



THE FACULTY OFFICE

THE FACULTY OFFICE OF THE ARCHBISHOP OF CANTERBURY

NOTARIES (PRACTISING CERTIFICATE) RULES 2012

Consultation on Business Plan and Practice Fees 2022/23– July 2021

FACULTY OFFICE RESPONSE TO THE CONSULTATION

The Faculty Office (FO) launched its consultation on the Business Plan proposed level of practising certificate fees on 8th July 2022 which ran until 12th August 2022. The consultation document (annexed to this response at Appendix A) was emailed to every practising notary in England & Wales together with other stakeholders and it also appeared on the FO website (from 11th July 2022).

This is the first occasion on which the FO has actively consulted on the Master's Priorities which have, in previous years, been set more as internal goals for the FO. The PCF proposals were, with one exception to maintain the current practising certificate fees and bands for the practising certificate year 2022/23, to not charge a contingency fund contribution and to collect the second and final additional levy to recover the accrued notarial deficit and build a reserve. The consultation elicited 15 responses from individual notaries and none from any other stakeholders. Anonymised copies of the responses received are included in Appendix B to this response.

The Headlines

Although the number of responses was somewhat disappointing, the FO was encouraged at the level of support both for the Business Plan and the PCF proposals. Few of the respondents had any substantive comments on the Business Plan and of those who did, much of what was said will be helpful as the FO moves forward.

The PCF proposals, including the one substantive alteration to the PCF proposals from last year, the introduction of an additional turnover band of £50,001 to £90,000 (splitting the previous £50,001 to £150,000 band) received overwhelming support from notaries with 14/15 (93.33%) expressing support and the other respondent not commenting directly either way.

We also asked respondents to let us know whether they thought that the PCF proposals would, or might, adversely impact equality, diversity or inclusion within the notarial profession. **6.667%** indicated that they would or might have an impact, **60%** believed there would be no impact and the remaining **33.333%** expressed no view or indicated they did not feel informed enough to express a view.

The Detail

Business plan

The majority of respondents (80%) had no general comments on the priorities set out in the Business Plan as a package but six respondents (40%) did provide specific feedback in relation to some of the proposals with two others not addressing the specifics but making more general comments of which some did relate to individual priorities. Some of the feedback received will assist the FO as it seeks to further develop and implement or carry forward the priorities. A couple of comments take aim at the priority on diversity but, with due respect to the respondents, appear to disclose a lack of understanding or appreciation of the regulatory objective which may, itself, require further work on the part of the FO to address.

The full anonymised responses to the consultation are included in the Appendix but some general and some specific comments are included here:

- *I agree with the package but would like to see more commitment to supporting the profession of notaries and ensuring the public understand the value of our services at a time where we are seeing certification and identity verification services being promoted by the Post Office and other solution providers as well as the Legalisation Office openly accepting certified documents from non-Notaries for Apostilles.*
- *As a full-time notary, I am acutely aware of the importance of notarial services to our 'consumers', whether individuals or companies. It is common at a notarial appointment to understand that a corporate transaction, a property sale and purchase, overseas litigation or other transaction are entirely dependent on the notarial work, as the final link in the chain. Not infrequently, an urgent response from a proactive notary, and quite possibly the arranging of legalisation, saves the consumer's position.*

We therefore have to be careful using the term "the interests of consumers". By far the most significant interest of consumers is the availability of notaries. At a time when the number of notaries is low, any regulatory proposal should be carefully scrutinised to assess (a) the impact on notaries and whether additional time-consuming procedures and overheads will cause some notaries to cease practising, (b) will discourage potential notaries from entering the profession and (c) will increase the charges that the consumers pay.

One example would be the suggestion of run-off insurance. In the solicitor's profession, especially amongst small firms, this has been the tail that wags the dog for some years. I foresee that some notaries will withdraw from notarial practice should such a suggestion become a requirement and the increase in notarial charges would most disadvantage the many consumers who already struggle to pay notarial charges.

- *The question of minimum terms and conditions is important to allow the profession to offer a basic standard of cover to protect the consumer. However, run-off cover is a very difficult subject. How can one be insured for acts that have to be kept forever?*
- *Any move for the Master to stop regulating probate and conveyancing activities could be hugely damaging for the profession. In many other jurisdictions, these are a key part of "notarial activities". If these were removed from a notary's competence, it could make*

notaries seem as if they were not equal to civil law counterparts who can carry out these activities which would be very damaging to the profession and could lead to English notaries being seen as no better than US notaries who cannot do anything other than effectively deal with oaths and certifications of signatures. If there were any moves to involve other regulators, this would need extreme care.

- Legal Choices does not work well for “notarial activities” as the scope is so broad that it is not possible to give a list of fixed prices for a matter in advance as each matter differs depending on the documents and the jurisdiction which need to be reviewed and considered before a fee estimate can be given. Therefore, any inclusion of notaries on a Legal Choices price comparison style site would be of little use to consumers. It would not be a good use of the Faculty Office’s time and resources to promote and develop this any further.*
- Perhaps solutions in addition to regulatory changes might be considered to improve consumer protection. In addition to reviewing the accounting rules, could the Faculty Office (together with the Notaries Society) “lobby” the leading firms of legalisation agents to update their payment methods to ensure it is simpler for a client to pay the legalisation fees to them directly? This would remove the need for a notary to receive these sums that are not due to them.*
- In considering wellbeing within the profession, it might be beneficial to consider the existing regulatory load faced by notaries. The need for increased regulation may be overwhelming in some areas, but the load might be lightened in other areas to mitigate this heavier regulation.*

There were also a couple of suggestions for priorities which were not identified in the business plan including a review of the requirement for Fidelity Insurance for notaries who do not hold client funds and a request for a review of Rule 15 of the Notaries Practice Rules 2019 referring to Notaries who practise as Scriveners.

