

Summary

Quality in difficult times

A free market, a drop in demand and notarial services

Background

The new Notaries Act [*Wet op het notarisambt*] (Wna) was introduced in 1999. One of the objectives of the Wna was that a freer market would result in a better quality of notarial services. Since the beginning, however, a discussion has been going on about the erosion of quality due to the influence of the free market. The introduction of the Wna has increased competition within the notarial profession. The liberalisation of notarial rates has resulted in competition on the basis of price, sometimes in combination with new market initiatives.

As a consequence of the economic crisis, the demand for real estate deeds has decreased dramatically in recent years. This has rekindled the discussion about the quality of notarial services. The difficult economic times and the increased competition may put pressure on the quality of the services. This has, in turn, increased the tension between the role of notaries as public servants and their role as entrepreneurs. The financial importance or the continued existence of a practice can start to weigh more heavily than the quality of the work performed and care for clients.

Various notaries believe that the competition in the notarial profession has gone too far. There is a feeling that the core values of the notarial profession – impartiality, independence and integrity – are being put under pressure. In order to defend these values and to safeguard the quality of real estate transactions, a case is being made for minimum rates to be applied to consumer real estate transactions. The State Secretary of Security and Justice rejected this idea but the Lower House has promised to ‘assess together with the Royal Dutch Notarial Society (KNB) whether it is possible to carry out a quality comparison’.

Given its ministerial responsibility for the notarial system, the Ministry of Security and Justice needs to gain an insight into the development of the quality of notarial services and the relationship between the price and quality of the work. The Justice Department then asked the Research and Documentation Centre (WODC) to research the development of quality within the notarial profession and also to repeat the research into price competition in the notarial profession that was carried out at the behest of the Hammerstein Committee. The WODC commissioned research institute EIM to investigate errors which the Land Registry identifies in real estate deeds and the assess-

ment of notarial services from the point of view of estate agents, project developers and mortgage advisors. The findings are published in a separate report (EIM, 2010). The current research also covered other quality aspects of the notarial services. Besides it describes the most important market developments within the notarial profession in recent years.

Objective and research questions

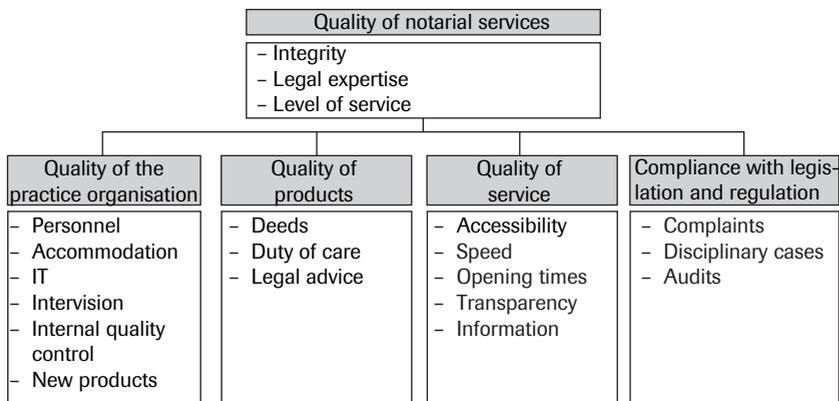
The research has three objectives. We are trying to gain insight into:

(1) the market developments within the notarial profession, (2) the development of quality of the notarial services, (3) the link between the free market and drop in demand and the quality of the notarial services.

Quality is a difficult concept to measure. We differentiate between three dimensions as regards the quality of notarial services, namely integrity, legal expertise and commercial services. In our research we examine the extent to which these quality aspects are expressed in:

- the quality of the practice organisation;
- the quality of products;
- the quality of the service for clients;
- the compliance with provisions in the Wna, regulations and other legislation and rules.

Figure S1 The quality of notarial services



The focus was on the following research questions:

- 1 How has the market developed? We examined the following aspects:
 - Supply and demand as regards notarial services:
 - the number of deeds executed;

- the number of practices, the number of (junior) notaries;
 - market levels and customers;
 - supply and demand compared.
- Rates:
 - price indexes;
 - variation in rates.
 - Business economic situation of practices:
 - turnover, costs, profit;
 - efficiency of operations;
 - solvency and liquidity;
 - strict supervision.
- 2 How have the various quality aspects of the notarial services developed in recent years?
 - The quality of the practice organisation: personnel, accommodation, IT, intervention, internal quality control, new products;
 - The quality of products: deeds, consultancy, duty of care;
 - The quality of service: accessibility, speed, opening times, transparency and information;
 - Compliance with legislation and regulations: complaints, disciplinary cases, the outcomes of audits.
 - 3 Is there a connection between the free market and a drop in demand and the quality of the notarial services?
 - 4 What developments have taken place in the notarial profession as regards value for money compared to the outcomes of the EIM research in 2005?

