

Report on Case No U 0098

Complaint lodged by [omissis] against the Office of the Commissioner for Revenue (CFR) following communications from the Chief Notary to Government that the property she acquired in 2019 could only be registered if the stamp duty and capital transfer taxes due in respect of the transfer were paid to the CFR, as the Notary who had published the deed, and to whom the stamp duty and the capital transfer tax had been paid by complainant and the vendor respectively, had failed to pass on the funds deposited with him to the Department. Complainant felt aggrieved by the aforementioned policy implemented by the CFR, which she insists is reprehensible and in breach of her human rights, requested to be relieved from effecting said payments again.

The complaint and facts leading to the grievance

Complainant had entered into a preliminary agreement to acquire an apartment for the price of €185,000. The 1% stamp duty due to the CFR on the promise of sale agreement was paid to the notary who had drawn up the said agreement and passed said funds to the CFR. A contract of sale was subsequently published in September 2019 where complainant paid the remaining 4% stamp duty amounting to €7,400 and the vendor paid the 8% capital transfer tax in the amount of €14,800. Both these amounts were passed on to the Notary in accordance with applicable legislation, for this latter to pass on to the CFR and register the transfer.

Complainant explained that as she had not received the relevant DDT Form¹ after some time, she enquired with the Department and became aware that the notary was in financial trouble and had failed to pass on the funds collected to the CFR and register the title of the property in her name. As her attempts to contact the notary were futile, she sought to establish what had happened to the actual deed published by said notary and what steps she was required to take for the registration to be carried out. In June 2020, the Chief Notary to Government informed her that the original contract had been traced and was at the Office of the Notary to Government and Notarial Archives. She was however informed that as per standard practice the contract of sale could only be registered following payment of the respective stamp duty and capital transfer tax as the CFR does not allow registration unless said dues are settled.

Complainant insists that the practice adopted by the CFR is unfair as both she and the vendor had paid the amounts due to the CFR. She maintains that notaries are public officers as reflected in the Notarial Profession and Notarial Archives Act which states that:

Notaries are public officers. They are charged to receive acts inter vivos and wills, and to attribute public faith thereto; they shall be responsible for their custody, ...”

She contends that the notary acts as a public officer, representing the government in the execution of various duties and responsibilities and it is imperative that the notary acts in utmost good faith, as private individuals engaging the services of a notary must have peace of mind that the transaction will be carried out diligently and in accordance with the law. She elaborates that in line with the Notarial

¹ The receipt from the CFR for the Stamp Duty she had paid.

Profession and Notarial Archives Act, the duties and responsibilities of notaries include “*the collection and payment of any duties and taxes pending in consideration of the said Act. Moreover, in terms of the Duty of Documents and Transfers Act in the case of transfers carried out by deed inter vivos and in declarations causa mortis, stamp duty and taxes are passed on to the Notary, who submits the relative DDTI form at the Capital Transfer Duty Department together with the money collected from the buyer and/or the seller together with Schedule 8.*” In her opinion, once the notary collects the amounts due on behalf of the CFR, if the former defaults in his duty to pass on funds collected on behalf of the CFR to the department, it is CFR that should take responsibility for the misused funds and allow the registration of the relevant deeds, without requiring innocent parties to repay dues already paid. She further points out that in terms of the Home Loan Regulations 2016, all money collected by way of stamp duty and taxes are to be paid to the Notary and not to the CFR.

Complainant protests that notwithstanding the provisions of the law with which she abided by, the property she acquired remains unregistered. In her view, this is grossly unjust as she is not only being prejudiced as a result of the misconduct of a public officer, but is being expected to pay the vendor’s tax contributions, given that this latter will not offer to repay the amount already given to the notary, as he has nothing to lose from the fact that the transfer is not registered, and possibly much to gain by retaining the property registered in his name.

Complainant elaborated that the notary who drew up the deed of sale/purchase has no money or assets and several similar cases to hers had been reported against him to the Police. Therefore, it would be futile and excessively burdensome to sue him seeking to recover the misappropriated funds. Moreover, any insurance policy which he might have had to cover him for professional liability will not

cover the present circumstances as the notary's actions were intentionally fraudulent and not the result of an accident, mistake or negligence.

She therefore sought the Ombudsman's assistance for the situation to be rectified and that the CFR should be required to assume responsibility for the notary's misconduct and be required to waive the request for repayment of amounts already paid by her and the seller to said notary, so that the consequent registration of the transfer can be carried out.

Meanwhile, in July 2020 complainant provided this Office with a copy of the letter which she received from the CFR in reply to her letter of the 4th September 2019 wherein she was informed about the following:

"... kindly be informed that the Commissioner for Revenue does not have the power to waive the payment of taxes in cases where a notary fails to register a deed, even if such taxes would have been given to the notary by the parties. Therefore, if a different notary files a notice of a deed published by a defaulting notary, the tax still needs to be paid since it would be due to the Government. There is no provision in the law which allows a waiver from payment of taxes in such cases.

*Our position in such cases has always been that the clients' remedy is through court proceedings against the notary. The amounts are still due to the Government and it is up to the client to pay amounts and then to claim them from the notary. This position is based on the Court judgment in the names **Carmel Galea et vs Nutar Pubbliku Dott. Pierre Falzon** decided on the 9th October 2009 by the Court of Appeal. You may also wish to note that similar cases have been rectified by the publication of a new deed with*

another notary and by paying taxes again. Court proceedings normally result in the defaulting notary being held liable for damages in favour of taxpayers. You may therefore wish to seek legal advice.”²

Complainant replied to this communication through Notary Abela who insisted that the Department’s reply was not in sync with reality and imposed an unfair burden on complainant who had observed the law. He insisted that notaries are mandated by law to collect the taxes due to the CFR and the purchasers/vendors are required by the legislator to pass the taxes and duties due on the transfer of immovables to the notary. When collecting duties/taxes due on the transfer of immovables the notary is acting as a public officer in line with the provisions of the law. Once this procedure is adhered to by the contracting parties, the CFR cannot subsequently find them at fault and request them to repay what has already been passed on to the notary, because the latter has defaulted in his duty as the Department’s mandatary. The Department cannot deflect the problem on the purchaser merely because it has the muscle and power and act as if the mandate is inexistent – such action is in breach of the principles of good faith and of legitimate expectations.

Correspondence and communications exchanged with the respective ministries/entities

This Office sought the comments of the Ministry for Finance and the CFR, the Ministry for Justice, Equality and Governance and the Ministry for Home Affairs, National Security and Law Enforcement, as these were responsible for the entities involved in complainant’s predicament.

