



THE FACULTY OFFICE

THE FACULTY OFFICE OF THE ARCHBISHOP OF CANTERBURY

LSB Consultation on policy statement on 'Encouraging a diverse legal profession'

FACULTY OFFICE RESPONSE TO THE CONSULTATION

The Faculty Office of the Archbishop of Canterbury ("the Faculty Office") admits and regulates notaries in England and Wales¹. The Faculty Office regulates around 750 notaries and the vast majority are self-employed. The Faculty Office does not engage in entity regulation.

Notaries are required to *"comply with all legal and regulatory obligations and cooperate with the Master and any persons or body appointed by [them] in exercise of the Master's regulatory functions"*².

The Faculty Office supports the overall objective to increase the diversity of the notarial profession. We recognise that a diverse profession is beneficial to the longevity of the sector and beneficial to consumers. We recognise that omitting to include Equality, Diversity and Inclusion in policy making does not have neutral outcomes.

We think at the outset it may be helpful to outline some of the current work which the Faculty Office does which may fulfil some of the objectives set out in the statement of policy:

- We complete a triennial diversity survey of our entire regulated population. Notaries are required to complete the survey as part of their practising certificate renewal process (though of course, they are able to refuse to answer questions on the survey as they wish).
- We have recently commissioned an EDI research project through an independent advisory consultant looking at the barriers to diversity in the notarial profession. This work takes on a

¹ See the Courts and Legal Services Act 1990 and the Legal Services Act 2007 which confirms the Master of the Faculties' statutory powers to make Rules for the regulation of the profession.

The Faculty Office also maintains jurisdiction for the appointment and partial regulation of Notaries in certain overseas jurisdictions. Given that the LSB's jurisdiction does not extend to those countries, we do not consider that regulatory work to be within the scope of this consultation response.

² See the Notaries Practice Rules 2019.

mixed-methods approach and included interviews with 30 notaries across our regulated population.

- We complete Equality Impact Assessments on relevant projects including consultations, policy papers, and proposed rule changes.
- We have our EDI colleague attend our working groups to ensure that EDI concerns are raised where appropriate.
- We attend the cross-regulator EDI meetings and report back on findings to the management committee and Master of the Faculties where appropriate.

We recognise the importance of the regulatory objective of “encouraging an independent, strong, diverse and effective legal profession” , but feel that overall, the proposed statement of policy represents regulatory “creep”. The Legal Services Board (“the LSB”) has identified diversity issues with certain regulated professions and applied “solutions” to those issues across the entire legal sector without due regard to the need of subsidiarity. The Faculty Office considers that if there are specific sector EDI issues then these should be addressed through targeted action rather than blanket statements at an ever-increasing pace.

The Faculty Office is also concerned about the LSB’s proposals infringing on our ability to discharge our regulatory duties and in particular section 28(2)(b) of the Legal Services Act 2007 which requires us to act in a way “which the approved regulator considers **most appropriate** for the purpose of meeting those objectives” (*emphasis added*)

The Faculty Office is also concerned that the “harmonisation” approach proposed, and underlying rhetoric of encouraging all regulators to be the same in their EDI approach, lends towards the concerns across the sectors that the LSB intends to create a single “super regulator”. Such an approach would not be appropriate and is not outcomes focused. It also fails to appreciate the considerable difference in the roles between the various legal and accountancy professionals and the historical development of such professions.

The Faculty Office understands that other legal sectors may be vulnerable to international pressures working against EDI. Specifically, those regulators whose regulated populations work at international organisations which are headquartered in jurisdictions where EDI is being deprioritised (typically solicitors and CILEX members). These issues do not apply to notaries who are either self-employed or employed by a UK headquartered entity. Notaries who are employed in another capacity (such as solicitor, consultant etc.) are typically still self-employed in their capacity as a notary. They are required to issue a statement of professional independence to their employer (in their other capacity such as solicitor etc.) once a year.³ They are therefore not beholden to firm policies in the same way as other legal professionals. This is a clear example of how there are sector specific variances which need to be accommodated in how regulators deal with their respective challenges.

