



## THE FACULTY OFFICE

### Response to the LSB Call for Evidence: Ongoing Competence

#### Introduction

The Faculty Office intends to formally respond to this Call for Evidence through this document and its supporting papers. The Faculty Office will provide evidence on the following topics:

- Defining competence
- Competence assurance
- Consumer expectations of competence
- Competence assurance in the legal services sector

The Faculty Office does not feel that it is in a position to provide evidence on 'competence assurance in other sectors' but is interested to see what evidence the LSB is able to gather on this point.

#### Defining Competence

The Faculty Office does not have an official definition of a competence within the notarial profession which can be located in one source, though this may be something which is considered in the future. The Faculty Office relies on a number of different sources to define a "competent notary" these are:

- Notaries Rules (various)
- Code of Practice
- Inspector's Questionnaire

#### Notaries Rules

The Faculty Office would consider a notary competent if they were following all of the Rules set by the Master to govern a notary's practice. There are currently 14 sets of Rules and regulations in force:

- Notarial Contingency Fund Rules 1981
- Notaries (Notification of Address) Rules 1982
- Notaries Accounts Rules 1989 (as amended)
- Notaries' Accounts (Deposit Interest) Rules 1989
- Notaries Trust Accounts Rules 1989
- Notaries (Prevention of Money Laundering) Rules 2008
- Notaries Continuing Professional Education Regulations 2010
- Notaries (Practising Certificates) Rules 2012
- Notaries Practice Rules 2014 (As Amended) superseded by 2019 rules see below.
- Notaries Inspections Regulations 2014

- Notaries (Conduct and Discipline) Rules 2015 (As Amended in September 2019)
- Notaries (Qualification) Rules 2017
- Notaries (Post-Admission Supervision and Training) Rules 2019
- Notaries Practice Rules 2019

All of these Rules are available for both the profession and the public to access via the Faculty Office website.

The Notaries Practice Rules 2019 are the back-bone of the Rules governing notaries day-to-day practice and linking in with the other 13 sets of Rules and regulations currently in force. Rule 4 of the Notaries Practice Rules contains a set of Principles which notaries must apply to all areas of their practice.

Failure by a notary to comply with these Rules may amount to notarial misconduct for which a notary may face disciplinary action, in the Court of Faculties.

### Code of Practice

Rule 5, Notaries Practice Rules 2019, requires notaries to comply with the Code of Practice and a failure to do so could amount to notarial misconduct. The Code of Practice sets out guidance on certain specific areas. This Code of Practice is available on the Faculty Office website to both the profession and the public.

It should be noted that an updated Code of Practice will be published on the Faculty Office website in July 2020.

The Faculty Office would consider a notary competent if they were following the Code of Practice.

### Inspector's questionnaire

When inspecting a notary's practice the inspector will run through a questionnaire. This questionnaire is available on the Faculty Office website to both the profession and the public. The questionnaire is reviewed annually by the Inspectors and the Master and updated as necessary. A copy of the questionnaire submitted with this document as a supporting paper.

The Faculty Office and the Inspectors would consider a notary competent if they satisfied the questionnaire.

The Faculty Office believes that all of these sources contribute to the overall definition of competence in the context of the notarial profession.

## **Competence Assurance**

The Faculty Office uses a number of different methods to monitor the competency of the profession. The main methods are outlined below.

### Inspections Regime

The Faculty Office instructs 3 senior notaries to conduct inspections on behalf of the Faculty Office. Every year a list of 20 notaries is prepared. These 20 notaries are selected with 10 notaries classified

by the Faculty Office as higher risk and 10 which are classified as lower risk. The higher risk notaries include those that conduct conveyancing and probate as a notary.

The Inspectors visit the practice and work through the Inspections questionnaire. This includes reviewing a random sample of the notary's acts and a review the Notary's protocol. During the inspection the Inspector can give informal advice. Following the inspection, the Inspector will write a report which is submitted to the Faculty Office for the Master to review, a copy of which is also submitted to the notary for their comment. The Inspector's report highlights to the Master any areas in which the notary lacks competency and these areas are followed up by the Faculty Office as necessary.

At the end of each year the Inspectors review all of the inspections and highlight any common areas where notaries have lacked competency. A thematic report is then generated by the Inspectors. A copy of this report is published on the Faculty Office website. This report provides notaries with information on any areas where they might need to improve their competency. A copy of the 2019 Inspectors' Report is submitted as a supporting document.

The Faculty Office also uses the annual Inspectors' Report to produce targeted guidance to the profession in the form of briefing notes on areas where notaries appear to be lacking in competency. These briefing notes are readily available on the Faculty Office website to help notaries to improve their competency.

#### Continuing Professional Education (CPE) regime

The Faculty Office operates a CPE regime whereby all notaries must have completed six points/hours of CPE training in notarial practice in order to renew their practising certificate. Three of these points must be from a Faculty Office accredited provider. Three points can be unaccredited, recognising the importance informal training such as reading the Society newspaper and researching particular areas of practice is to maintaining a notary's competence. If a notary also conducts conveyancing or probate as part of their practice as a notary then they must undertake an additional three accredited points in each of these areas.