Practising certificate fee and levy

The FO proposals are set out in the table below:

Turnover	Practising Certificate Fee	Deficit/Reserve Levy contribution (year 2 of 2 annual contributions)	Contingency Fund contribution	Total	
Up to £15,000	£470	£75	£0	£545	No change
Up to £50,000	£580	£85	£0	£665	No change
Up to £90,000	£615	£135*	£0	£750	£205 reduction
Up to £150,000	£895	£135*	£0	£1,030	£75 increase
Up to £300,000	£1,020	£250	£0	£1,270	No change

Over £300,000	£2,270	£300	£0	£2,570	No change
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As indicated above, the overwhelming majority (**93.33%**) of respondents agreed with the proposal:

- *"I suspect that many sole practitioner notaries like me ensure that they do not meet the VAT threshold so that they do not need to charge clients VAT (or, indeed, account for it) so the £90,000 band break is logical"*
- *"Very happy as will benefit a lot of notaries"*

Contingency fund

As regard the proposal to maintain a nil contribution to the Contingency Fund for the third year running, the overwhelming majority of respondents (**86.66%**) agreed with just **6.67%** indicating a preference for a modest contribution to be maintained and **6.67%** expressing no view. Of those advocating for a contribution:

- *For the sake of £20 per member, I think it is worth topping up the current fund. You never know when it will be called upon and it is better to have more money in the fund than less.*

Equality, Diversity & Inclusion impact

Of those who responded to the question or expressed a view, **90%** did not believe that the proposals would unduly impact equality, diversity or inclusion in the notarial profession. Of the **10%** who thought that there might or would be some impact, the focus was, again, on age:

- *"As someone from a working class background, I do not consider the proposed PCF/levy structure alone would impact equality, diversity and inclusion in the profession. It is essential for the future of the notarial profession to ensure that its regulator is properly funded. However, other costs faced by notaries in the qualification process and in maintaining a practice may well deter new entrants, and thus severely impact equality, diversity and inclusion. Many younger lawyers are now burdened with considerable student debt, which may act as a disincentive to spending further money to acquire additional qualifications and starting a practice."*

Our response

The FO was pleased to note the support for the items identified as priorities in the Business Plan and welcomes the suggestions made in respect of some of the items which will certainly assist the Master and the FO as these matters are taken forward.

In relation to the specific suggestions around the requirement for Fidelity Insurance, we confirm that this will form part of the overall review of Insurance requirements for notarial practice. However, and without pre-judging the outcome, Fidelity Insurance is not just about the risk of misappropriating the content of a client account but would also cover, for example, the fraudulent preparation of a Power of Attorney for the benefit of the notary or a client to the detriment of a third party.

As regard the point raised about Rule 15 of the Notaries Practice Rules 2019, the FO will take time to consider the issues raised with all relevant stakeholders before taking a view as to what actions may be required to address the matter and any underlying consumer protection concerns.

Given the overwhelming support for the PCF proposal, which took into account the comments made in last year's PCF consultation in relation to the bands, the FO believes that the table of proposed fees does represent the most acceptable solution to maintaining our ability to effectively regulate the profession whilst at the same time securing the financial stability and resilience of the regulatory arm of our operation.

It is worth repeating the definition of notarial turnover for the purpose of charging a practising certificate fee: that is all the fee income of the notarial practice (and whether or not notarial services) but excluding VAT and excluding disbursements and before deduction of expenses.

We continue to hold that the banding system allows the expense of regulation to be shared in a more equitable way which can help shield those notaries whose fee income is low from the highest burden. That is designed to help those notaries, for example, who are in rural areas whose work may be more occasional or less lucrative but who still provide an important service to their local community. We recognise that both practising fee levels and regulatory requirements can precipitate the retirement of such notaries and we are engaged in a balancing act between trying to set a fee which is proportionate while being realistic to achieve the aim of regulating all notaries robustly.

The Faculty Office

August 2022

ANNEX A – THE CONSULTATION DOCUMENT



THE FACULTY OFFICE

THE FACULTY OFFICE OF THE ARCHBISHOP OF CANTERBURY

NOTARIES (PRACTISING CERTIFICATE) RULES 2012

Consultation on Business Plan and Practising Certificate Fees 2022/23 – July 2022

The Faculty Office is consulting on two important aspects of its activities:

Firstly, we are consulting on the Priorities which the Master intends to set for the Faculty Office for the next triennium which have been formulated as a Business Plan; and

Secondly, in order to fund the regulatory work of the Faculty Office, the intention to maintain the current practising certificate fees and deficit/reserve levy at 2021/22 level (subject to the introduction of one additional turnover band) for the practising certificate year 2022/23.

The consultation will close at 5pm on 12 August 2022.

Introduction and background

- Business Plan

The current Master, Morag Ellis QC, has now been in post for a little over two years. In that time, the Faculty Office (FO) has been the subject of a review of its governance arrangements by the Legal Services Board (LSB) which reported in September 2021. This has led to a codifying of the FO governance arrangements in a published Governance Manual available to view on the FO website. Alongside this work, the Master has also met regularly with the senior officers of the FO to formulate a vision for the continuation of the work commenced by her predecessor to ensure the financial stability of the regulatory arm of the FO and for the ongoing work of modernisation and transparency of the profession for the benefit of the consumers of notarial services and for the profession itself.

The resulting Business Plan (Appendix 1) sets out eleven priorities for the work of the FO over the next triennium. A number of those priorities will be the subject of individual Calls for Evidence and/or Consultations as the work proceeds which will be the opportunity for detailed comments on the individual items. This consultation will provide an opportunity for Notaries and other stakeholders to offer high level comment on the proposals set out in the Plan and the general direction of travel.

- **Practising Certificate Fee (PCF) for the 2022/23 practising year**

Notaries will know that one of the priorities which the previous Master, Charles George QC, set for the FO in his last six months in office was a reduction in the historic 'notarial deficit' in the FO accounts and the building up of an operating reserve equivalent to approximately six months operating costs. In order to achieve this more quickly, the FO introduced an additional levy over and above the normal PCF to be paid in two instalments in the practising certificate years 2021/22 and 2022/2023.

The combined effect of the collection of the levy (amounting to £76,315 in 2021/22) and prudent budgeting and expenditure controls has resulted in a net surplus in the year end accounts (year ending 31 March 2022) of £208,904. This has now cleared the deficit (which stood at £117,206 at the end of March 2021) and the accrued surplus now stands at £91,698 - some way to our target operating reserve of around £250,000.

The second portion of the levy will be collected this coming practising certificate year. We are not proposing any increase in the annual PCF next year and nor will we be collecting any contribution to the Contingency Fund. We are proposing one change to the PCF bands following feedback from notaries whose turnover fell within the £50,000 to £150,000 band and that is to split this banding into two: namely £50,000 - £90,000 and £90,001 to £150,000. Clearly, wherever a band boundary is set, there will always be people whose turnover sits close to one side or the other but we have taken note of representations that, in respect of this band in particular, there is a very wide divergence between those with a turnover of just over £50,000 and those earning nearly £150,000. We are therefore consulting on a PCF structure made up of six bands rather than five.