Finally, we are concerned about the idea that complete diversity within the legal profession is achievable within 10 years given that there are broader social and structural barriers beyond the power and scopes of the relevant regulators. For example, research shows that those from lower socio-economic backgrounds (as evidenced by being in receipt of means tested free school meals)

³ See rule 11.2.2 of the Notaries Practice Rules 2019.

experience barriers in accessing higher education.⁴ It is necessary for an individual to have obtained higher education to enter the notarial profession and therefore consequently the notarial profession is affected by this broader societal barrier (over which it has little to no control).

Furthermore, there continue to be smaller but sector specific barriers affecting notaries. For example, is the issue of legal recognition of multiple names by the Foreign, Commonwealth and Development Office (which particularly affects female notaries). This is an issue the Faculty Office has been campaigning on without any support from other regulators or the LSB.

If the LSB wants complete diversity in the legal profession at all levels, then they need to work with the government and regulators to remedy such structural barriers. The LSB also needs to recognise that in seeking complete diversity it is asking regulators to fix matters arising potentially before the birth of their regulated professionals.⁵ The Faculty Office, whilst in favour of promoting diversity, considers this 10 year goal to be simply unachievable in the current political, social and economic climate.

Being a smaller regulator means that we can be more agile and targeted in our approaches across our regulatory obligations. Restricting our activities by creating specified required and aspirational outcomes runs contrary to our agility. For example, we note that there is no reference in the proposals to the barriers faced by care leavers (that being individuals who were in Local Authority care as a child). Yet we recognise that this may be an area of under-representation in the notarial profession and have started work building a relationship with an organisation called “Lawyers who care” who support care leavers entering into the legal professions. This demonstrates how being small and agile is advantageous.

We are therefore strongly suggesting that the LSB reconsiders the proposed approach such that diversity policies and activities remain, under law, at the discretion of individual regulators.

Q1a. Do you agree that these proposed outcomes will help to address the barriers to encouraging a diverse legal profession? Are there any further, or alternative, outcomes we should consider?

The Faculty Office recognises the benefits to having a diverse notarial profession both for notaries and consumers. The nature of notarial work (being that it is often international) means that notaries are often multi-lingual and may serve specific cultural or linguistic communities. For example, a notary may specialise in notarial acts for use in Italy owing to skills in Italian and an understanding of what the receiving country requires. Diversity within the profession is essential to the long-term functioning of notarial work.

⁴ [Gaps in outcomes among Free School Meal students in higher education - HEPI](#)

⁵ For example, the socio-economic background of an individual as a child or young adult prior to entering the notarial profession will in all likelihood be impacted by the socio-economic background of their parents including in the years prior to their birth.

However, we do not necessarily agree that the proposed outcomes will address barriers to a diverse notarial profession. For a small regulator like ourselves, these enhanced obligations may well put those in unrepresented groups at a further disadvantage. This is because it will increase the EDI workload within the Faculty Office (currently met by a part-time member of staff). To fulfil all these requirements within 3 years, we would need to take on extra staff at an additional cost which will be passed on to the regulated profession via their practising certificate fees. Although such fees are paid on a sliding scale depending on income it is widely accepted that professional costs impact certain groups more than others.

Additionally, a large percentage of our regulated population are qualified as another type of legal professional first. Therefore, the diversity of the notarial profession is directly related to the diversity of other legal professions and there is far less we can do as a regulator to support diversity when compared to other regulators. No other regulator has such a highly dual regulated population, and this makes us unique. Nowhere in the proposals is this reflected or the issue of dual regulation considered.

Q1b. Do you agree that the proposed outcomes should be pursued by regulators through a set of specific expectations?

No, guidance is acceptable and a preferable option. The specific expectations go too far in mandating what regulators do in this sphere. The problem is that the LSB is treating regulators as a monolith; but we are simply too varied to be treated as such. As previously explained our regulated population is unique in that it is small, largely self-employed and largely dual regulated (mostly as solicitors and CILEX professionals), and we do not engage in entity regulation.

Q1c. Do you agree that the proposed structure of core and enhanced expectations under the general outcomes offers an effective way to set a clear minimum standard for all regulators, while also encouraging regulators to consider additional steps, where appropriate?

We are concerned that regulators would be penalised for not meeting the “enhanced expectations”. If this were to occur it would essentially become the case that all expectations are “core”. If in future there are proposals to alter what is considered “enhanced” and “core”, we would expect there to be a thorough consultation process.