² Letter dated 17th July 2020.

The Ministry for Home Affairs, National Security and Law Enforcement explained that its involvement in the case was limited to the role of the Public Registry in the registration of public deeds. It explained that the duties of the Public Registry are regulated by the following legislations:

- The Notarial Profession and Notarial Archives Act³;
- The Public Registry Act⁴; and
- The Duty on Documents and Transfers Rules⁵.

In terms of Article 50(1) of the Notarial Profession and Notarial Archives Act – *“Every notary must, within fifteen working days from the date of the act deliver to the Director of the Public Registry a note of – a) any act inter vivos transferring the ownership of immovable property or other real rights over such property; ...”*.

Consequently, the notary who draws up the deed is responsible to enrol or register a note at the Public Registry Searches Unit within the stipulated time-frame. Moreover, Regulation 8(1) of S.L. 364.06 provides that *“For the purposes of article 51 of the Act⁶, the notary shall give notice of the relative deed to the*

³ Chapter 55 of the Laws of Malta

⁴ Chapter 56 of the Laws of Malta

⁵ S.L. 364.06

⁶ Article 51 of the Duty on Document and Transfers Act provides that:

“(1) Where a notary receives a deed of transfer of any immovable property or a deed containing a declaration made in accordance with article 33, whether duty is chargeable thereon in accordance with this Act or otherwise, he shall, within fifteen (15) working days and together with the payment of such duty, if any, give notice of such deed to the Commissioner in such form and containing such particulars as may be prescribed: (emphasis added)

Provided that no notice shall be given where the Government or the Housing Authority is the transferee.

*Commissioner⁷ and it shall **not** be lawful to deliver a note of enrolment for registration in the Public Registry of such deed before it has been ascertained that such notice has been filed with the Commissioner”⁸.(emphasis added)*

The Ministry therefore explained that the Public Registry Searches Unit cannot accept a note for enrolment unless the tax and/or duty have been duly paid to the CFR, further observing that the Public Registry Act does not provide for the eventuality of a notary not fulfilling his obligations according to law. It further noted that the notary would be liable to criminal and/or civil proceedings if it is established that he had failed to pay the dues owed to the Government of Malta.

In her reply dated 2nd September 2020, the Director (Property Tax) of the Capital Transfer Duty Division, iterated what had been already stated in the reply sent by the CFR to the complainant in July 2020. It was further claimed that although a notary is a public officer, in the case *C Galea et vs Nutar Pubbliku Dott. Pierre Falzon*⁹ the Court of Appeal held that the notary has to exercise professional diligence in the exercise of his profession and thus the CFR should not be held

(2) Any notary who fails to give such notice within forty (40) working days together with any relative payment as provided in sub-article (1), or gives incorrect or incomplete particulars or details shall incur interest at a rate as prescribed by the Minister on any duty due on the transfer to which such duty refers which interest shall start accruing from the expiration of the fifteen (15) working days mentioned in sub-article (1), provided that the total interest shall in no case exceed the amount of the said duty.

(3) Interest imposed under sub-article (2) shall be imposed by the Commissioner and shall be paid to him, and all actions for the recovery thereof shall be brought by the Commissioner before the courts of civil jurisdiction in terms of article 466 of the Code of Organization and Civil Procedure.”

⁷ CFR.

⁸“(2) The notice shall be made on the forms or means as supplied by the Commissioner for this purpose and shall contain the information required in respect of a deed of transfer of any immovable property and in respect of a deed containing a declaration made in connection with article 33 of the Duty on Documents and Transfers Act.

(3) The Commissioner shall not accept payment of the relative duty before the said notice has been filed.”

⁹ Application no. 286/2002/1 decided on the 9th October 2009.

responsible for the notary's failure to give notice of a transfer and pay the tax and duty due. The Department stated that similar cases had been rectified by the publication of a new contract by another notary and the repayment of taxes. Court proceedings against the defaulting notary generally find the notary liable for damages in favour of the contracting parties.

The Ministry of Justice informed that the grievance had been discussed with the Office of the State Advocate and the Chief Notary to Government. It explained the following:

- In line with Article 17(2) of Chapter 55 of the Laws of Malta, the notary keeper (in this case the Chief Notary to Government) is not responsible for the payment of any registry fees, duty, tax, impost or penalty due by, or which could have been imposed on the notary who drew up the contract of sale in terms of past or current fiscal legislation or any other law, unless and until such time as the notary keeper is put in funds to be able to pay the same. Therefore, the Chief Notary to Government must first receive any pending taxes and duties from the parties to the contract before proceeding to enrol the contract at the Public Registry as the latter does not allow the enrolment of public acts unless all taxes and duties have been settled with the CFR.
- The State has provided an adequate and effective remedy to complainant as Article 10A of Chapter 55 obliges notaries to be adequately insured against all risks of professional liability during the time they are exercising their profession. This Article is further complimented by Regulation 3 of the Notaries (Compulsory Insurance) Regulations which requires notaries to be adequately covered by a policy for a minimum of €250,000 or such other sum as may be

determined by the Minister from time to time, against any breach committed by the notary and, or the notary's employees in a policy year.

- Regulation 2 gives a wide definition of what constitutes a breach, by providing that a breach which gives rise to an indemnity includes “*any negligent act, error, breach of confidentiality, omission, loss of documents, committed or happening during the exercise of the notary's functions under any law at any time in force in Malta, and for any preparatory, ancillary or consequential work done with respect to same, by the notary or by his employees, and includes any act which causes damages resulting from a criminal or fraudulent act by any of the notary's employees in the performance of their duties if they are in his employment, or in furtherance of the notary's functions if they are third parties engaged by him*”.

The notary's failure to pay the taxes and duties collected from the contracting parties to the CFR amounted to an omission, which falls within the aforementioned definition. The complainant therefore had an effective remedy as she could have submitted a claim for indemnity with the insurance company with which the notary was insured, which indemnity should be sufficient to cover the amounts paid by the clients. Should the insurance company refuse to honour its obligations under the insurance policy complainant can sue the company; and

- it is the client who engages the notary and Government cannot be held responsible to waive tax/stamp duty if the notary has failed to exercise professional diligence in the exercise of his profession.

Complainant reacted to the said replies through Notary Abela claiming that the arguments raised were “*frivolous, pitiful and demeaning*”. Notary Abela insisted

that when collecting taxes and duty due on the publication of a contract the notary is acting as a mandatory of the Department and that therefore the CFR should waive the payment of the dues already paid by the contracting parties to the notary.