BUSINESS PLAN FOR THE TRIENNIUM ENDING 31 MARCH 2025

The proposed Business Plan accompanies this consultation document as Appendix I. The Plan sets out 11 priorities for the Faculty Office during the period up to 31 March 2025. A number of these priorities represent a continuation of work which has already commenced and which we are seeking to conclude (specifically Priorities 1, 9 and 11). Others are new projects designed to enhance consumer protections (Priorities 2, 3, 4 and 7) and to benefit individual members of the profession and the profession as a whole (Priorities 6, 8 and 10). Priority 5 is, *inter alia*, a reflection of the current geo-political situation in eastern Europe.

Collectively, the Priorities are primarily part of the ongoing responsibilities of any Regulator of a legal profession to keep its regulatory framework under review and, as such, will be funded by PCF contributions and within existing budgetary provision although an additional £10,000 annual figure has been included in the budgets for 'Strategic Regulatory Expenses' which acknowledges that there will be additional expenses in relation to some of the projects over and above 'normal' expenses.

The Priorities have been grouped under the headings of the Regulatory Objective¹ to which it most closely aligns (although many will encompass more than one of the Objectives).

The Priorities are:

1. Entity Regulation and the conclusion of the required Order under Section 69 of the Legal Services Act.
2. Professional Indemnity Insurance – minimum terms and conditions and run-off cover.
3. A review of the Conduct and Discipline system.
4. A review and consolidation of the Notaries Accounts Rules.
5. Reinforcement of the sanctions regime as outlined in our action plan.
6. To build-up and maintain an appropriate level of operating reserves.
7. Work to increase the diversity of the profession.
8. A review of the post-qualification environment.
9. Promotion of wellbeing amongst the profession.
10. Promotion of the notarial profession's rôle in upholding the Rule of Law.
11. Promoting and developing the Legal Choices project in conjunction with the other Regulatory Bodies.

The Master and the FO will review progress against these 11 Priorities at the Quarterly Master's Council meetings and will prepare an Annual Assessment Report detailing the progress we have made. Additional Priorities may well be added through the triennium to respond to other regulatory requirements as they arise or as a result of our ongoing horizon scanning project.

We understand that these are very much headlines and that 'the devil will be in the detail' as these projects progress at which point more detailed consultations on the individual projects will be issued. However, we would be grateful for any feedback at this stage from notaries and other interested stakeholders on the Priorities as set out in the Plan.

PRACTISING CERTIFICATE FEE PROPOSALS FOR THE 2022/23 PRACTISING CERTIFICATE YEAR

The principal source of income to fund the regulatory work of the FO is, of course, the annual practising certificate fee (PCF) – amounting to some 77% of our income in 2021/22 (excluding the levy). PCF income may only be spent on one or more of the permitted purposes² which are:

- (a) the regulation, accreditation, education and training of relevant authorised persons and those wishing to become such persons, including—
 - (i) the maintaining and raising of their professional standards, and
 - (ii) the giving of practical support, and advice about practice management, in relation to practices carried on by such persons;
- (b) the payment of a levy imposed on the approved regulator under section 173;
- (c) the participation by the approved regulator in law reform and the legislative process;

¹ The Regulatory Objectives are set out in [Section 1 of the Legal Services Act 2007](#)

² See S.51(4) Legal Services Act 2007

- (d) the provision by relevant authorised persons, and those wishing to become relevant authorised persons, of reserved legal services, immigration advice or immigration services to the public free of charge;
- (e) the promotion of the protection by law of human rights and fundamental freedoms;
- (f) the promotion of relations between the approved regulator and relevant national or international bodies, governments or the legal professions of other jurisdictions.

The majority (in excess of 90%) of the PCF income is spent on (a); the levy paid to the LSB and OLC account for a further 4.5% with the remainder split between (c) and (f).

Current position

The introduction of five turnover-based fee bands for the practising certificate year 2019/2020 (following two consultations) had been broadly welcomed recognising, as it does, the very wide divergence in turnover across the profession. The bands were based on turnover in the notary's accounting year immediately preceding practice renewal. The vast majority of notaries (81%) were in the two lowest bands. However, we have taken account of feedback that band 3 is too wide and that there is a significant difference between a turnover of just over £50k and one of nearly £150k. We are therefore consulting on splitting this band in two to create an additional band of up to £90k turnover.

The fees for 2021/22 were:

Table 1

Turnover	Practising Certificate Fee	Deficit/Reserve Levy contribution (for 2 years)	Contingency Fund contribution	Total
Up to £15,000	£470	£75	£0	£545
Up to £50,000	£580	£85	£0	£665
Up to £150,000	£820	£135	£0	£955
Up to £300,000	£1,020	£250	£0	£1,270
Over £300,000	£2,270	£300	£0	£2,570

This generated an income of £554,268 (up from £470,777 the previous year but including £76,315 made up of the levy – net of the levy, the figure was £477,953).

In the practising certificate year 2020/21 the Faculty Office lowered the contribution to the Contingency Fund for all notaries from £20 to £0. This was possible due to the recovery of costs in disciplinary cases ordered to be repaid to the Contingency Fund resulting in the fund maintaining a healthy balance as at 31 March 2020 of £154,414. We were able to maintain the zero contribution in 2021/22.

Proposals for practising certificate year 2022/23

Contingency Fee

The Faculty Office Contingency Fund balance at 31 March 2022 stands at £165,494, a net reduction of £652 on the previous year. Although there are a small number of disciplinary cases and investigations pending, the Master does not consider it necessary to add to the Contingency Fund

balance in this practising certificate year and intends to maintain the Contingency Fund contribution at £0 across all bands.

Practising Certificate Fee (PCF)

Notaries will recall that, in 2016, the Faculty Office changed its accounting policy from a cash basis to an accruals basis and the year end was changed to 31st March. Prior to the change income was recognised in the accounts when it was received with the result that practically the entire income arising from the practising certificate fees was included in the year in which the income was received when in fact only 2 months (Nov & Dec) related to that accounting year and 10 months to the following year. The Faculty Office considered that to be an inaccurate reflection of the income generated from the practising certificate fees and so the decision to change to an accruals basis was made. The Legal Services Board have also stipulated that, unless good reason can be shown, Approved Regulators ought to be accounting on an accruals basis. As a result of the change, a prior year adjustment was made to years 2014 and 2015 which resulted in a deficit of £268,549 in 2014 and which, at 31st March 2021, stood at £117,206. Last year, the FO introduced a levy, payable over two years, and provided budgets in which it proposed to clear the deficit and build up an operating reserve amounting to approximately six months operating costs by 31 March 2024 (see Annex I).

