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The Legal Services Board
One Kemble Street
London
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By email only: paul.greening@legalservicesboard.org.uk

8 September 2015

Dear Paul

**Application to the Legal Services Board for an alteration to regulatory arrangements
Notaries (Conduct & Discipline) Fees and Costs Order 2015**

On behalf of the Master of the Faculties I am making the above application under Part 3 of Schedule 4 of the Legal Services Act 2007 ('LSA 2007') and the rules made by the Legal Services Board under that part. This is the Fees and Costs Order which is referred to in the recently approved Notaries (Conduct & Discipline) Rules 2015 and which you saw a draft of during your consideration of those rules. A copy of the proposed new Fees and Costs Order is annexed.

Reason for the proposed alteration in regulatory arrangements

The proposed new costs order is intended to provide a structure for recoverable costs in disciplinary proceedings in the Court of Faculties. It is intended to assist the Court and parties to manage more effectively the costs of proceedings with the aim of ensuring that we have a cost effective disciplinary regime which is robust and transparent.

Compliance with the regulatory objectives

The LSA 2007 requires approved regulators to comply with the following objectives:-

- (a) protecting and promoting the public interest;
- (b) supporting the constitutional principle of the rule of law;

- (c) improving access to justice;
- (d) protecting and promoting the interests of consumers;
- (e) promoting competition in the provision of services;
- (f) encouraging an independent, strong, diverse and effective legal profession;
- (g) increasing public understanding of the citizen's legal rights and duties;
- (h) promoting and maintaining adherence to the professional principles.

In light of the regulatory objectives I have the following comments:-

(a) protecting and promoting the public interest

The new costs order, in conjunction with the new Rules are designed to provide a robust and cost-effective disciplinary process for the notarial profession with the aim of ensuring that allegations of misconduct by a notary public are properly and effectively investigated and, where appropriate, prosecuted in the interests of both the profession and for the protection of consumers and the public interest.

(b) supporting the constitutional principle of the rule of law

It is not anticipated that the rule changes will have any specific positive or negative effect on the constitutional principle of the rule of law. The principles behind the disciplinary regime have not been fundamentally altered but this simply introduces a mechanism for controlling the costs of the regime.

(c) improving access to justice

The new order will have a neutral effect on public access to notaries.

(d) protecting and promoting the interests of consumers

As indicated above, the new rules and the associated order are intended to enhance the protection and promotion of the interests of consumers by promoting a cost-effective and robust disciplinary process.

(e) promoting competition in the provision of services

It is expected that the order will have a neutral effect on the competition between legal professionals.

(f) encouraging an independent, strong, diverse and effective legal profession

The proposed rules are intended to encourage an effective notarial profession by encouraging compliance with the rules and providing a swift and cost-effective disciplinary process where breaches have been. It is an essential facet of the Notarial profession that they be independent. The new rules are expected to have a neutral effect on the strength and diversity of the notarial profession.

(g) increasing public understanding of the citizen's legal rights and duties

The proposed new rules are unlikely to affect public understanding of citizens' legal rights.

(h) promoting and maintaining adherence to the professional principles

The 'professional principles' are:

- (a) that authorised persons should act with independence and integrity;
- (b) that authorised persons should maintain proper standards of work;
- (c) that authorised persons should act in the best interests of their clients;
- (d) that persons who exercise before any court a right of audience, or conduct litigation in relation to proceedings in any court, by virtue of being authorised persons should comply with their duty to the court to act with independence in the interests of justice; and
- (e) that the affairs of clients should be kept confidential.

All the provisions governing the conduct of a notary are underpinned by the general duty to promote and maintain those professional principles which are contained in rules made by the Master of the Faculties, in the general law, and which are common to best notarial practice internationally. The new order is primarily intended to provide a clear mechanism for managing the costs of investigations and hearings in the, fortunately, relatively infrequent instances where the conduct of a notary public is alleged to have fallen below the standard which consumers are entitled to expect.

Compliance of the Regulations with the Better Regulation Principles

Section 28 of the Act imposes a duty on an approved regulator, so far as is reasonably practicable, to act in a way:

- (a) which is compatible with the regulatory objectives; and
- (b) which the approved regulator considers most appropriate for the purpose of meeting those objectives.

The approved regulator must have regard to:

- (a) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and
- (b) any other principle appearing to it to represent the best regulatory practice.

I have explained how the amended rules comply with the regulatory objectives.

The order sits alongside the new rules as I have outlined above. The order is presented after consultation with the two representative membership societies (The Notaries Society and The Society of Scrivener Notaries) neither of whom have raised any substantive issues.

How will the Faculty Office determine whether the Order has been successful in meeting their objectives?

It is the amendment to make provision for limiting the costs of investigations and prosecutions where the principal impact is likely to be seen and this should be measurable. As has been well documented elsewhere, a recent case proved to be extremely expensive, effectively depleting the contingency fund. This fund is provided by an annual contribution from every practising notary. It has been the Master's intention to seek to maintain the contingency fund at £100,000 and the recent case resulted in the required annual contribution doubling from £40 to £80. In a small profession, many of whom have relatively low incomes from their notarial practice, it is essential to have a system which provides an appropriate and robust disciplinary process, where the proper administration of justice can be effected and at a cost to the profession which is both realistic and proportionate.

Impact on other approved regulators

As the amended rules will have no adverse effect on other approved regulators and they will not give rise to regulatory conflict.

Timetable

The amended Conduct and Discipline Rules are intended to be made and signed by the Master on Tuesday 15th September. The Notaries (Conduct and Discipline) Fees and Costs Order under rule 23.4 will be signed and brought into effect as soon as approval has been given and the new rules and the fees order will then come into force on the same date.

If you have any questions, please do not hesitate to contact my Clerk, Neil Turpin, in the first instance. I look forward to hearing from you in due course.

Yours sincerely

A handwritten signature in black ink that reads "Howard Della". The signature is written in a cursive style with a long horizontal flourish at the end.

HJ DELLAR
Joint Registrar