

# **10<sup>th</sup> International Forum on the Electronic Apostille Programme (e-APP)**

**1<sup>st</sup> November 2016**

Mr Secretary General, distinguished guests, ladies and gentlemen,

For me it is a great honour to be asked to give the opening address this morning. I would like to thank the Hague Conference, the Secretary General, Christophe Bernasconi and his staff and those who have otherwise supported or helped to organise this Forum so that we can come together and again record, I believe, the continuing success of the Apostille Convention and discuss how we can together promote the use of the e-APP programme across all member states.

What a pleasure it is to be here again in the city of Peace & Justice and also in Holland. You will know the saying that **“God created the world, but the Dutch created Holland”**. It is a country renowned

for so many things and everyone who has visited will have their own fond recollection.

The country lays claim to so many records, a few of which I have put on the slide. The only one I would quibble about is its claim that it is home to the oldest profession. With the greatest of respect to those fine ladies in Amsterdam, I wish to make it clear, as everyone should know, that it is the Notaries who are the oldest profession and that is as far as the comparison goes!

I am here today representing the UK & Ireland Notarial Forum whose members comprise the five bodies I have mentioned on the slide. I am therefore not from a competent authority, but because we are among the largest consumers of the Apostille in the UK & Ireland, we feel we have a valuable contribution to make.

I am also here because we are keen followers and supporters of the Convention and also the e-APP programme which I encourage as many member states as possible to make available to their

citizens. At present we in the UK are still working with paper Apostilles. Most of the people who use my services are looking for a quick turnaround of their documents. Without the Apostille available on a while-you-wait same day service I could not achieve their frequent expectations on timescales.

It is a great tribute to the Hague Conference that they have made the Apostille Convention so successful with 112 contracting states around 30 of which have already implemented one or both components of the e-APP programme. I am certain that more states will apply in the near future. Why is this?

Everyone knows just how important global international trade and commerce are to our economies. People travel and work and own property and businesses in different jurisdictions more than ever they have in the past. This gives rise to a huge number of inter country transactions and the parties to them have to be able to rely on the validity, genuineness and security of documents and that is of course where

trusted third parties such as Notaries have an essential role. I am asked on a daily basis to authenticate the identity, capacity and authority of people and legal entities and this can range from the simplest certification of a document such as a passport to certifying the binding effect of a contract involving many millions of pounds. The Apostille acts as a vital check that my signature and seal may be safely relied upon. I should explain that for a Notary from the UK, 99% of what we do is for use overseas and that is why we are so interested in these Forums and the progress of the e-APP.

Perhaps it would be helpful to be reminded of what it was like before 1961 and is still the case today when you have to deal with a non-Convention country with whom your jurisdiction has no bi-lateral agreement dispensing with legalisation. It requires you to go not only to the competent authority but also to the Embassy of the destination country. In some cases you even have to go to a nominated chamber of commerce

before the Embassy will deal with the document, thus adding further time and expense. Sometimes the receiving country doesn't have an Embassy or consular official in your country and that causes no end of problems in trying to locate one in an adjoining country, which may or may not accept your document unless it has been first legalised by their competent authority (who do not know me) or it has been translated into their own language or both.

Each authority has its own rules concerning process which can seemingly change from day to day without warning and without mentioning any names, some of the fees are eye-wateringly expensive. In order to keep your client happy and the document circulating at an acceptable speed, you have to be aware of the individual requirements of a large number of Embassies, consulates, High Commissions and other representative offices. And what does all of this achieve? A stamp (I have some examples on the screen) that says that the certificate already

issued by the Foreign Affairs department in the host nation was indeed issued by them! But of course we knew that already and in the UK could confirm it by going on-line to inspect the e-register!

Some consulates want payment in cash in a particular currency, others require payment to be lodged in advance in a particular bank. Some require copies of the documents, will only accept documents in the English language and they all have different timescales varying from a day to several working days. One embassy has recently started asking for copies of the passports of everyone mentioned in the underlying document. With a Power of Attorney, that means obtaining multiple copies of passports belonging to people who may be overseas. Some will accept various documents being bundled together under one notarial certificate. Some embassies require a separate certificate for every document – even to the point that a company’s memorandum of association has to be separately certified and

presented from the Articles! I am completely mystified by these requirements and can only assume that they are designed to generate the maximum amount of fees possible. I am sure you will all agree that this two or three stage process of legalisation is not conducive to the smooth operation of international trade and is a prime example of why every country should join the Convention in order to avoid unnecessary bureaucracy.

On a quite different subject, I have also been concerned about the increasing incidence of fraud and forgery. It can take the form of people pretending to be a public official when they are not or actually forging or faking a signature, stamp or seal of someone who is. It matters a lot because people are losing considerable sums of money by relying on documents which purport to be validly authenticated when they are not. Over the last few years members of our Society have sent me numerous examples of documents appearing to have been signed and sealed by

them but which they have never seen before. The first thing that happens is they receive an email asking if a particular document was issued by them and this usually occurs after the fraud has been discovered and the loss incurred. Often there is no apostille and apart from reporting this to our national fraud authority, there is nothing you can do other than to advise people to make sure in future they obtain an Apostille and verify it. This is not limited to Notarial Certificates. Other public documents are affected too.