All notaries applying to renew their annual practising certificate must supply evidence that they have completed the requisite CPE in the practising certificate year. Every application is checked for compliance with the CPE regime and a practising certificate will not be issued if the applicant has not complied with the CPE requirements. This enables the Faculty Office to ensure that all notaries have taken steps to maintain their continued competence in each practising certificate year.

CPE training can be provided in person or online as long as it has been accredited by the Faculty Office. Reports from the Notaries' Society indicate that there has been a large increase in the number of notaries undertaking online CPE courses. Hundreds of notaries have signed up since the beginning of "lockdown". The online CPE training is assessed during and at the end of the course through quizzes which have a pass mark of 75%. No notary may obtain a CPE certificate unless they have passed the quizzes. This enables the training providers and by extension the Faculty Office to monitor and assess the continuing competence of the profession. Online CPE training has also enabled the Faculty Office to continue its CPE regime despite the Covid-19 restrictions.

The CPE regime was recently reviewed by the Qualifications Working Group. A copy of that report is submitted as a supporting paper to this document. The Group suggested that an additional requirement for 1 accredited point in AML training should be added to the CPE requirements and

that the Master should have discretion to require training in specific areas to reflect any changes in law or practice. This suggestion was adopted by both the Qualification and Advisory Boards and will be introduced into the new Notaries (Practising Certificate) Rules 2020 which are currently being drafted.

The Faculty Office seeks to keep the CPE regime under regular review to ensure that the CPE regime remains an effective tool in assuring the ongoing competence of the profession.

#### Desktop reviews

The Faculty Office also monitors the competence of the profession by undertaking desktop reviews of notaries practices. A desktop review will select a random sample of the profession and review a particular area of practice. The Faculty Office will then follow-up with any notary found to be lacking competence in the area investigated.

Two such reviews have taken place in the last year. One on information provided to consumers on websites and another on AML risk assessments. Both of these reports are submitted as supporting papers to this document.

#### Disciplinary process

The Faculty Office disciplinary process is set out in the Notaries (Conduct & Discipline) Rules 2012. The Notaries Society and Society of Scrivener Notaries handle first tier complaints and the Faculty Office second tier.

This assists in assuring competence within the profession by encouraging notaries to maintain high levels of competence and enabling the Master to remove incompetent notaries from the profession for the protection of the public

#### Supervision period

Upon admission to the profession a notary must undertake a supervision period of two years (or 3 years if practising conveyancing or probate). This involves regular meetings between the new notary and the supervisor, during which the supervisor reviews a sample of the notaries' work and provides advice. All supervisor notaries are experienced and are required to have held their practising certificate for at least 5 years. Throughout the supervision period the supervisor will prepare reports on the notary's competence which are lodged with the Faculty Office so that the notary's progress can be monitored. At the end of the supervision period the supervisor produces a final report on the notary's competence and makes a recommendation to the Faculty Office as to whether the notary is ready to practise unsupervised. The Faculty Office believe that this early supervision is key for ensuring that notaries apply the competencies they have learned on the Notarial Practice Course to their practice and in instilling good habits in notaries from an early stage.

#### **Consumer Expectations**

The Faculty Office publishes a variety of information which is available to the public via the Faculty Office website. This information includes the Rules governing notaries, Code of Practice, Inspections questionnaire and details of disciplinary cases.

The Faculty Office provides the consumer with information on any disciplinary action taken against a practising notary via its "find a notary " search function. The Faculty Office also publishes the judgments from the Court of Faculties against notaries, which is available to the public via the Faculty Office website.

In December 2019 new rules came into effect requiring all notaries publishing their practice via a website to provide certain information on pricing, services, regulation and redress and complaints procedures to the consumer. This will provide the consumer with the ability to hold the notary to account for the service provided. The Faculty Office undertook a review of a sample of 25 notaries' websites to determine whether the profession was compliant with these new rules. All notaries reviewed had taken steps to improve their websites in response to the new rules. A copy of the report is submitted in support of this document.

The Faculty Office believes that the overall risk to the consumer from poor quality notarial work is low. This is because the nature of the work necessitates that any faults are quickly discovered by the legalisation office or receiving jurisdiction. Similarly, the profession are not involved in litigation where a consumer's liberty may be at stake, the vast majority of notarial work being transactional posing a relatively low risk to the consumer.

## **Competence assurance in the legal sector**

### Effectiveness of competence assurance

The Faculty Office handles very few disciplinary cases each year an average of four or five. This is a strong indicator of competence within the profession. The Faculty Office receives relatively few complaints each year which again indicates a high level of competence within the profession.

The Faculty Office suggests that the Foreign and Commonwealth Office may be able to provide evidence of competence within the notarial profession but indicating how many documents are produced by notaries and how many of those are rejected by the FCO.

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