It was further pointed out that the argument put forth by the Ministry for Justice, following consultation with the Office of the State Advocate, was incorrect. Complainant could not claim payment from the insurance company with whom the notary had been insured, as a claim can only be made by the insured - complainant had in fact been informed about this from the insurance company. Moreover, policies issued to notaries are those of professional indemnity and not client-money protection insurance policies. The insurance company will only proceed with an assessment of the notary's claim if it relates to his professional work and will not proceed to accept a claim by a notary when this latter has fraudulently and knowingly misappropriated funds entrusted to him by clients. In fact, the requirement imposed on notaries to take out professional indemnity insurances was introduced following the introduction in applicable legislation of the obligation that notaries would be responsible for the property title – thus, should it result that the property title of the property subject to a contract is defective, the notary would be able to revert to the insurer to recover damages claimed by the parties.

The complainant further referred to the judgement of the Court of Appeal referred to by the CFR and remarked that the case referred to revolved around a promise of sale agreement and was being quoted out of context. While there is no doubt that all professionals are required to act responsibly in the exercise of their profession, the CFR is ignoring completely the fact that the notary is the CFR's mandatory and that the contracting parties are obliged to act in line with the law.

Consequently, they cannot be prejudiced because the person mandated by the CFR to collect dues owed to it by law failed to act with professional diligence.

Having taken into consideration the arguments raised by all parties involved, this Office sought further feedback from the relevant Ministries and the Office of the State Advocate. In its correspondence this Office further remarked the following:

“This Office observes that the replies provided to this Office did not address the concern expressed in our letter dated 4th August 2020 namely, that contracting parties acting in good faith and in accordance with the law are being prejudiced and subjected to undue hardship because they are unable to register property legally acquired by them as a result of a failure of the notary public (who is carrying out the functions of a public officer when collecting funds in the name and on behalf of the Commissioner for Revenue) to abide by the legal obligations imposed by law. While, there might be no legal provision allowing the CFR to waive the repayment of the tax and duty already paid by the contracting party to the notary, the principles of fairness and reasonableness dictate that the Public Administration implements policies so as to ensure that the failure of the notary does not prejudice those acting in good faith and in accordance with the law. This Office, regrettably notes that the authorities seem to be completely insensitive to the hardship being imposed upon innocent contracting parties by requiring them to re-effect payment and advising them to seek remedy through court action – action which involves additional expenses which the parties might not afford, additional time during which the parties cannot fully exercise their rights of enjoyment on the property acquired and which might not lead to the recovery of the amounts repaid if the notary does not have the necessary funds. Innocent parties are currently being penalised as a result of

procedures applied by the relevant departments when they committed no breach on their part. Claiming that the notary was chosen by the parties and that therefore government cannot be held responsible is illogical in the opinion of this Office as the notary is a public officer and the parties could not have foreseen that the notary would not deposit the funds with the CFR. It also appears that the insurance which notaries are required to have in line with the legislation introduced does not cover cases where the notary has fraudulently and intentionally misappropriated funds.

This Office therefore encourages the Ministries and the State Advocate to consider the difficulties and hardship encountered by those in complainant's situation and to discuss what can be done to implement procedures to protect and limit the prejudice suffered by contracting parties through no fault of their own.”¹⁰

Following the aforementioned, the Director (Property Tax) within the Capital Transfer Duty Directorate in an email of the 27th January 2021 informed this Office that the CFR was discussing a number of remedies to address similar situations. The Director elaborated that in collaboration with the Notarial Council, the Office of the CFR plans to organise an educational campaign in the near future to educate the public about what to look for in such situations – for instance, that if a receipt is not received from the CFR within three weeks from the date of the deed, they can contact the Department so that they can take action against the notary more promptly, rather than finding out by chance that their deed has not been registered.

¹⁰ Email of the 7th January 2021.

Moreover, having taken note of the concerns raised by the Office of the Ombudsman regarding the additional expenses which currently need to be incurred by the contracting parties in order to take criminal and civil action against the notary, internal discussions had been initiated to consider more effective remedies for these situations. The Directorate however observed that such a process would necessarily take some time, since it involves planning, carrying out any necessary amendments to the legislation, as well as implementation.

Complainant welcomed this reply and noted that:

- in her case, the decision of the relevant entities should be that of allowing the registration of the deed of transfer without requiring the repayment of stamp duty and transfer taxes which had already been deposited with the Notary;
- a solution to similar issues should not be dependent on the contracting parties as the public cannot be expected to investigate the honesty or otherwise of notaries. There should be a means of paying these dues directly to the CFR through bank drafts, even if these are passed to the notaries; and
- since the notary is a public officer entrusted by Government to collect the monies due on the deed from the contracting parties, Government is liable if the notary fails to pass on these funds to the CFR. In fact, according to the Home Loan Regulations if the notary makes a mistake when calculating the tax due to the CFR, the notary is responsible for the payment of the difference. The Notary is therefore the one liable, not the contracting parties.

Subsequent to the reply provided by the Director (Property Tax) of the 27th January 2022, a further reply was sent to this Office by the CFR on the 5th April 2021 further elaborating on the previous reply and commenting on the observations made by this Office. The CFR stated the following:

- while it is true that the notary as per Chapter 55 of the Laws of Malta is a public officer and is expected to exercise his/her profession with due diligence and full responsibility, it is also the responsibility of every tax payer to: a) diligently choose the right professionals to whom they delegate their power to pay on their behalf the tax due; and b) to take the proper precautions to avoid the risks of such failure;
- the statements made in the Ombudsman's correspondence that the authorities "*... seem to be completely insensitive to the hardship being imposed upon innocent contracting parties by requiring them to re-effect payment and advising them to seek remedy through court action ...*" and that "*... innocent parties are currently being penalised as a result of procedures applied by the relevant departments when they committed no breach on their part*" are factually and legally unfounded. Chapter 364 of the Laws of Malta stipulates clearly the rights and duties of the taxpayer, notaries and the CFR and reverting the aggrieved parties to seek court action is not an insensitive approach but the rightful option for these cases to be independently and impartially investigated and adjudged by the Courts. In a democratic society those accused of a crime or contravention are deemed innocent until proven guilty beyond reasonable doubt before a court of criminal jurisdiction, or proven to have acted contrary to law on a basis of probability before a court of civil jurisdiction. It is therefore inconceivable that the CFR assumes the role of judge and decides beyond what the law provides by waiving the taxpayer's obligation to pay the tax due – this

will create a precedent and ignite a scenario where the alleged offender is denied a fair trial;