Draft budgets for 2022/23, 2023/24 and 2024/25 are annexed to this consultation (Annex II). These have been prepared by our accountant on the basis of no further change to the PCF or the banding structure and make a number of other reasonable assumptions (based on her many years of experience). They show surpluses of £137,563, £39,070 and £36,720 for each respective year. Clearly, if current inflationary pressures persist, it may well be necessary to review the assumption of no change to the level of PCF over the course of the period covered by the budgets.

The Master is therefore proposing the following fees for 2022/23:

Table 2:

Turnover	Practising Certificate Fee	Deficit/Reserve Levy contribution (year 2 of 2 annual contributions)	Contingency Fund contribution	Total	
Up to £15,000	£470	£75	£0	£545	No change
Up to £50,000	£580	£85	£0	£665	No change
Up to £90,000	£615	£135*	£0	£750	£205 reduction
Up to £150,000	£895	£135*	£0	£1,030	£75 increase
Up to £300,000	£1,020	£250	£0	£1,270	No change
Over £300,000	£2,270	£300	£0	£2,570	No change

*this is the level of the levy applied to the turnover band £50k - £150k in year 1 and we are proposing to maintain the levy contribution at the same level for both new bands.

We are keen to hear from notaries as to whether the suggested PCF fee and levy, and the addition of an up to £90,000 band is appropriate.

Working with the Faculty Office

The Faculty Office will welcome enquiries from individual notaries on how they are to calculate their annual turnover. In essence we define turnover as gross fees/profit costs received net of disbursements charged to clients for the provision of notarial services and other legal services when acting *qua* notary.

Sole practitioners practising through a company (or other corporate structure) will be treated as having generated the declared turnover personally.

The Faculty Office is confident that notaries will act with integrity when assessing their own turnover and agreeing the amount with those notaries with whom they are in partnership. But we are seeking your views.

THE FACULTY OFFICE

8 July 2022

HOW TO RESPOND

Please respond in writing by 5pm on 12 August 2021 to The Faculty Office:

By email to: consultations@1thesanctuary.com

Please put "BUSINESS PLAN & PRACTICE FEES CONSULTATION RESPONSE" in the subject line of your email

By post to: The Faculty Office, 1 The Sanctuary, Westminster, SW1P 3JT

Questions about the proposed business plan and the proposed practising certificate fee/levy

1	Do you have any comments on the proposed FO Business Plan/Master's Priorities as a package for the next triennium?
2	Do you have any comments or specific concerns over any of the individual Priorities?
3	Do you agree with the overall proposal set out in Table 2? If not, please outline your reasons.
4	Do you agree with the proposed splitting of the original band 3 into two (ie £50,001 to £90,000 and £90,001 to £150,000)? If not, please outline your reasons.
5	Do you agree the continued nil rate contingency fund fee? If not, please outline your reasons.
6	Do you consider that the proposed PCF/levy structure will have an adverse affect on equality, diversity or inclusion within the notarial profession. If 'yes' what do you consider the impact will be?

ZOOM – Consultation Drop-in meeting

Howard Dellar (Registrar) and Neil Turpin (Chief Clerk) will be available at an online 'drop-in' via Zoom to discuss any aspect of the proposals set out in this Consultation between 2pm and 4pm on Monday 25th July. A link to the meeting is set out below.

Topic: Faculty Office Business Plan and PCF Consultation - drop-in

Time: 25 July 2022 2:00 PM – 4:00 PM BST

Join Zoom Meeting

<https://us06web.zoom.us/j/89403088844?pwd=UkdsWUFseFE3bU1zR3djS0tvcVE5UT09>

Meeting ID: 894 0308 8844

Passcode: 722179

Annex I– Faculty Office breakdown of the notarial deficit

BREAKDOWN OF NOTARIAL ACCUMULATED (DEFICIT) SURPLUS @ 31/3/2022 & PROJECTED SURPLUSES FOR YEARS 2022/23; 2023/24; 2024/25

			£
Retained surplus @ 31/12/2006			6,033.00
Y/e 31/12/2007	Deficit		-15,764.00
Y/e 31/12/2008	Deficit		-26,090.00
Y/e 31/12/2009	Surplus		15,767.00
Y/e 31/12/2010	Surplus		2,412.00
Y/e 31/12/2011	Surplus		28,260.00
Y/e 31/12/2012	Deficit		-3,534.00
Y/e 31/12/2013	Surplus		20,119.00
Y/e 31/12/2014	Adjusted Deficit following change to accruals based accounting		-268,549.00
Y/e 31/12/2015	Surplus		6,220.00
15 months ended 31/03/2017	Surplus		26,383.00
Y/e 31/03/2018	Surplus		9,886.00
Y/e 31/03/2019	Deficit		-10,945.00
Y/e 31/03/2020	Deficit		-33,194.00
Y/e 31/03/2021	Surplus		125,790.00
Y/e 31/03/2022	Surplus (incl. yr. 1 levy)		208,904.00
Accumulated surplus @ 31/3/2022			£91,698.00
Y/e 31/03/2023	Projected Surplus (with yr. 2 levy)		137,653.00
Y/e 31/03/2024	Projected Surplus		39,070.00
Y/e 31/03/2025	Projected Surplus		36,720.00
Projected accumulated surplus with levy @ 31/3/2025			£305,141.00

Annex II - Faculty Office Budgets 2022/23, 2023/24 & 2024/25

FACULTY OFFICE BUDGET YEAR ENDED 31 MARCH 2023

NOTARIES

Income:

Practising Certificates:

England & Wales & Overseas

Accrued income April-October 2022	281,324
725 certificates (Nov 2022-March 2023)	200,946
Levy - 2nd	
Instalment	76,215

558,485

Channel Islands Registrations:

Accrued income April-December 2022	11,343
52 Registrations @ £275 (Jan 2023-March 2023)	3,575