Research methods

First of all, existing data was collected from various organisations, namely the Royal Dutch Notarial Society [*Koninklijke Notariële Beroepsorganisatie*] (KNB), the Financial Supervision Office [*Bureau Financieel Toezicht*] (BFT), the Central Register of Wills [*Centraal Testamenten Register*] (CTR), the Tax and Customs Administration [*Belastingdienst*], Statistics Netherlands [*Centraal Bureau voor de Statistiek*] (CBS) and Amsterdam Court of Appeal. Secondly semi-structured interviews were held with three representatives of the KNB, nine auditors, three representatives of the BFT, five chairs and two secretaries of five Supervisory Committees, four district chairs, a registrar from the Land Registry, two representatives from the National Association of House Owners [*Vereniging Eigen Huis*] and a representative from the Consumers' Association [*Consumentenbond*]. Thirdly, the results were used from the research entitled 'Price competition in the notarial profession' [*Prijscurrentie in het notariaat, 2010*] that the EIM was commissioned to carry out by the WODC.

Results

Market development

The market developments have been identified using the description of supply and demand in relation to notarial services, the changes in rates and business economic details from notary practices.

- The year in which the Wna came into force – 1999 – was a peak year. In that year, 1.8 million deeds were executed. In previous and subsequent years demand for deeds was lower. In 2006 the level of 1999 was almost attained. After that demand dropped significantly to 1.3 million deeds in 2009. That decrease was noticeable primarily in connection with real estate transactions. In 2009 notaries executed around half the number of real estate deeds in comparison to the years 2006 and 1999. In 2010 the total number of deeds increased again to 1.4 million due to the increasing demand for wills.
- The number of real estate deeds was much more changeable and appears to be more sensitive to economic fluctuations than deeds with respect to family and company law. Real estate work has dwindled considerably since 2006 while family and commercial work appears to be reasonably stable. Apparently, therefore, family work has not suffered much from the drop in the number of real estate deeds. In 2010 there was even an increase in the number of wills due to the new Inheritance Act [*Successiewet*].
- Along with the increasing demand for deeds in the period 1994 to 2000, the number of (junior) notaries also increased. While the demand for deeds has fluctuated since 2000, the number of junior notaries increased slightly until 2008. The average number of deeds per notary and junior notaries was lower in most years following 1999 than the years before. In 2009 in particular the number of deeds per (junior) notary decreased significantly. In particular the decreasing demand for deeds after 2006 is not reflected directly in a decreasing workforce. Up until 2008 the number of junior notaries and employees actually increased.
- Regarding the degree to which notaries perform other services in addition to the drawing up of notarial deeds, no recent figures are available. In 2001 94% of the turnover was achieved by drawing up notarial deeds.
- The price indexes in family and commercial work rose until 2009, and 2008 respectively. After that the price indexes stayed the same. In real estate work the price indexes actually dropped. After 2009 that drop flattened out.
- Not only was there a variation in price *between* practices, but also *within* practices. Consumers can opt for standard products at (low) standard prices or for more extensive services at a higher rate.
- In the period 2004 to 2007 the financial situation of notary practices was a lot healthier than in the following period. In 2004-2007 the average profit

per notary was between 210 and 240 thousand euros, the average profit-turnover ratio was around 33%, between 1% and 3% of the practices suffered losses and 1 to 2% of the notaries were subject to strict supervision by the BFT. After that the strongly decreasing demand for real estate deeds, combined with a drop in the real estate rates and high (personnel) costs turned into a significant drop in profit. Between 2007 and 2009 the number of practices that suffered a loss or failed to make a profit rose from 2% to 30%. The average profit per notary dropped to 55 thousand euros and the profit-turnover ratio dropped to an average of 8%. This means that the costs did not decrease proportionally to the decreasing turnover. The number of notaries that are under strict supervision rose to more than 3%. In 2010 that increase continued to almost 5%.

- Notaries who are under strict supervision are those who have, for example, been too late implementing measures regarding their personnel and practice based on a significantly decreasing turnover from the real estate work, have not adjusted their (private) spending on time, or started their practice in an unfavourable time – just before the real estate crisis – and have therefore been unable to build up a buffer.