- suggesting a waiver of the payment of taxes in these circumstances is very dangerous as this can instigate room for abuse by those who wilfully intend to evade paying the tax due. Such a precedent would lead to a situation where people will ultimately expect to acquire ownership notwithstanding the tax is unpaid.
- the proposal made would inevitably lead to abuse of power and the initiation of law suits by all parties involved for a breach of laws and the fundamental human rights involved throughout the said process, particularly the right to a fair and impartial hearing;
- the remedy to be sought in these cases is that of the institution of civil and criminal proceedings against the notary who allegedly acted negligently or with the intent to defraud his clients. The Judiciary is the guardian of human rights and the Constitution and ensures that victims are compensated for the damages suffered from those who breached the law and possibly re-instate these latter to their *status quo ante*;
- This unfortunate situation stems from the lack of knowledge the public has about the law and how the tax system works and not from how the law is enacted or implemented. The public who delegates a notary as their mandator (*recte* mandatary) to pay the duty or tax due, should not hand over cash. They should use a cheque or bank statement (*recte* draft) as this serves as evidence of how and when the money was passed on to the notary. Moreover, the general public should know that one can verify with the office of the CFR whether the tax was

fully paid after 15 working days from the signing of the contract. Chapter 364 imposes penalties on notaries who fail to comply with the obligations imposed upon them by the Act; and

- ultimately this is not a question of why the authorities do not co-operate with the public when faced with similar situations, but rather why the public still blindly trusts their chosen notary without taking the proper precautions, notwithstanding other known cases of notaries who failed to pay tax due on behalf of their clients. For this reason, the CFR and the Notarial Council are working to promote an educational campaign to educate the public about the workings of the procedure of duty on documents and transfers, including information about the duties of notaries and those of the tax payer.

This Office also sought feedback from the **Notarial Council** that had in fact publicly commented in 2021 about similar situations and explained that it was collaborating with the CFR to implement an integrated online system that would allow real time registration of deeds and the payment of taxes, so that these occurrences are avoided. The Council explained the following:

- Notaries, as public officers, are entrusted by the state to attribute public faith and ensure legal certainty for citizens and businesses requesting their services. Anything that tarnishes or appears to tarnish their independence and impartiality or diminishes legal certainty is taken seriously by the Notarial Council and relevant authorities. The law strictly regulates the procedures to be followed in such cases. Article 88 of Chapter 55 requires the Council to “... *inquire into the professional conduct of any notary which is considered to be repugnant to the decorum of his profession, or into any charge of negligence or abuse made against any notary in the exercise of his profession ...*” unless the

power to take cognizance and deal with this conduct is vested in another authority by the legislator. In the case under examination, there is a clear element of fraudulent misconduct and the power to take action and prosecute rests with the police and the office of the Attorney General. The Council intervenes to direct these entities to make representations to the Court for the suspension or revocation of the notary and for the appointment of a notary keeper;

- While exercising their profession notaries are obliged to keep an indemnity insurance in line with Article 10A of Chapter 55 and S.L. 55.07. This insurance will not cover instances of criminal activity or fraud, leaving aggrieved parties in a limbo as to how they are to have their rights redressed in case of fraudulent misconduct;
- Currently Government insists that the rights of the aggrieved parties can only be registered if all the amounts due for property transfer tax and duty on documents are remitted. This in essence requires a double payment on the part of the purchasers, which in itself creates an added burden on the juridical system as the purchasers would then have to sue the fraudulent notary civilly. The prejudice is aggravated when there are insufficient assets to satisfy the outstanding amounts;

The Council has repeatedly made its submissions to the Government for the situation to be addressed by having an adequate system of timely redress, whereby the deed will be registered through the Office of the Chief Notary to Government (Keeper of the Acts of the defaulting notary) and Government reserves the right of action against the notary, as in any other case where money is owed to the public exchequer. One needs to balance Government's fiscal requirements with the interest of safeguarding the juridical order and the rights

of property of private citizens, which outweigh fiscal considerations. This especially in the light of the fact that had the modern adequate systems suggested been properly implemented, such abuse could have been detected and stopped upon inception;

- there was a lack of action or delay by aggrieved third parties, which although exposed to instances of similar abuse never formally brought their case to the Council's attention or to that of other competent authorities for proper investigations. Had such action been taken at the first occurrence or suspicion, the instances of such fraudulent misconduct could have been mitigated;
- the Notarial Council has formulated a clear agenda for the digitisation of all notarial services, in particular for a paperless property tax payment and a registration system. This aims to achieve a more efficient, secure and transparent system using a combination of decentralised technology, smart contracts and self-executing tokens having built-in features and verification, like escrow and KYC mechanisms, also through the use of Distributed Ledger Technologies (DLT).

The idea of an integrated system that brings together all the key elements in property transfer, registration and payment was discussed in a dedicated Symposium in October 2016. A dedicated framework was subsequently developed and presented to various key players over the past years, including the Office of the Principal Permanent Secretary, the Ministry for Justice, the Ministry for Finance, Cabinet and the Office of the Prime Minister. Presently, the online registration and payment of deeds had been initiated, but the current implementation leaves the crucial element of tokenisation through DLT out of the workflow.

In August 2021 this Office was informed that the Office of the State Advocate was discussing the matter internally and may have devised a possible solution which however required further discussion with the respective stakeholders.

In October 2021 complainant who was very concerned about the fact that the transfer was still unregistered, sought assistance from this Office so that she could come to a financial compromise with the CFR which would enable the registration of said transfer without her being required to pay the total amount of duty and tax due on the deed as at 2019. This Office referred complainant's proposal to the Office of the CFR, but was informed in June 2022 that the contract published in 2019 was still valid and that the said contract would eventually be registered by the Chief Notary to Government. The Department was willing to accept that the market value of the property remains unchanged (that is, the same as that declared upon signing of the deed, without any increase in market value, notwithstanding that the contract would be registered in 2022) and that complainant was to pay tax and duty due on that value.

Matter brought to the attention of the Court of Revision of Notarial Acts¹¹

Before proceeding with my considerations about this grievance, this Office considers it appropriate to refer to the comments made by the Court of Revision of Notarial Acts in an identical case, the subject-matter of which had also been brought to the attention of this Office by the submission of a complaint in July 2020. By application filed on 11th May 2021 this anomaly¹² was brought to the

¹¹ Application No 406/2021 decreed on 19th July 2021.