14,918

UK Appointments
30 x £625

18,750

Overseas Appointments
10 x £700

7,000

Certificates of Exemption (55)

8,250

Total Income

607,403

Less Expenditure:

Management Charge (60%) 278,550

Direct Expenditure 191,200

Total Expenditure

469,750

Projected Notaries Surplus 2022/23

£137,653
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**FACULTY OFFICE BUDGET
YEAR ENDED 31 MARCH 2024**

NOTARIES

Income:

Practising Certificates:

England & Wales & Overseas

Accrued income April-October 2023	281,324	
725 certificates (Nov 2023-March 2024)	200,946	

		482,270

Channel Islands Registrations:

Accrued income April-December 2023	10,725	
52 Registrations @ £275 (Jan-March 2024)	3,575	

		14,300

UK Appointments

30 x £625		18,750
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Overseas Appointments

10 x £700		7,000
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Certificates of Exemption (55)		8,250
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Total Income		530,570
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Less Expenditure:

Management Charge (60%)	285,300	
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Direct Expenditure	206,200	
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Total Expenditure		491,500
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Projected Notaries Surplus 2023/2024		£39,070
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**FACULTY OFFICE BUDGET
YEAR ENDED 31 MARCH 2025
NOTARIES**

Income:

Practising Certificates:

England & Wales & Overseas

Accrued income April-October 2024	281,324	
725 certificates (Nov 2024-March 2025)	200,946	

482,270

Channel Islands Registrations:

Accrued income April-December 2024	10,725	
52 Registrations @ £275 (Jan-March 2025)	3,575	

14,300

UK Appointments

30 x £625		18,750
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Overseas Appointments

10 x £700		7,000
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Certificates of Exemption (55)

8,250

Total Income

530,570

Less Expenditure:

Management Charge (60%)	289,680	
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Direct Expenditure	204,170	

Total Expenditure

493,850

Projected Notaries Surplus 2024/2025

£36,720

ANNEX B – THE RESPONSES

Response #1

The report content and proposals look very sound.

Questions about the proposed business plan and the proposed practising certificate fee/levy

1. **1 Do you have any comments on the proposed FO Business Plan/Master's Priorities as a package for the next triennium? NO**
2. **2 Do you have any comments or specific concerns over any of the individual Priorities? NO**
3. **3 Do you agree with the overall proposal set out in Table 2? If not, please outline your reasons. YES**
4. **4 Do you agree with the proposed splitting of the original band 3 into two (ie £50,001 to £90,000 and £90,001 to £150,000)? If not, please outline your reasons. AGREE - I suspect that many sole practitioner notaries (like me for example), ensure that they do not meet the VAT threshold so that they do not need to charge clients VAT, (or indeed to account for it), so the £90,000 band break is logical.**
5. **5 Do you agree the continued nil rate contingency fund fee? If not, please outline your reasons. YES**

6 Do you consider that the proposed PCF/levy structure will have an adverse affect on equality, diversity or inclusion within the notarial profession. If 'yes' what do you consider the impact will be? NO

Response #2

Dear Master of the Faculties Office

My thanks for circulating this consultation.

My answers are as follows:-

1. No
2. No
3. Yes
4. Yes
5. Yes
6. I do not feel informed enough to comment.

Yours faithfully

Response #3

In response to the questions set out in the above consultation I reply as follows,

1. No
2. No
3. Yes
4. Yes
5. Yes
6. No

Kind regards,

Response #4

Thank you for your Business Plan.

Your income comes from notaries. You almost lost this income stream in 2016 when the Legal Services Board (“LSB”) recommended that accountants should carry out notary work. It was only the submission by myself to the Lord Chancellor which persuaded him to reject the recommendation of the LSB that saved the profession and hence your source of income.

My submission was based on a rigorous analysis of the duties of a notary in authenticating documents which proved that this work could not be carried out by accountants. If accountants had been allowed to do notary work then in all probability, notarised documents would be rejected in civil law countries. The reason why the LSB came to their view was because of the poor submissions by the Notary & Scrivener Societies. I urge you to read these as we are in danger of falling into the same trap again.

You now have an expensive Money Laundering Regulations (“MLR”) employee who recently issued a dire warning about Russian sanctions as if this was something new. We have had Iran sanctions for about 10 years but every day with the government’s approval, the Iran Consulate legalise documents. The Foreign Office Apostilles documents for Russia & Belarus everyday. So what is the problem as you have stated in the annual application form to do with Risk Assessments that if a notary authenticates documents, he does not advise on the underlying transaction & is not caught by the MLR’s. Banks are much more in the firing line for sanction busting than notaries & do not have a QC in charge of them but even they have read the chapter in The Notary on authentication of documents not being caught by the MLR’s.

We have to attend CPE lectures at our own cost on the MLR’s with not one second’s thought being given to the above chapter in The Notary on whether or not they apply to the authentication of documents.

With regards diversity, a glance at the roll will show a huge number of women & people of Indian origin are notaries. So why is there a need to spend money on all “this woke nonsense” (to quote the attorney general) as oppose to market forces doing the work for free for you.

Yet despite all the time & effort spent on the above fashionable topics, no time at all is spent by the Faculty or the two professional bodies in ensuring that notary work is done to a high standard for a proper fee. The priorities of this Business Plan are all wrong. It was the poor standard of work exemplified by the poor submissions from our two professional bodies which persuaded the LSB to

allow accountants to do notary work.

In summary, in this proposed Business Plan, there is a need to rigorously go through each head of work & ask:-

1. Are the priorities right; and
2. Is it money wasted.

We are a small & not very rich profession headed by a QC. There are no grounds for us to fail to do this.

Response #5

I, personally, am very much in favour of having the Faculty Office finances on a sound footing, and I am OK with the / a graduated fee structure for practising certificates.

The item that I disagree with is the proposed positive discrimination in favour of groups that might or might not in reality be finding themselves being discriminated against.

By definition, positive discrimination in favour of one group inevitably means positive discrimination against another group, and then you have to be really certain that setting one group against another in the fight for scarce resources (qualifications / jobs) is going to be worth it.

Ireland is, in my opinion, an object lesson in how badly things can turn out if you insist on setting one group against another group at a time and place when and where jobs are tight.

In recent history Ireland has twice descended into outright civil war. The first time was after World War I when the British Army was demobilised too quickly, (the Easter Uprising of 1916 notwithstanding), and the second time was in the 1970's when the Yom Kippur War and the Oil Crisis plunged the world into recession, (the civil rights marches of the late 1960's notwithstanding).