The quality of the practice organisation

The quality of the practice organisation covers the quality of personnel, accommodation, IT, intervision, internal quality control and new products. On the basis of the interviews with the KNB and auditors, it is difficult to draw an unequivocal conclusion regarding the quality of the practice organisation. There are significant differences between practices in the way that they are organised and it is also impossible to state which practice characteristics clearly have a positive or negative effect. In general terms, large practices are often well organised and have structured work processes. New notaries also have an advantage because they can make deliberate choices when building up the practice organisation regarding, for example, IT and personnel.

If we look at the individual aspects of the practice organisation, we can conclude the following:

- Many (experienced) employees and junior notaries had to leave the notarial profession after 2008. It is also apparent that the level of specialist knowledge is not always adequately maintained, particularly by older employees.
- A development appears to be taking place away from chic to simpler accommodation.
- Most practices are computerised. This helps to simplify work processes and reduces the chance of mistakes. However, it appears that by no means all the computer systems are up to date. In addition, the quality of digital dossiers sometimes leaves a lot to be desired.

- The degree to which internal quality control takes place differs between practices. Some practices use quality handbooks and protocols. These matters are often properly organised at large practices and practices which are part of a network in particular. In general, very little use is made of handbooks.
- Intervention takes the form of formal consultation structures at large practices, while at small practices it usually takes the form of informal consultations. In addition there are small regional collaborations and national networks of collaborating notary practices.
- Various developments have taken place in relation to new products, such as intakes via internet, specialisations in ICT and international law and legal advice.

The free market has resulted in price competition and also an increase in the popularity of 'B brands' for standard products. There are no indications that the quality of B brands is lower than that of A brands. Usually, the practice organisation of B brands is efficient and straightforward in order to keep costs down.

The drop in demand has consequences for the quality of the practice organisation. As a result of the drop in demand in real estate work, a lot of notary practices have experienced a drastic decrease in their turnover. This has resulted in cutbacks in relation to personnel, knowledge, IT and, where possible, accommodation. In the longer term, cutbacks in the quality of personnel, knowledge and IT may have a negative effect on the quality of the notarial services.

The quality of products

The quality of products covers the substantive quality of deeds, the duty of care and the quality of legal advice.

With regard to the quality of products, we can state the following:

- It is impossible for us to make any statements about the legal substantive quality of deeds.
- In 2009 the Land Registry discovered errors and/or irregularities in 2.8% of real estate deeds. This is a minimal increase compared to the two previous years (2.7%).
- In the view of some auditors, the quality of a dossier can serve as an indicator of the quality of the deed. The quality of the dossiers differs significantly between practices.
- The quality of the services to which the duty of care relates is difficult to ascertain. It appears that share transfer inquiries are not always performed. However, it does appear to be the case that most notaries pay sufficient attention to the 'duty of care'.

- Legal advice is a product that is offered by notaries more often. We are unable to determine the quality of the legal advices.

Due to a lack of data we were unable to determine whether the free market or the drop in demand is affecting the quality of products. In any event, most notaries appear unwilling to make concessions as regards the duty of care. It may be the case that the minimal increase in the number of errors and irregularities in the deeds registered with the Land Registry is the consequence of the drop in demand, as a result of which large numbers of experienced personnel have had to leave the notarial profession.

The quality of the service

The assessment of the quality of the service involved an examination of accessibility, speed, transparency and information. We found that the quality of the service differs per aspect.

We can state the following about the quality of the various aspects of the service:

- Most notary practices are easy to contact by both telephone and e-mail. The increased popularity of smartphones is also a contributing factor. Opening times differ from one practice to another, but this has been the case for some time.
- The speed of response appears to differ per type of practice. The KNB has indicated that the speed of response sometimes leaves a lot to be desired in the context of family/estate-related work. On the other hand, the results of the EIM research reveal that estate agents, mortgage advisors and project developers involved in real estate work believe that the speed of response has improved in recent years.
- Auditors indicate that the transparency of rates differs between practices and is generally not good. The transparency appears to have improved in recent years as regards information about rates on practice websites and comparison sites. Few billing disputes are submitted to the district chairs. However, the number of disputes with regard to which a district chair has taken a decision was higher in 2009 and 2010 than in previous years. Those billing disputes are primarily related to inheritances and not to real estate or company law transactions.
- The commercial partners of notaries involved in real estate work have indicated that the client focus has improved in recent years. We have also observed that more and more practices are providing the necessary information to clients via their website.
- The deGoedkoopsteNotaris.nl and zoekjenotaris.nl sites enable practices to be selected not only on the basis of price, but also on the basis of certain service aspects.