¹² The applicant had brought to the attention of the court "... l-anomalija li qed tinholoq meta Nutar li jkun gabar it-taxxi dovuti mill-partijiet fuq att pubbliku jibqa' ma jghaddix lill-Kummissarju tat-Taxxi Interni u minhabba f'hekk l-att ma jkunx jista' jigi insinwat."

attention of the Court of Revision of Notarial Acts that had ordered notification to the CFR, the State Advocate, the Attorney General and the Director of the Public Registry. Respondents had raised the procedural inadmissibility of the application and noted that the issue went beyond the remit of the Court that is limited to the supervision of all notaries, the Notarial Archives and the Public Registry in terms of Article 110(1) of Chapter 55. The CFR had raised identical arguments to the ones raised with this Office, as did the Director, Public Registry who further pleaded that the contract could not be registered once the relative taxes had not been passed on to the CFR as the Public Registry would be in breach of the relevant provisions of the law if it were to accept such registration. Said replies were notified to the applicant who insisted, as in the case under examination, that once the notary is appointed to collect the tax and duty due on a transfer on behalf of the CFR, there is a mandator-mandatory relationship between the two and consequently the parties to the contract should not be subjected to penalties, by being requested to pay once again the tax and duty which they had already passed on to the notary, in line with their obligations at law.

Having considered the submissions of all the parties involved the Court declared that the application filed was not admissible, and made the following observations:

“Pero`, fiċ-ċirkostanzi, hasset id-dmir li tinnotifika lill-uffiċjali pubbliċi li huma involuti biex tissentizhom dwar il-portata ta’ din il-problema li qed iġġib hafna tbatija fuq il-partijiet f’atti nutarili li jiġu traduti fil-fiduċja tagħhom minn xi Nutar li huwa ukoll uffiċjal pubbliku skont il-liġi. Mit-tenur tar-Risposti jidher li sfortunatament dan l-għan tal-Qorti ma intlaħaqx.

Illi huwa ċar li de lege lata u sakemm il-liġi tibqa' kif inhi l-uffiċjali pubbliċi involuti ma jistgħu jagħmlu xejn fir-rigward ta' dawn il-każijiet ħlief li jissolevaw dawn il-każijiet mal-Ministeri li huma jaqgħu taħthom biex jgħarrfuhom dwar din l-anomalija u jissoleċitaw xi forma ta' rimedju jew palattiv li għall-inqas inaqas mill-konsegwenzi tal-aġir abbużiv tan-nutar..."

The aforementioned decision was brought to the attention of this Office in October 2021. This Office subsequently sought feedback from the Ministry of Justice about the outcome of the discussions that had been ongoing with the various stakeholders, pointing out that it shares the same concerns expressed by the Court. It had in fact communicated with the relevant entities on various occasions soliciting them to consider the difficulties and hardship encountered by those in complainants' situation and to implement procedures to protect the public and limit the prejudice suffered by contracting parties as a result of an omission on the part of defaulting notaries. No update was however provided to this Office.

Considerations

Complainant observes that notaries are considered public officers by applicable legislation and asserts that they act as mandatories of the CFR when collecting stamp duty and transfer tax on public deeds. She maintains that the notary's failure should not prejudice the rights of third parties who acted in good faith and in accordance with applicable legislation when they deposited the amounts due to the CFR with the notary. In her opinion, it is unreasonable to burden

laypersons with the obligation to oversee the actions of public officers in the proper discharge of their duties and to hold the former liable for the notary's failure to do so, obliging them to make good on the misconduct of a public officer. She contends that the CFR should bear responsibility for the notary's conduct as the latter is carrying out the duties of a public officer representing Government and not the parties to the contract - Government should therefore register these deeds without requesting further payments. She further observes that the professional indemnity which a notary is obliged to have in terms of Article 10A of Chapter 55 does not extend to criminal and/or fraudulent acts of the notary, as in the case under consideration.

The CFR noted that there is no provision in the law allowing a waiver of the payment of taxes or/and stamp duty in cases where a notary fails to register the deed, even if said dues would have already been tendered by the parties to the notary. According to the CFR any such waiver could lead to abuse by those seeking to avoid paying tax. The Department claims that although the notary is a public officer in terms of Chapter 55, the Court of Appeal held that the notary is required to exercise due diligence while practicing his profession and consequently the CFR should not be held responsible for the notary's failure to give notice of a transfer and payment of the tax and duty due. The Department contends that taxpayers are required to diligently choose the right professionals to whom they delegate their power to pay on their behalf the tax due and to take proper precautions to avoid the risks of such a failure, such as for instance, by not handing over cash to the notary.

According to the CFR rectification of the purchaser's title to the property can only be made by the registration of the contract by another notary (in this case the Chief Notary to Government) and the repayment of the tax and duty due. The

purchaser would then have a right of action against the defaulting notary who is generally found liable for damages by the Courts that are the guardians of human rights and ensure that victims are compensated for the damages suffered from those who breached the law and possibly re-instate the former to their status *quo ante*. The Department opines that similar situations stem from a lack of knowledge about how the tax regime works, noting that the public still trusts blindly their chosen notary without taking precautions, notwithstanding known cases of notaries who failed to pay tax due on behalf of their clients.

On its part, the Ministry for Justice contends that the State has provided an adequate remedy to those in complainant's predicament referring to Article 10A of Chapter 55 which requires notaries to be adequately insured against all risks of professional liability while in the exercise of their profession. According to the Ministry the law gives a wide definition to the term 'breach' and the Notary's failure to pay taxes and duties collected from the contracting parties constitutes an omission which falls within the definition of term 'breach' in Regulation 2. Complainant can therefore seek compensation from the insurance company once she effects repayment of the dues already paid to the notary.

This Office does not concur with the interpretation given by the Ministry of Justice and the Office of the State Advocate of the term 'breach' contained in Regulation 2 of the Notaries (Compulsory Insurance) Regulations. This Office considers that the term 'omission' in Regulation 2 does not include acts of a criminal or fraudulent nature committed by a notary, but refers to other omissions of the notary in the carrying out of the duties connected or ancillary to the publication of notarial acts and other functions specified by Chapter 55 (as opposed to 'acts which cause damages resulting from criminal or fraudulent acts' committed by third parties in the notary's employment or engaged by him', which

are specifically mentioned in the said definition and which appear to be covered). As rightly pointed out by the Notarial Council the professional indemnity which notaries are obliged to keep will not cover instances of criminal activity, thus leaving aggrieved parties in a limbo as to how they are to obtain redress in cases such as the one under consideration. Moreover, the contracting parties cannot claim payment from any professional indemnity insurance subscribed to by the notary, as a claim can only be submitted by the insured – that is, the defaulting notary - who in this case cannot be expected to submit such a claim, when he had renounced from exercising the profession of Notary public as of the 10th December 2019 and reported his actions to the Police, who charged him with aggravated misappropriation¹³. The insurance policies issued to notaries are those of professional indemnity and not client-money protection insurance policies, and the insurance company will only proceed with an assessment of the notary’s claim if it is related to his professional work – it will not proceed to accept a claim by a notary when this latter has allegedly fraudulently and knowingly misappropriated funds entrusted to him by clients.