On a small island divided along religious lines the fighting between the two groups was for who got the good jobs there. In the first round the Catholics won in Dublin / the South and the Protestants won in Belfast / the North, (and the Protestant population in the South / the Republic collapsed as a consequence). The Catholic population in the North continued to be numerous because there weren't any jobs for them in the South. Had there been plenty of good jobs in the South, of course the Northern Catholics would have upped sticks in the North and gone South.

In the second round arguably the Catholics won. Actually, the Protestants won, and the British Government threw away the victory, allowing the Catholics to snatch victory from the jaws of defeat.

The atmosphere in England's major cities is tense. I have got an A-Level in Economics and I studied it a little bit at University. What is happening is in every Economics textbook on the planet. It is pure Keynes. You print masses of money, (which stimulates demand), and you break supply chains so that access to global markets / globalisation is disrupted, (the pandemic did that), and prices will go up ... a lot ... and this is before you add in the Ukraine Crisis pushing up energy costs as Russia turns off the taps. This has, of course, got to end badly for an awful lot of people in this country.

My advice to the Faculty Office is to stay above the fray, to drop the requirement for diversity. Following the Law Society / the Solicitors Regulation Authority is a mistake.

Anecdotally, I can say that the solicitors' profession is divided into two camps. There are those who work for the big City firms (and boutique niche firms further down the pecking order), and those who work for ordinary High Street firms. City solicitors are completely indifferent to what the Law Society / Solicitors Regulation Authority do and say. High Street solicitors carrying out the day to day legal work that citizens need doing absolutely loath the Law Society / Solicitors Regulation Authority. There are many reasons for this, but the problem is systemic / structural, and has everything to do with the kind of person who ends up on the Law Society Council.

The post of Law Society Council Member is unpaid. This means that you have to be wealthy to be able to be on the Law Society Council. The Senior Management Team is well paid and wealthy, and the vast majority of Law Society Council Members are also wealthy. Neither group is actually in a client facing job at High Street firm level. I was on the Law Society Council from 2003 until 2005, and I heard a lot of "the polluter pays" when it came to client complaints, (from people who never actually had to deal directly with clients), and I heard a lot of preaching about equality & diversity from people who clearly did not believe in it. At the end of the day, no-one is going to stop their son or daughter from getting a good job simply because their group is over-represented at that time and place. Not them. Not anybody.

The Law Society / the Solicitors Regulation Authority are wrong when it comes to equal opportunities / diversity. If they were serious about it, they would not have moved away from the centrally set, properly invigilated, anonymously marked competitive exams that I did when I was a Law Society Finals student in the early 1980s. My exam scripts had a student number on them, not a name. Would I have passed if I had put my full name on each exam script? Sadly, I have to conclude that I would not have passed. Anonymity has always favoured me. It gets worse, a lot worse.

The current exams for solicitor have an oral exam element. There is only one reason why a profession that predominantly does paper-shuffling for a living might be forced to go through oral exams and that is so that the authorities can see who they are examining. In effect, they want to fix the result. Maybe it is with the best of intentions, but it won't work. Groups who perceive themselves as being (unfairly) discriminated against will fight.

So, like I say, I recommend that the Faculty Office stay well clear of the topic of diversity as pursued by the Law Society / the Solicitors Regulation Authority and as outlined in the Faculty Office Consultation Document. Instead find a system that genuinely is fair, and then stick with it. The Law Society had a system that was fair in the early 1980s, (the mistake was not to match up better supply and demand), and Spain's doctors have a system that is both fair and which works well, (with supply and demand matched up perfectly, which is why it is a system that has endured over time). Neither had / has quotas or targets for equality & diversity.

Yours sincerely

Response #6

Questions about the proposed business plan and the proposed practising certificate fee/levy

1. Do you have any comments on the proposed FO Business Plan/Master's Priorities as a package for the next triennium?
2. Do you have any comments or specific concerns over any of the individual Priorities?

Yes.

As a full-time notary, I am acutely aware of the importance of notarial services to our 'consumers', whether individuals or companies. It is common at a notarial appointment to understand that a corporate transaction, a property sale and purchase, overseas litigation or other transaction are entirely dependent on the notarial work, as the final link in the chain. Not infrequently, an urgent response from a proactive notary, and quite possibly the arranging of legalisation, saves the consumer's position.

We therefore have to be careful using the term "the interests of consumers". By far the most significant interest of consumers is the availability of notaries. At a time when the number of notaries is low, any regulatory proposal should be carefully scrutinised to assess (a) the impact on notaries and whether additional time-consuming procedures and overheads will cause some notaries to cease practising, (b) will discourage potential notaries from entering the profession and (c) will increase the charges that the consumers pay.

One example would be the suggestion of run-off insurance. In the solicitor's profession, especially amongst small firms, this has been the tail that wags the dog for some years. I foresee that some notaries will withdraw from notarial practice should such a suggestion become a requirement and the increase in notarial charges would most disadvantage the many consumers who already struggle to pay notarial charges.

3. Do you agree with the overall proposal set out in Table 2? If not, please outline your reasons.

I agree with it as far as it goes, and subject to my comment above. I would like to see an additional point: a review of the requirement for fidelity insurance for those notaries who never hold client funds. This is a significant burden on notaries. I, and I suspect many other notaries, do not understand the reasoning for the continued requirement for this additional overhead or the cost/benefit to 'consumers', who are ultimately paying for it.

4. Do you agree with the proposed splitting of the original band 3 into two (ie £50,001 to £90,000 and £90,001 to £150,000)? If not, please outline your reasons.

Yes.

5. Do you agree the continued nil rate contingency fund fee? If not, please outline your reasons.

Yes.

6. Do you consider that the proposed PCF/levy structure will have an adverse affect on equality, diversity or inclusion within the notarial profession. If 'yes' what do you consider the impact will be?

No.

Response #7

Thank you for your email of 11 July. I have read the proposals with interest. They all make sense to me and I have no comment other than to express my support.