It is important to remember that the regulators know their profession and the issues affecting their regulated population best. Furthermore, it is important to remember that regulators have a wide range of resources. For example, in the case of the Faculty Office a single member of staff is allocated EDI work (part-time). This is in contrast to the larger regulators who have entire teams to dedicate to the work arising from the LSBs proposals.

The core and enhanced expectations detailed throughout the report envisage (in large) an individual who works in a law firm. This simply does not reflect the working life for most notaries and therefore does not get to the heart of the barriers affecting diversity in the notarial profession.

Q2a. Do you agree with the proposed Outcome 1?

The report appears to be critical of the fact that different regulators take different approaches to data collection and monitoring without giving due regard to the difference in the regulated populations and the resources available to various regulators. An expectation of harmonising data is likely to have the most significant impact on small regulators as we will be expected to harmonise to the standards of the larger regulators.

Whilst the LSB has sought to define “high-quality data monitoring”, we feel that this concept is simply too vague to be a “core expectation” which regulators will be assessed against. The Faculty Office is concerned that “high-quality data monitoring” will become synonymous with spending lots of money. Additionally, data collection must be evolutionary and reactive to the environment – for example, you will see that we have varied our questions in our triennial diversity survey about gender reassignment because we realised that respondents were getting confused. We also work with other regulators and look at the questions they are asking and consider whether they are appropriate for our regulated population.

Q2b. Do you agree that the proposed expectations will help regulators to pursue Outcome 1? Are there any further expectations beyond those we have included that would support regulators to pursue this outcome?

N/A

Q2c. Are there any enhanced expectations that would be better placed under core expectations under Outcome 1? Are there any core expectations that would be better placed under enhanced expectations under Outcome 1?

N/A

Q3a. Do you agree with the proposed Outcome 2?

The Faculty Office broadly agrees with Outcome 2.

Q3b. Do you agree that the proposed expectations will help regulators to pursue Outcome 2? Are there any further expectations beyond those we have included that would support regulators to pursue this outcome?

The Faculty Office already completes impact assessments (when applicable) as we consider it to be required under the Equality Act 2010. We therefore consider this core expectation to be superfluous. We have taken on board the feedback from the last LSB review which flagged that we were not previously completing impact assessments.

With regards to the disciplinary and enforcement process, we are committed to ensuring diversity and fairness however, there are number of unique circumstances which mean that a core expectation might be detrimental to us. So few disciplinary cases are heard each year (single digits) that we cannot draw any statistically significant data monitoring about the characteristics of those

subject to such disciplinary proceedings. Furthermore, often disciplinary proceedings arise by virtue of misconduct by an individual in their other regulated capacity (ie as a solicitor). We have no control over the biases of other regulators in their disciplinary proceedings but are the most vulnerable to them as we have the largest dual-qualified population. As previously noted, there is no mention in the proposals about those regulators who have dual-qualified populations.

Additionally, given the very low figures involved in the Faculty Office's disciplinary and enforcement processes, we are very concerned that collecting and analysing data is likely to identify individuals with protected characteristics. We do not consider that this would encourage a more diverse legal profession. Even if we were to follow the relevant guidance on pseudonymisation⁶ it is unlikely that we would be able to take steps to prevent identification of individuals with protected characteristics.

Q3c. Are there any enhanced expectations we could set for regulators to pursue Outcome 2?

N/A

Q4a. Do you agree with the proposed Outcome 3?

The Faculty Office agrees with the objectives of "accessible, flexible and inclusive pathways into and through the profession". However, we do not think that the proposed expectations achieve Outcome 3.

Q4b. Do you agree that the proposed expectations will help regulators to pursue Outcome 3? Are there any further expectations beyond those we have included that would support regulators to pursue this outcome?

Presently the Faculty Office provides information on:

- The courses that must be studied (both academic and professional stage) [Examinations - The Faculty Office.](#)
- The process for applying for a certificate of exemption and the associated cost of £175 (such certificate being required to commence the Notarial Practice Course) [Overview - The Faculty Office.](#)
- To cost of admission of £630 [The Application for Admission - The Faculty Office.](#)
- Post-qualification supervision requirements.