Moreover, this Office cannot fault the stand taken by the Public Registry. A review of existing provisions applicable to the case at hand prohibits the Searches Unit from accepting a note of enrolment for registration unless notice and duty due has been paid to the CFR. As observed by the relevant Ministry, Chapter 55 does not provide for the contingency of a notary not fulfilling his obligations in terms of the law. Furthermore, as observed by the Court of Revision of Notarial Deeds in the aforementioned decision, as the law stands the public officers involved are unable to do anything in regard to these cases “... *ħlief li jissolevaw*

¹³ The said information transpires from the acts of a civil case instituted against the same notary – Application no. 1179/20.

dawn il-każijiet mal-Ministeri li huma jaqgħu taħthom biex jgħarrfuhom dwar din l-anomalija u jissoleċitaw xi forma ta' rimedju jew palattiv li għall-inqas inaqqas mill-konsegwenzi tal-aġir abbużiv tan-nutar...”.

This Office acknowledges that presently the law does not provide for a waiver of the payment of taxes or/and stamp duty in instances when a notary fails to register the contract and convey the funds entrusted to him by the parties to the CFR as required to do by law, as complainant suggests. It also concurs that notaries are bound to exercise their profession prudently and with due diligence. In this regard this Office refers to the decision of the Court of Appeal in the case *C Galea et vs Nutar Pubbliku Dott. Pierre Falzon*¹⁴, referred to by the CFR in his replies to this Office, where the Court noted the following about the functions of a notary public:

“14. Il-funzjoni tan-Nutar Pubbliku Malti hija doppja: dik ta' uffiċjal pubbliku, fejn in-nutar għandu l-funzjoni illi jagħti fidi pubblika lil atti jew dokumenti li jirredigi u li jirċievi, u dik ta' professjonist liberu u indipendenti, li għandu responsabbiltà lejn il-partijiet li jkunu talbu s-servizz tiegħu u jkun allura parteċipi fl-att minnu redatt. Dawn iż-żewġ funzjonijiet jipproteġu żewġ interessi separati iżda li huma intrinsiċi fil-professjoni ta' nutar pubbliku; in-nutar għandu r-responsabbiltà li jissalvagwardja l-interess pubbliku kif ukoll l-interess privat. In-nutar pubbliku jissalvagwardja l-interess pubbliku billi jirredigi bil-formulatajiet (recte formalitajiet) kollha skont il-liġi, atti fost il-ħajjin u testmenti, jagħtihom fidi pubblika, jippreservahom u jagħti kopja u estratti ta' dawn l-atti u testmenti (art. 2(1) tal-Kap 55 - Att dwar il-Professjoni Nutarili u Arkivji Nutarili). In-Nutar huwa obligat li jissalvagwardja l-interessi tal-

¹⁴ Appeal no. 286/2002/1 decided on the 9th October 2009.

partijiet illi jkunu inqdedw bis-servizz tiegħu billi, inter alia, jassigura ruħu li jistabbilixxi l-volontà tal-partijiet u wara li jkun irredigà l-att jaqrahulhom u jfissirulhom, isaqsihom jekk dan hux skont il-volontà tagħhom (art. 25(4) Kap 55)...Il-funzjoni pubblika u l-funzjoni ta' libero professionista tan-nutar pubbliku ma tistax tiġi separata u tali dottrina hija ormai aċċertata minn diversi ġuristi prominenti Taljani...

15. Il-funzjoni pubblika tan-nutar pubbliku ġġib magħha responsabbiltajiet li jaqgħu taħt l-isfera pubblika rregolati mill-Kapitolu 55 tal-Liġijiet ta' Malta. Jekk nutar pubbliku ma josservax il-forma li biha huwa għandu jirredigi l-atti notarili kif ukoll il-proċeduri preskritti, allura jkun qed jivvjola dan l-Att, fil-kapaċità tiegħu ta' uffiċjal pubbliku. Tali responsabbiltà normalment titqies bħala waħda extra-kontrattwali. Min-naħa l-oħra, in-Nutar Pubbliku għandu wkoll responsabbiltà kuntrattwali, fil-kapaċità tiegħu bħala libero professionista, u dan a bażi tal-mandat mogħti lilu mill-partijiet.

...

16. Jekk imbagħad jirriżulta minn xi liġi oħra, barra dik notarili, illi n-Nutar Pubbliku kellu d-dover li jaġixxi b'ċertu mod f'ċirkostanzi partikolari jew li kellu xi obbligu impost fuqu minn xi liġi partikolari, allura jekk jonqos minn dawn id-dmirijiet, titwieled ir-responsabbilita` akwiljana li hija msejsa fuq il-prinċipji tad-delitt u kwazi delitt fil-Kodiċi Ċivili.”

Does this however entail that the Public Administration, that is in a stronger position to apply the law and the sanctions therein envisaged vis-à-vis the defaulting notary, should persist in its stance that the proprietary rights of the aggrieved purchaser can only be registered once the amounts due for the property transfer tax and duty on documents are proffered to the CFR, without providing

some form of redress to said aggrieved contracting parties? This Office has reflected on the arguments raised by the CFR in the reply dated 27th January 2022 at length, and considers some of said arguments as unfounded, particularly the contention that a waiver of the payment of taxes in these circumstances could lead to abuse by those who wilfully intend to evade paying the tax due; and that a waiver could bring about a situation where people will ultimately expect to acquire ownership notwithstanding that tax and duty due are unpaid. Complainant's proposal for a waiver of tax and duty due – amounts which have already been passed on to the notary in line with the provisions of applicable legislation – refers to “*the specific circumstances under examination*” and is aimed at alleviating the hardship caused by the actions of a public officer. While there is no doubt that the parties to a contract must act diligently in their choice of notary and that they should take proper precautions to avoid similar risks (particularly that of tendering payment in cash), it is noted that the public's chances of becoming aware of similar behaviour by a notary are in practice very limited and generally depend on such behaviour being rendered public through the media. It is also noted that legal professionals can only exercise the notarial profession after having satisfied the requirements stipulated by the legislator for the attainment of the requisite warrant and having attained said warrant – the warrant, granted by the State, can be looked upon as a guarantee provided to the service users that the service provider (the notary who is in possession of a warrant) has the skills and competences to perform the duties and functions of the profession.