Kind regards,

Response #8

Questions about the proposed business plan and the proposed practising certificate fee/levy

1	Do you have any comments on the proposed FO Business Plan/Master's Priorities as a package for the next triennium? NO
2	Do you have any comments or specific concerns over any of the individual Priorities? NO
3	Do you agree with the overall proposal set out in Table 2? If not, please outline your reasons. YES
4	Do you agree with the proposed splitting of the original band 3 into two (ie £50,001 to £90,000 and £90,001 to £150,000)? If not, please outline your reasons. YES
5	Do you agree the continued nil rate contingency fund fee? If not, please outline your reasons. YES
6	Do you consider that the proposed PCF/levy structure will have an adverse affect on equality, diversity or inclusion within the notarial profession. If 'yes' what do you consider the impact will be? NO

Response #9

Sirs

I agree that the suggested PCF and ley and also the addition of an "up to £90000" band is appropriate.

Regards

Response #10

Master's Priorities

Questions about the proposed business plan and the proposed practising certificate fee/levy

- 1 Do you have any comments on the proposed FO Business Plan/Master's Priorities as a package for the next triennium? **I agree with the package but would like to see more commitment to supporting the Profession of Notaries and ensuring the public understand the value of our services at a time where we are seeing certification and identity verification services being promoted by the Post Office and other solution providers as**

well as the Legalisation Office openly accepting certified documents from non-Notaries for Apostilles.

2. 2 Do you have any comments or specific concerns over any of the individual Priorities? **See above.**
3. 3 Do you agree with the overall proposal set out in Table 2? If not, please outline your reasons. **Yes.**
4. 4 Do you agree with the proposed splitting of the original band 3 into two (ie £50,001 to £90,000 and £90,001 to £150,000)? If not, please outline your reasons. **Yes.**
5. 5 Do you agree the continued nil rate contingency fund fee? If not, please outline your reasons. **Yes.**
6. 6 Do you consider that the proposed PCF/levy structure will have an adverse affect on equality, diversity or inclusion within the notarial profession. If 'yes' what do you consider the impact will be? **No.**

Response #11

1. I agree with the proposals/priorities
2. No
3. Yes
4. Yes
5. Yes
6. No

Response #12

Dear Sir

Thank you for asking me to review your plan

It is very sensible and I agree with it and have no further comment to make

Kind regards

Response #13

Questions about the proposed business plan and the proposed practising certificate fee/levy

1 Do you have any comments on the proposed FO Business Plan/Master's Priorities as a package for the next triennium? **No – maybe yes? as I do have concerns over individual priorities see below.**

2 Do you have any comments or specific concerns over any of the individual Priorities? **See comments in red. If no comment made then no concern is held**

1. Entity Regulation and the conclusion of the required Order under Section 69 of the Legal Services Act. **This is welcome and seems long overdue. There are more and more entities being formed of groups of notaries, outside of the traditional scrivener firms, some of which are outside of the traditional law firm/partnership structure, which do not seem to be**

complying with the NPR on the face of it yet would argue that they fall outside of the NPR. This is a source of frustration.

2. The Regulatory Objectives are set out in Section 1 of the Legal Services Act 2007
3. Professional Indemnity Insurance – minimum terms and conditions and run-off cover. The question of minimum terms and conditions is important to allow the profession to offer a basic standard of cover to protect the consumer. However, run-off cover is a very difficult subject. How can one be insured for acts that have to be kept forever?
3. A review of the Conduct and Discipline system.
4. A review and consolidation of the Notaries Accounts Rules.
5. Reinforcement of the sanctions regime as outlined in our action plan. This action plan seems to be included to demonstrate to OPBAS that the FO is regulating its 'community'. It would be helpful if the FO could provide concrete guidance on certain issues relating to sanctioned countries e.g. a list of the type of work one can carry out for Russian individuals.
6. To build-up and maintain an appropriate level of operating reserves. This is what the FO has been doing over the last few year – at what point will it have enough given that circumstances keep changing? I found the budget papers difficult to understand and could not see how the predicted surpluses were being accounted for in the following year's budget.
7. Work to increase the diversity of the profession.
8. A review of the post-qualification environment.
9. Promotion of wellbeing amongst the profession. Not just promotion but actual concrete support e.g. guidance on how the disciplinary process works if a nominated notary is appointed to investigate you.
10. Promotion of the notarial profession's rôle in upholding the Rule of Law. The promotion here – the lecture? – is not particularly clear but interested to see what this means.
11. Promoting and developing the Legal Choices project in conjunction with the other Regulatory Bodies.

3 Do you agree with the overall proposal set out in Table 2? If not, please outline your reasons.

4 Do you agree with the proposed splitting of the original band 3 into two (ie £50,001 to £90,000 and £90,001 to £150,000)? If not, please outline your reasons. Very happy as will benefit a lot of notaries.

5 Do you agree the continued nil rate contingency fund fee? If not, please outline your reasons.

6 Do you consider that the proposed PCF/levy structure will have an adverse affect on equality, diversity or inclusion within the notarial profession. If 'yes' what do you consider the impact will be?

There is a general point with regard to any future increase in costs of practising which is that as the cost of living escalates those notaries in the lower fee income brackets may well find they cannot afford to continue in practice. That would have a very negative impact on the profession. I am not sure it is useful to extrapolate further as to impacts on equality and diversity etc – the point is anyone who is not earning a very comfortable income from their notarial work will be severely

impacted by any increase whether it be the practising certificate fee, PI insurance, or just plain old energy bills. Obviously the regulator must bring in enough money to cover its costs but maybe now is not the time to be looking at building up reserves – the result may be fewer people to regulate which would have a far greater impact on the regulator's accounts.

Kind regards.

Response #14

Please find below my response to the Business Plan (Master's Priorities) and Practising Certificate Fee 2022/23 Consultation.