The Faculty Office has sought to be as flexible as possible in the routes to qualification whilst maintaining the integrity of the profession. As is noted in our Guidance to the Certificates of Exemption, there are four routes for obtaining a Certificate of Exemption (the prerequisite step prior to commencing the Notarial Practice Course). We have not considered if it is possible to provide additional options for the Notarial Practice Course given the small number of pupils each year.

⁶ [Pseudonymisation | ICO](#)

Requiring the publication of costs to qualify whilst laudable is problematic for several reasons. Firstly, it is unclear how far back into the qualification journey this would need to go. For example, to be a notary you need a law degree or another degree and a relevant conversion course/SQE, plus additional modules as required by the Qualifications Board. After that the Notarial Practice Course is required and this is delivered by UCL. Finally, there are ongoing CPE/CPD obligations.

Secondly, as the regulator although we approve the fees for the Notarial Practice Course these are ultimately influenced by market forces. We have no control over the fees charged for the SQE or top-up course required prior to the Notarial Practice Course. There is a risk of misinformation if the fees are updated and our information is not kept up to date. We do not consider the administrative burden of maintaining this information to be in line with the benefit to those entering the profession, not least because this information will be made available elsewhere on the relevant course providers' website. We currently publish the following information on our website: [Examinations - The Faculty Office](#), which includes the fees for the Notarial Practice Course. As we have stated consistently throughout our response, we are not opposed to these objectives but we do not feel that they should be mandated (nor should a regulator be at risk of being penalised, if say for example, they had out of date information regarding fees on their website).

One of the concerns that seems to arise through objective 3 is that those admitted may not get work. Notaries are largely self-employed (except for Scrivener notaries) and therefore usually responsible for sourcing their own work, however the relevant professional societies ensure that all graduates who wish to work are able to do so and provided with a supervisor. Consequently, the notarial profession does not suffer from the same issue as other legal professions where individuals complete the training course, but are unable to complete the relevant work place experience. We understand that in other legal professions, those from minority groups can find it harder to obtain pupillage/training contracts etc. Due to the nature of the training programme for notaries, we do not consider this to be an issue and do not feel that alternative methods of training such as an apprenticeship would be necessary.

The Faculty Office carefully considers the standards of those seeking to enter the profession by both the Certificate of Exemption Process and maintaining a strong working relationship with UCL. For example, there has been concern as of late as to the quality of the English language skills held by those newly admitted to the profession. These concerns have been raised by both UCL and supervisors. The Faculty Office is looking at introducing with UCL an English language test for entrants. This demonstrates how the Faculty Office is committed to maintaining the high standards of the profession. Our intention is to impose the English language requirements on all applicants so as to not single out those from certain backgrounds.

Under the enhanced expectation, there is the idea of "working with firms". The Faculty Office does not engage in entity regulation and as previously explained most notaries (aside for Scriveners) are self-employed rather than in "firms". This suggestion goes to the heart of the issue that the LSB are trying to regulate for all legal and accountancy professions without due regard to their differences and the different approaches by the various regulators.

Q4c. Are there any enhanced expectations that would be better placed under core expectations under Outcome 3? Are there any core expectations that would be better placed under enhanced expectations under Outcome 3?

N/A

Q4d. Are there any additional expectations, either core or enhanced, we should set under Outcome 3 to reduce barriers faced by authorised persons when moving between and/or re-entering the professions (e.g., following a prolonged absence from practice for health, caring or other reasons)?

N/A

Q5a. Do you agree with the proposed Outcome 4?

The Faculty Office broadly agrees with proposed Outcome 4.

Q5b. Do you agree that the proposed expectations will help regulators to pursue Outcome 4? Are there any further expectations beyond those we have included that would support regulators to pursue this outcome?

As stated above we do not consider that any of expectations should be mandatory. Currently the Faculty Office has clear professional standards and codes of conduct for notaries.

Notaries are subject to mandatory CPE requirements ([Continuing Professional Education - The Faculty Office](#)). Professional standards are covered by the Office Practice Course which is provided to new notaries by the relevant professional society.

Notaries are seldom managers because of their self-employed nature. We are aware of the research by LawCare, and the Faculty Office management team recently met with Elizabeth Rimmer, the CeO of that organisation, to discuss how we can better support the wellbeing of the notarial profession. The Faculty Office is committed to continuing to work with organisations such as LawCare to support the wellbeing of our regulated population. We already signpost notaries to LawCare as part of the inspection process and disciplinary procedure.