The CFR's standpoint basically obliges a purchaser, who acted in good faith and in accordance with the law, to affect not only a double payment of the amounts due by the latter, but also a payment of the capital transfer tax already passed on to the notary by the seller, as the seller has no interest to effect said payment a

second time. This Office iterates that those in complainant's situation are being prejudiced and subjected to undue hardship as they are unable to register property legally acquired by them, unless they incur a considerable expense and fork out the sums due to the public exchequer once again. Moreover, in some cases, such as the one under consideration, instituting civil action against the defaulting notary to recoup the amounts passed on to him, would not lead to the purchaser recouping the amounts paid and any judicial costs involved, as the claims against the defaulting notary would be considerable and there would not be enough assets to satisfy outstanding dues.

While there might be no legal provision allowing the CFR to waive the payment of the tax and duty already tendered by the contracting parties to the notary, the tenets of fairness and reasonableness, as well as the principle of legitimate expectations, dictate that the Public Administration implements effective policies and practices so as to ensure that the failure of the notary – who has been designated by the legislator as the official to whom the parties to the contract are bound to give the tax due to the CFR - does not prejudice laymen acting in good faith and in accordance with the law. It is imperative that Government addresses this anomaly without further delay as the current state of affairs is causing much stress and worry to contracting parties who fall victim to a defaulting notary in whom they would have put their trust. The notary is a public officer in terms of Article 2(1) of Chapter 55; he/she is exercising the function of a public officer when collecting the tax due on the contract from the contracting parties and exercises said profession as a result of a warrant accorded by the State after satisfying the requirements set out in relevant legislation for the attainment of said warrant. The parties have no choice but to hand over the tax and/or duty owed to the Tax Department to the notary as the legislator himself designated

notaries as the officials who must collect dues owed on public deeds to the CFR and to subsequently pass them on to the Department.

In this regard this Office refers to a recent judgement delivered by the Court of Criminal Appeal where a notary who had collected the tax due following the publication of a declaration of transfer of property *causa mortis* had not passed on the amount deposited to the Department. The court noted that in this case (as in the case of a transfer *inter vivos*) the transfer is carried out by a deed published by a notary public who is required to register the declaration in the Public Registry and collect the tax due in line with article 32 *et seq.* of the Duty on Documents and Transfers Act (Cap 364) and pass it on to the CFR. The Court observed that:

“34. L-obbligi tan-Nutar taħt l-Att dwar id-Dokumenti u Trasferimenti huwa wieħed oneruż tant li l-istess Liġi żżommu responsabbli, in solidum mal-benefiċjarju, li jhallas it-taxxa li tkun dovuta u ngabret fuq dak l-att¹⁵. Anzi, bis-saħħa tal-artikolu 50 tal-Kapitolu 364 tal-Liġijiet ta’ Malta, kull Nutar li –

(a) jonqos li jhallas it-taxxa dovuta kollha jew parti minnha taħt id-dispożizzjoni ta’ dak l-Att fuq xi att riċevut minnu; jew... ikun ħati ta’ reat u jeħel, meta jinstab ħati, penali ta’ mhux inqas minn ħdax-il euro (11) iżda mhux iżjed minn erba’ mija u ħamsa u sittin euro (465), u l-proviso li hemm mal-artikolu 11 tal-istess Kapitolu 364 tal-Liġijiet ta’ Malta għandu jgħodd għal dan l-artikolu.

35. Illi dan kollu juri li n-Nutar Pubbliku mhux biss ritenibbli Uffiċjal Pubbliku bis-saħħa tal-Liġi li tikkostitwixxi u tirregola l-professjoni tiegħu;

¹⁵ Artikolu 49(1) tal-Kapitolu 364 tal-Liġijiet ta’ Malta

izda bis-saħħa tal-Att dwar id-Dokumenti u Trasferimenti, il-Liġi tafdal u wkoll rwol speċifiku fl-amministrazzjoni tal-ġbir ta' dik it-taxxa.

...

40. Meta Nutar Pubbliku jkun qiegħed jopera u jeżegwixxi l-obbligi tiegħu taħt il-Kapitolu 364 tal-Liġijiet ta' Malta, huwa jkun qiegħed jaġixxi bħala Uffiċjal Pubbliku. Meta Nutar jippublika att ta' dikjarazzjoni ta' trasferiment causa mortis, u b'mod partikolari meta jkun qed jiġbor it-taxxa dovuta bis-saħħa ta' dak l-att, huwa ma jkunx qiegħed jagħmel sempliċi att professjonali minn suġġett professjonali privat, izda jkun qed jaġixxi fil-vesti tiegħu t'Uffiċjal Pubbliku inkarigat mill-ġbir ta' taxxa pubblika u li tkun trid tiġi konsenjata lill-Kummissarju tat-Taxxi. Ikun għalhekk qed jaġixxi fil-kwalita' tiegħu t'Uffiċjal Pubbliku, inter alia, kemm taħt l-Att dwar il-Professjoni Notarili u l-Arkivji Notarili kif ukoll tal-Att dwar it-taxxa fuq id-Dokumenti u Trasferimenti.

41. Il-klijent ikun qiegħed iħallas din it-taxxa lin-Nutar fuq l-att mhux fil-kwalita' tiegħu personali, jew bħala professjonist, izda bħala Uffiċjal Pubbliku, b'Liġi speċifikatament delegat biex jiġbor dik it-taxxa u jikkonsenjaha, f'isem il-klijent tiegħu, lill-Kummissarju tat-Taxxi.

...

45...Meta l-benefiċċjarju jkun qiegħed jikkonsenja l-flejjes rappreżentanti t-taxxa lin-Nutar, il-benefiċċjarju jkun qiegħed jagħmel dan għax bil-Liġi obligat li jħallas it-taxxa, u li din trid tingabar minn dak il-professjonist diżenjat bil-Liġi li huwa n-Nutar Pubbliku, li jaġixxi fil-vesti tiegħu t'Uffiċjal Pubbliku fil-qadi tal-funzjonijiet leġittimi tiegħu, in kwantu huwa obligat bis-saħħa tal-Liġi li jirċievi dik it-taxxa biex tiġi mghoddija lill-Kummissarju tat-Taxxi.”¹⁶

¹⁶ Il-Pulizija vs Peter sive Pierre Falzon, Appeal No 171/2018; Court of Criminal Appeal decided on the 18th June 2020).