	Question	Response
1.	Do you have any comments on the proposed FO Business Plan/Master's Priorities as a package for the next triennium?	No comment on the package as a whole. I have comments on individual points which I set out in my response to question 2.
2.	Do you have any comments or specific concerns over any of the individual Priorities?	Yes. I have the following comments in relation to the following Priorities: 1 – Entity regulation is, ultimately, a good thing for the profession as a whole and underlines our independence and separation from the other professions such as solicitors. However, it will make it more difficult for notaries who are currently employed in solicitors firms and operating through the firm (as I do) to provide notarial services as it will be less easy to convince a firm to allow you to pursue notarial training or practice if there is seen to be additional administrative burden for the firm by the need for a separate entity and the need for contracts and arrangements between the solicitors firm and the notary firm. Support and guidance should be given to notaries needing to make this transition and the possibility of a transitional period should be considered. 4 – This is long overdue and necessary – there should be a single set of accounts rules, there is no need for the individual sets of rules. 8 – Any move for the Master to stop regulating probate and conveyancing activities could be hugely damaging for the profession. In many other jurisdictions, these

are a key part of “notarial activities”. If these were removed from a notary’s competence, it could make notaries seem as if they were not equal to civil law counterparts who can carry out these activities which would be very damaging to the profession and could lead to English notaries being seen as no better than US notaries who cannot do anything other than effectively deal with oaths and certifications of signatures. If there were any moves to involve other regulators, this would need extreme care. I note that CILEX has asked the SRA to regulate Legal Execs in place of CILEX. It would be a mistake for the Master to follow the same route. This does not mean that there is not another option but it should not be this. An alternative would be to contract the SRA to provide certain supervisory or investigatory services for the Faculty Office in the name of the faculty office (in the same way that TfL has third party operators run the overground and Elizabeth Line but to the outside world it is all TfL). An arrangement of that nature would allow the Master to continue to regulate these activities while removing the burden from the Faculty Office directly.

11 – Legal Choices does not work well for “notarial activities” as the scope is so broad that it is not possible to give a list of fixed prices for a matter in advance as each matter differs depending on the documents and the jurisdiction which need to be reviewed and considered before a fee estimate can be given. Therefore, any inclusion of notaries on a Legal Choices price comparison style site would be of little use to consumers. It would not be a good use of the Faculty Office’s time and resources to promote and develop this any further.

Missing Important Priority

I would like to make the very important point that a key Priority should be the review of

	Rule 15 of the Notaries Practice Rules 2019. There are two key reasons for this: The first heading in the Master’s Business Plan for points 1 and 2 (not reflected in the consultation document) is “Protecting and promoting the interests of the consumer” and that this goes beyond simply entity regulation and insurance terms which are the Priorities listed under this heading. By way of Rule 15, the Master and the Faculty Office are actually actively not protecting and promoting the interests of the consumer (and could even be said to be damaging them). Rule 15 specifically refers to “to practise as a Scrivener notary”. This gives credence to the notion that “Scrivener notary” is a separate type of notary whereas, in fact, there is no “practice as a Scrivener notary”. A so called “Scrivener notary” is simply a normal notary who happens to be a member of a private company that (following passing some exams) decrees that its members may use that title. The inclusion of a practice rules reflecting this creates the impression that there are two legally distinct offices of notary in England (general and scrivener) which creates confusion overseas and with consumers and which leads overseas jurisdictions to incorrectly and mistakenly believe that only a so called “Scrivener notary” can issue certain types of acts. This leads to correctly issued notarial acts being incorrectly rejected in overseas courts and registries causing loss and delay to consumers. As a further point on the same subject, and possibly the more important point, it would appear that it is, in fact, unlawful/ultra vires for the Master to include Rule 15 in the Notaries Practise Rules 2019. Section 57 Courts and Legal Services Act 1990 gives the Master the power to make rules for specified purposes including under s57(4)(c) “for regulating the practice, conduct and discipline of public notaries”. However, Rule 15 does not do any of these things. What
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		Rule 15 does is to seek to use the public legal regulation framework to grant protection to a title used by members of a private organisation in accordance with the rules of that private members organisation. Such a matter is not a matter of practice or conduct that the Master is authorised to regulate by rules made under CLSA 1990; it is a matter for the relevant private members body that awards the title under its own private set of rules to address and enforce through the private legal system, as with any other matter between private citizens. For both of these reasons, it should be a key Priority for the Master to review Rule 15 and ascertain whether it is legitimate and lawful and whether its inclusion protects and promotes the interests of the consumer and investigate whether it should be removed, leaving the matter of self-awarded titles to the private bodies who invent and award those titles to enforce matters relating to them under the private law.
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Response #15

Dear Faculty Office,

Thank you for providing the opportunity to respond to the FO Business Plan and the proposed PCF structure. My responses to the questions are included below.

1. Do you have any comments on the proposed FO Business Plan/Master's Priorities as a package for the next triennium?

- As it works through the Master's priorities over the coming years, I would find it very useful for the FO to articulate how it sees the future of the office of notary public. The profession will have it's own view, but a dialogue could then commence for the benefit of all stakeholders.

2. Do you have any comments or specific concerns over any of the individual Priorities?

- Perhaps solutions in addition to regulatory changes might be considered to improve consumer protection. In addition to reviewing the accounting rules, could the Faculty Office (together with the Notaries Society) "lobby" the leading firms of legalisation agents to

update their payment methods to ensure it is simpler for a client to pay the legalisation fees to them directly? This would remove the need for a notary to receive these sums that are not due to them.

- In considering wellbeing within the profession, it might be beneficial to consider the existing regulatory load faced by notaries. The need for increased regulation may be overwhelming in some areas, but the load might be lightened in other areas to mitigate this heavier regulation. For instance, many public form notarial acts are similar in scope and effect to those drafted in the private form, but carry a greater record keeping burden based on form alone. It would greatly reduce the regulatory burden if the current minimum 12 year record keeping requirement for private form powers of attorney was applied to those in the public form. This would allow resources to be re-allocated. Notaries may choose to keep certain powers of attorney for a longer period based on their professional judgement, as they may currently do with private form powers of attorney.

3. Do you agree with the overall proposal set out in Table 2? If not, please outline your reasons.

- I agree with the proposed fees.

4. Do you agree with the proposed splitting of the original band 3 into two (ie £50,001 to £90,000 and £90,001 to £150,000)? If not, please outline your reasons.

- I agree with this proposal.

5. Do you agree the continued nil rate contingency fund fee? If not, please outline your reasons.

- I agree with this proposal

6. Do you consider that the proposed PCF/levy structure will have an adverse affect on equality, diversity or inclusion within the notarial profession. If 'yes' what do you consider the impact will be?

- As someone from a working class background, I do not consider that the proposed PCF/levy structure alone would impact equality, diversity and inclusion in the profession. It is essential for the future of the notarial profession to ensure that its regulator is properly funded. However, other costs faced by notaries in the qualification process and in maintaining a practice may well deter new entrants, and thus severely impact equality, diversity and inclusion. Many younger lawyers are now burdened with considerable student debt, which may act as a disincentive to spending further money to acquire additional qualifications and starting a practice.

Thank you once again for the opportunity to comment.

Yours sincerely,