I have many examples of these documents and have brought a few with me today which I recently received. This bundle consists of over 40 legal agreements or certificates which are signed by a non-existent person (purporting to be a public official). Yet more worrying is that each one has attached to it a forged apostille which, to a layman, might seem genuine. Of course any wording outside the box about being able to check the validity of the apostille on-line has been removed. These frauds were committed in



another EU member state and received by me with an enquiry as to whether the public official named actually existed.

There are lessons to be learned from this. The first is of course to educate and encourage people as to the benefits of always using the Apostille. It may therefore have come as something of a surprise to us all that the EU Commission sought fit to encourage people to dispense with its use on certain public documents. I do understand in appropriate cases, if there are unnecessary or expensive obstacles hindering citizens from going about their daily business, steps should be taken to alleviate this. However, I believe the encouragement which the EU has given to dispensing with the use of the Apostille is misplaced and could potentially put the consumer in danger. I remember our Society objecting in the strongest terms, remarking that this was a risky strategy based in part on what is now Recital 3 of the Regulation which is on the screen (the underlining is mine).

Mutual Trust is all very well, but where is the room for this when so many seem prepared to commit fraud or forgery in order to gain a financial advantage?

Recital 4 of the Regulation says that people who want an Apostille should not be denied, but who will make the judgment about whether it is safe to proceed without one? My experience is that if people are presented with a cost or inconvenience they are inclined to take the risk if the decision is down to them.

Does Recital 5 mean that every EU Competent Authority must place on its website a warning for every applicant who has a document for use within the EU, that they need not obtain an Apostille? But who is going to advise as to whether the document concerned falls within the categories of documents listed in Article 2? Also, what happens if a public document contains a mixture of matters which are listed and not listed in Article 2?

In my opinion the processes made available under the Regulation to check that a signature on a

public document is valid through the Internal Market Information System (IMI) are neither helpful nor convenient, even assuming that the relying party actually knows when and how to check and there is the time to do so.

The huge industry that exists today in creating false identities and faking and forging documents and certified copies with a view to fraud is I suggest just too big to take risks. The arguments in favour of having a systematic check up front by the competent authority before the document is relied upon are I believe overwhelming and that it why the Convention and the utilisation of the Apostille coupled with the e-APP programme are so important.

And finally, in addition to encouraging more countries to adopt the Convention and dispense with legalisation formalities, is the need to embrace both components of the e-APP programme. A number of countries (including I am pleased to say the UK) have adopted the e-

register and it is now possible to verify the genuineness of an Apostille on line.

But fewer countries have so far made available the e-apostille which could help address many of the problems I have highlighted.

Because the electronic apostille has so many advantages (I have put some on the screen) in terms of lowering cost for the consumer as well as the competent authority, whilst speeding up transaction times and increasing security and making it much more difficult for the criminals to do their work, I would advocate widespread adoption. Why should we want to make it easy for the fraudsters?

In being able to offer a wholly electronic service, public officials such as Notaries who still have to employ century old methods of working on paper, will be able to offer a far more secure way of creating, executing, validating and transmitting public documents. This is all set against a

background (at least in the UK) of an increasing year-on-year demand for the Apostille.

I am curious to know what it is that can discourage people from embracing more modern methods of working. What is it about paper and all its by-products that is so endearing that we cannot seem to live without it? Is it a fear or mistrust of the technology itself or the risks associated with being in the vanguard of a useful innovation? It needs all stakeholders to come together and decide to take this step in order to encourage others to do the same. Just think how long ago it was that you wrote a letter to someone and posted it? Given the choice between a letter and an email or an SMS, my bet is that you would almost always go for the email or a text message. And the solution for the e-APP which I have been working on is far more secure than email. Do we not owe a duty to the public to adopt a more secure way of issuing and handling public documents?

I would therefore ask you to lobby the decision makers within your government such as those responsible for commerce and trade and the courts systems and to act as a catalyst for change. Where you lead, others will follow as it becomes the acceptable way to do business. Ladies & Gentlemen, it is the future and the future is here and now.

I hope that your own authority will be able to put a big tick in the box next to the e-Apostille.

The very last thing I would like to add is that we are privileged to enjoy good relations with our own competent authority and we have found that regular contact and meeting together make the whole system work better with greater understanding on both sides.

Likewise, these Forums and the Special Commissions are a vital part of oiling the wheels of the Convention and keeping it on track and progressing initiatives such as the e-APP programme. It is my fervent hope that we will

keep meeting together and I wish everyone a successful outcome in the coming days. Thank you for your attention.

Michael Lightowler

The Notaries Society of England & Wales

November 2016