This Office acknowledges that the relevant Ministries, that are aware of the existing situation, have sought to alleviate and improve the current situation by holding discussions between the various stakeholders but, in so far as this Office has been informed, said discussions have not resulted in any **tangible** solution to mitigate the hardship of those in complainant's situation and provide them with some sort of redress. While the CFR's proposal to organise educational campaigns alerting the public about the signals to look for in these circumstances and to educate the general public about the workings of the tax system and the precautions that should be taken so as to avoid the risks of such failures are well-meaning, this action is certainly inadequate. Advising the general public to verify with the office of the CFR after fifteen days of the publication of the contract whether the tax and/or duty were fully paid by the notary, is a positive step, but it is inadequate protection, as the tax due would have already been passed on to the notary, who might have used them for other purposes and might not have sufficient funds to cover outstanding dues.

This Office was informed by the Notarial Council that the Council has repeatedly made its submissions to the Public Administration about the matter, insisting that the Government needs to address the situation by having an adequate system of timely redress, whereby through the Office of the Chief Notary to Government, the deeds of said notaries are registered with Government reserving the right of action against the defaulting notary, as in other cases where money is owed to the public exchequer. As correctly noted by the Council one must balance Government's fiscal requirements with the supreme interest of safeguarding the juridical order and the proprietary rights of private individuals, which outweigh fiscal considerations. Moreover, the Government is in the strongest position in applying the full weight of the law against the public officer designated by law to

collect tax due to the CFR. This Office was further informed that the Notarial Council had formulated a clear agenda for the digitisation of all notarial services, particularly for a paperless property tax payment and registration system and that a detailed framework had since been developed and presented over the years, at various instances and to various key players, including the Ministry for Justice, the Ministry for Finance, the Office of the Principal Permanent Secretary, the Government Cabinet and the Office of the Prime Minister. It appears however that although the online registration and payment of deeds has been initiated, other crucial proposals made by the Council were not taken up.

Acknowledges

Conclusions and recommendations

This Office acknowledges that presently the law does not provide for a waiver of the payment of taxes or/and stamp duty in instances when a notary fails to register the contract and convey the funds entrusted to him by the parties to the CFR as required by law, as complainant requested. Chapter 55 does not provide for the contingency of a notary not fulfilling his obligations in terms of the law. Moreover, this Office cannot fault the stand taken by the Public Registry as a reading of existing provisions applicable to the grievance prohibit the Searches Unit from accepting a note of enrolment for registration unless notice and duty due has been paid to the CFR.

This Office concurs with the comments made by the Court of Revision of Notarial Deeds and shares the concerns expressed therein. As stated by the Court, in terms of current legislation the public officials involved are unable to do anything in regard to these cases “... *ħlief li jissolevaw dawn il-każijiet mal-Ministeri li huma jaqgħu taħthom biex jgħarrfuhom dwar din l-anomalija u jissoleċitaw xi forma*

ta' rimedju jew palattiv li għall-inqas inaqqas mill-konsegwenzi tal-aġir abbużiv tan-nutar...". The Public Administration however should not ignore the plight of those in complainant's situation, also in the light of the fact that the professional indemnity insurance notaries are required to subscribe to in terms of Article 10A of Chapter 55 does not extend to fraudulent behaviour of notaries.

The stand taken by the CFR basically obliges a purchaser, who acted in good faith and in accordance with the law, to affect not only a double payment of the amounts due by the latter, but to pay also the capital transfer tax already passed on to the notary by the seller. This stance prejudices the contracting parties and perpetuates an added burden on the juridical system, as purchasers would then have to seek redress through the courts to try and recover the amounts repaid as a result of the irresponsible and fraudulent actions of the notary. This Office reiterates that those in complainant's situation are being prejudiced and subjected to undue hardship as they are unable to register property legally acquired by them, unless they incur a considerable expense and fork out the sums due to the public exchequer once again. Moreover, in some cases, such as the one under consideration, such judicial action would not lead to the purchaser recouping the amounts paid and the judicial costs involved, as the claims against the defaulting notary would be considerable and there would not be enough assets to satisfy outstanding dues.

The tenets of fairness and reasonableness dictate that the Public Administration implements effective policies and practices so as to ensure that the failure of the notary – **who has been designated by the legislator as the officer to whom the parties to the contract are bound to pass on the tax due to the CFR** - does not prejudice laymen acting in good faith and in accordance with the law. **The notary is a public officer in terms of Article 2(1) of Chapter 55; he/she is**

exercising the function of a public officer when collecting the tax due on the contract from the contracting parties and exercises said profession as a result of a warrant accorded by the State after satisfying the requirements set out in relevant legislation for the attainment of said warrant. The parties have no choice but to hand over the tax and/or duty owed to the Tax Department to the notary as the legislator himself designated notaries as the officials who must collect dues owed on public deeds to the CFR and to subsequently pass them on to the Department. It is imperative that Government addresses this anomaly without further delay and that a balance is found between Government's fiscal requirements and the interest of safeguarding the juridical order and the proprietary rights of private citizens.

I therefore recommend that the Public Administration:

- i) addresses the situation **without further delay** by providing **adequate and tangible** redress to complainant and others who have found themselves in her predicament, so that contracting parties can register their proprietary rights without being required to pay taxes and/or duties which have already been passed on to the notary as required by law. In this regard the Ministries might consider the proposal of the Notarial Council that the deed is registered through the Office of the Chief Notary to Government without further expense and Government reserves a right of action against the defaulting notary;
- ii) that the Ministries involved, as well as the Office of the State Advocate, hold discussions about these situations with the Notarial Council so as to introduce legal provisions and policies that provide more robust protection for the service user. Online systems whereby tax and duty payments are made directly to the Department on the same day of the publication of the contract, with

the consequent registration of the deed should be considered, as this would provide contracting parties with an instant confirmation that the amounts due to the public exchequer have been in fact passed on to the CFR; and

iii) that the Notarial Council together with the Ministry of Justice discuss the possibility of the Council being provided with the resources necessary to adequately and effectively carry out its functions stipulated by law, particularly its powers to “... *inquire into the professional conduct of any notary which is considered to be repugnant to the decorum of his profession, or into any charge of negligence or abuse made against any notary in the exercise of his profession*”.

A C Mifsud
Ombudsman

25 January 2023