Notarisation

IB advised the Board that amended guidance on Remote Notarisation was being prepared for approval by the Master and publication. The guidance had not been circulated as it very technical in nature. The initial guidance was devised in May 2020 in the midst of the first Covid-19 lockdown to provide 'best practice' guidance to notaries rather than a set of requirements that must be followed. It has now been updated by Julian Gibbons and Nigel Ready (the original principal authors) in the light of experience in practise and with a view to putting the guidance on a more permanent footing. The guidance is being reviewed by the Faculty Office before being signed-off by the Master for publication.

It was noted that the authors had had the benefit of an Opinion from Leading Counsel in preparing the revised guidance. ML (who had had sight of both the Opinion and the revised guidance) requested a further review of section 6 in relation to "any requirement of law that (a) a deponent to an oath or affidavit, a declarant to a statutory declaration should be physically present with the notary when the oath or affidavit is sworn or the declaration made..." as neither the Counsel's Opinion nor his own research had found any such requirement. It was suggested, and the Board agreed, that the authors be asked to look again at this provision.

8. AML/OPBAS matters

IB confirmed that the Faculty Office was awaiting the report on the outcome of its inspection by OPBAS (the Office for Professional Body Anti-Money Laundering Supervision) which took place in September.

IB reported that the Master had made an Order under the Notaries (CPE) Regulations 2021 requiring the obtaining of at least one point of accredited CPE in AML/CTF/Sanctions related topics in the CPE year ending 31st October 2023.

IB reported that one of the Faculty Office appointed inspectors, accompanied by the Deputy Chief Clerk, had undertaken a targeted inspection of one of the City-based notarial firms to review its AML policies, procedures and controls. The report was awaited. Further targeted inspections may follow.

Finally, IB alerted the Board to the Economic Crime and Corporate Transparency Bill which was currently with Parliament. He noted that it is a huge piece of legislation which, amongst other provisions, would provide Companies House with significant new powers to obtain and share information on the beneficial ownership of companies and other bodies which it registers. The Faculty Office are keeping a watching brief on the Bill.

9. Any other urgent business

CV reported that he had received some expressions of discontent principally about the continued fully remote nature of the teaching on the UCL course but confirmed that these concerns had now been directed to the Course Administrator at UCL which was the most appropriate avenue for such concerns to be dealt with.

10. Date of next meeting

Tuesday 14th March 2023 at 11am (in person)

Part II – CLOSED ISSUES

NT confirmed that there were no closed issues to be discussed and the meeting ended at 12.35pm.