The free market means greater variation in services. There are cheaper standard products with more no-frills service (e.g. limited opening times, unpre-

tentious accommodation, limited possibilities for making agreements) and more expensive products with more service. As a consequence of the free market, price competition has increased and clients now request offers from a number of practices, particularly in relation to real estate work. Although the transparency of the rates sometimes differs, the level of transparency appears to be improving. The drop in demand may have indirect consequences for the quality of service. The fact that, after 2008, a lot of employees had to leave the notarial profession may result in practices being less easy to reach by telephone or using shorter opening hours.

Compliance with legislation and regulations

Compliance with legislation and regulations – as an element of the quality of the notarial services – has been assessed on the basis of complaints, disciplinary proceedings and audit outcomes. Complaints by consumers and unfounded disciplinary proceedings do not necessarily mean that professional ethics have been violated. However, this is the case in the event of founded complaints and when an auditor believes that a practice is not fulfilling the requirements.

- Both in the context of complaints submitted to the KNB and disciplinary proceedings, the proportion that relate to family-related work is relatively high in comparison to the number of deeds involved. The majority of these concern the processing of inheritances in connection with which complaints are made about the service provided by the notary (too slow, poor communication) or partiality.
- Most complaints by citizens relate to the service provided by the notary (takes too long, poor communication, not adhering to the assignment). In view of the fact that consumers are particularly able to assess this aspect of quality, this comes as no surprise.
- From 1998 to 2010, the KNB received between 200 and 300 complaints. The number of complaints has fluctuated and does not exhibit any particular downward or upward trend.
- In recent years, around 450 cases per year have been submitted to the disciplinary court (*Kamer van Toezicht, KvT*). In the years 1999-2001 there were much fewer complaints. There is no clear explanation why the number of complaints increased after 2001. The number of founded disciplinary cases ranged between 120 and 155 cases in recent years.
- Complaints by the BFT regarding violations of the administration regulations and irregularities with third-party funds accounts are usually founded. The financial supervision sector submitted 58 complaints to the KvT in 2008 and 36 complaints in 2009. This means that at least a quarter of all founded complaints came from the BFT's financial supervision sector. A number of chairs of the KvT indicated that they have become stricter in recent years as regards BFT complaints and have imposed more stringent measures.

- There were more complaints about irregularities with third-party funds accounts between 2007 and 2009 than in other years. The BFT has indicated that this may be the consequence of, among other things, more frequent and stricter checks. In 2010 however the number of complaints about deposit shortfalls dropped to nine, while policy was tightened in that same year. This may be because stricter policy has borne fruit and notaries have become more alert.
- The free market affects the kind of cases that are submitted to the disciplinary tribunal. There have been various market initiatives that have resulted in the KNB or other notaries submitting disciplinary-related complaints about, for example, collaborations with referring parties, the violation of the ban on commission and forms of advertising.
- There are no indications that the poor market situation or free market has resulted in more notaries engaging in real estate fraud. Before 1999 notaries were involved in such practices too. It is difficult to say whether notary involvement in real estate fraud has become more common. In 2003, supervision of the Money Laundering and Terrorist Financing Act (Wwft) became the responsibility of the BFT and more checks were carried out.
- Those interviewed were unable to cite any characteristics of practices that receive complaints relatively often. This can apply to all types of practices. Relatively speaking, practices with a focus on family law run a greater risk, while complaints relating to corporate law are dealt with more often without any disciplinary proceedings taking place. What is more, a lack of communication skills and certain personality characteristics of the notary can result in more treatment-related complaints.

Conclusion

We have distinguished several aspects of the quality of notarial services. Some quality aspects have been improved, while others have not. And some quality aspects have proven impossible to measure. According to the auditors, the quality of the practice organisation is variable and insufficient at only a limited number of practices. Moreover, most notaries appear unwilling to make concessions as regards the quality of products. However, this aspect proved difficult to measure. The quality of the service appears to have improved in recent years thanks to more information being available. However, the level of transparency as regards rates is not great. There are no immediate indications that the free market or the drop in demand has increased the pressure with respect to compliance with the professional ethics. However, various market initiatives have been close to the limits of what is permissible.

We can conclude that the notarial profession is experiencing difficult times, in which there is a mismatch between supply and demand. The introduction of minimum rates will not provide a solution for the consequences of the considerable decrease in the number of real estate deeds. Before the real estate crisis, in the period dominated by price competition, the financial situation of the notarial profession could be described as healthy. It is therefore important for notaries to adapt their practice organisation, to innovate and/or focus on other aspects of notarial services in order to survive while waiting for better times. However, long-term cutbacks on things like IT and knowledge development will, in the long term, have negative consequences for the quality of notarial services.