

NOTARIES (INSPECTION) REGULATIONS 2014

INSPECTORS' REPORT FOR 2022-23

Background

We conducted the following 19 Inspections this year. A remote Inspection is now the default method for first Inspections (unless circumstances suggest otherwise) but Inspections of Conveyancing and Probate practices are conducted in person because of the nature of the Practice and the volume of documents.

Type of inspection	Remote	In person	Inspector(s)
Regulated activity	3	1	IADM
	3		NH
	2	3	JAG
	1	2	SPG
Probate, Conveyancing & Will Writing		3	NH
Registration of Overseas Entities		1	NH
Trust work			
Company			
Holds clients' monies			
Complaints			

Inspections in previous years have been of the practices of individual Notaries. The first “large entity” inspection was conducted this year by an Inspector, with a representative from the Faculty Office present, and was very different from an individual inspection.

General observations

With regard to organisational arrangements for inspections we encountered some practical problems.

It is encouraging to see that the Faculty Office have recruited additional support, following staff retirements, and this seems to have been resolved for this current

year.

With regard to the Inspections themselves, in the main, most Inspectees presented well-ordered and efficient practices, submitting documents in advance by email in good order.

We had three second Inspections in person this year as a result of first Inspections where the Inspector raised concerns that needed to be addressed.

Two of these concerned Notaries struggling with stress and time management issues, largely resulting from a lack of support within their practices and also limited or no contact with other Notaries. This led to a failure to be able to refer work or seek guidance on addressing problems which resulted in poor practice management and failures in work quality. Both Notaries were made aware of the problems and had successfully resolved the failings by their second inspection. One of them had effected a significant turnaround with the help of Lawcare.

The third follow up inspection concerned a more worrying issues of :-

- Poor financial management, whereby a Notary who was practising through a limited company operated to a very large extent on a cash basis, not all of which was going through the company bank account.

We have had positive feedback from Inspectees and no complaints. In an endeavour to spread the word and limit any anxiety of Inspectees when they receive their letter of Inspection, the Inspectors are giving a presentation this year at the Notaries Society's Annual Conference on the form and purpose of the inspections.

Detailed review

We noted the following significant changes from previous years.

Fees

Across the board Inspectees have increased their rates and seem to charge an appropriate fee (subject to geographical areas) commensurate with local legal fees.

Use of consular agents

Very few Inspectees deal with legalisation directly and this seems to be largely due to the priority given by the FCDO to consular agents. Inspectees confirmed they are very satisfied with the consular agent service.

VAT

Some Inspectees were unaware that, for VAT purposes, their disbursements are added to their fees in calculating the applicable figure for this.

Therefore, while their own fees may be less than the threshold, their VAT turnover may be above it.

Tax is a very specialised area, and this has been referred to the Notaries Society for consideration as to whether general guidance is necessary.

CPE

The use of webinars appears to have eased off amongst Inspectees since the end of the pandemic lockdowns, with Notaries attending seminars in person to obtain their accredited points.

Updates on improvements on previous concerns

We are pleased to report that no cases of inadequate insurance arose this year. Inspectees have been fully aware of their CPE requirements for AML and are complying with that.

Notarysafe is gaining customers year on year. A common question remains about how the Faculty Office stores Notaries' passwords and there is a reluctance to share those without having some reassurance of how it will be protected once in the Faculty Office's hands. A notification on this would be helpful.

In previous years in fact going back to 2016 - Inspectors have commented on entries in Inspectees' registers which were felt to be too brief, with the consequence that it would not be possible to identify the particular document should the need arise. Unfortunately, this situation continues: one Inspectee in the current year had recorded Powers of Attorney simply as "Power of Attorney", "Public Form Power of Attorney" or "POA", without mention of the grantees or any description of its purpose. Other Acts had been recorded simply as (for example) "Oath", "Attest", "Certify", "Paspt", "Identity verify".

Most (but not all) of the Notaries whose practices were inspected in this year included the registered number and country of jurisdiction in their corporate Notarial Acts. The remaining Inspectees were inconsistent in doing so.

Inspectees generally have adopted forms of Firm-Wide and Client and Matter AML Risk Assessments that are suitable for the nature of their respective practices. Most use the templates provided by the Notaries Society, with or without amendments. The firm in which one Inspectee is a partner uses bespoke forms. The same firm (in relation to sanctions compliance) has adopted bespoke forms of consent/confirmation of compliance addressed to its Clients and to be signed by the Clients at an appropriate time. This serves to emphasise to the Client concerned that sanctions compliance is not merely a matter for Notaries and we commend this approach.

Areas of concern and recommendations

The application of GDPR to notaries

There remains confusion as to the length of time to retain correspondence and ID records under GDPR guidance. As last year, some Inspectees expressed concern as to whether destroying personal data (as opposed to copy Notarial Acts, which must be kept for 12 years, or indefinitely if in the public form) at 5 years could prejudice their position should a claim arise in year 6. Our recommendation remains that joint guidance from the Faculty Office and insurers on this point would be useful.

The practicalities of destruction of electronic records are not fully understood by most Inspectees. Consequently, we would repeat our thoughts from last year that the Faculty Office may need to issue guidance on what constitutes *destruction* for digital records. A simple press of the Delete Button is not adequate, as data may still be retrieved; Reliable, free, software for electronic destruction is readily available.

Google Optimisation software

Concerns were raised over the use of this on Notaries' websites. These were referred to the Faculty Office, and the matter has been resolved.

Notarial Registers

In the case of two Inspections, the Notaries concerned had not been maintaining Notarial Registers. These situations resulted from the use of (different) high-end Client Relationship Management software in legal firms with large volumes of transactions. However commendable the use of the CRM software may be, it is difficult to answer queries if the necessary information is scattered across a wide range of sources.

This issue was referred to the Faculty Office for review in relation to whether if the programming of the software was redesigned so as to enable a report to be generated (for example in a MS Excel .csv format, or similar) on Rule 24 matters, that would be effective compliance with the Rules.

No firm conclusion has been made at this stage, but the Faculty Office have considered the issues raised and agree that this requires to be looked into further.

Contact and communication across the profession

There still appears to be an issue within the profession of isolation. This has three main consequences:

- mental health deterioration
- lack of support to cover absences leading to poor provision of notarial services in some areas
- failure to stay up to date with regulations.

The Notaries Society has sought to address some of these by circulating Notary News regularly and that is well received.

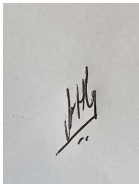
They are also looking to encourage the establishment of local regional groups, although this is a slower project.

Faculty Office Inspectors

September 2023



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