Q5c. Are there any enhanced expectations that would be better placed under core expectations under Outcome 4? Are there any core expectations that would be better placed under enhanced expectations under Outcome 4?

Neither of the enhanced expectations would apply to notaries because the Faculty Office has no regulated entities.

Q6a. Do you agree our proposed timelines for implementation are achievable?

Regulators are expected to set their budgets a number of years in advance and the Faculty Office has recently set its business plan and Master's priorities. If the proposals are implemented there will be knock on financial implications which we did not budget for in the current business plan.

Q6b. Are there any reasons why a regulator would not be able to meet these milestones? Please explain your answer.

We have read the milestones on page 39 in conjunction with those detailed in Table A of Annex A.

We have the following concerns:

- As detailed in 6a we have set our budgets already for a few years and therefore a sudden increase in obligations in this area will alter budgeting.
- The rigidity of the timetable fails to appreciate the distinct working approaches of the various regulators and the regulated populations. For example, we have a very small regulated population of around 750 individuals, and around 60 new entrants to the profession each year upon graduation from the Notarial Practice Course. Our incoming cohorts are substantially more diverse than the profession has been historically and we are very pleased with this trajectory, but we cannot deny that the intention in Table A that in 7-10 years there will be "diversity that truly reflects the public, at all levels of the profession" is unachievable due broader societal structural barriers. Furthermore, we recognise that the profession is not as diverse in the more senior ranks/older cohort but to simply push those people out for the sake of diversity would result in a knowledge gap which would see the profession suffer. Our objective at the Faculty Office is to see that new entrants to the profession are as representative of the consumers they serve as possible, whilst ensuring that steps are taken to avoid retention issues of underrepresented groups as they progress through their careers.
- Also our primary focus needs to be on maintaining the standards that notaries must conform to. The regulatory objective is "encouraging an independent, strong, diverse and effective legal profession". Diversity is part of that, but not to the exclusion of the rest of the obligation, nor the other regulatory objectives.

Q6c. Do you have views on whether and how the LSB could take additional steps to support compliance with the proposed statement of policy (e.g., through either formal or informal outputs, such as guidance and/or other relevant resources)?

We would support an informal approach of issuing guidance. Where a regulator is clearly acting in a way which is intentionally contrary to the objective of promoting diversity then the LSB should issue targeted actions.

Q7a. Have you identified any equality impacts (both positive and negative), we haven't considered which, in your view, may arise from our proposed statement of policy?

The LSB does not seem to have considered the negative impact on imposing more obligations on regulators to the relevant regulated sector in that the cost of the work must be passed on to the relevant regulated population. Whilst we have a tiered system of fees which seeks to distribute the cost fairly, for those who are in marginalised groups (perhaps recently returning from maternity/paternity/adoption leave) or who are carers, profit margins may be smaller, and the increased fees will be more detrimental.

Q7b. Do you have any evidence relating to the potential impact of our proposals on specific groups with certain protected characteristics, and any associated mitigating measures that you think we should consider?

N/A

Q7c. Are there any other wider equality issues or impacts that we should take into account and/or any further interventions we should take to address these in our proposed statement of policy?

N/A

Q8. Do you have any comments on the potential impact of the draft statement of policy, including the likely costs and anticipated benefits?

We consider the cost of implementing the statement of policy to be significant for a small regulator such as the Faculty Office.

Q9a. Do you have any comments on how the LSB, either independently and/or in partnership, might develop further measures alongside the proposals set out in the consultation to encourage a diverse profession?

One of the greatest barriers to diversity within the notarial profession is the cost to entry. This is not unique to the notarial profession but also other legal professions. The LSB could as part of its commitment to diversity work more closely with the Department for Education and Office for Students to find more effective ways at controlling tuition fees or reintroducing grants for lower income students during their undergraduate studies. We would like to see the LSB focus its efforts on tackling the larger societal structural barriers that we as a small regulator simply do not have the power or voice to fix.

Q9b. Do you have any views on whether the LSB could take additional steps alongside setting expectations for regulators in the draft statement of policy to encourage a diverse profession? If yes, please share your reflections on the most appropriate and potentially effective routes the LSB could take to achieve this.

As detailed above we do not feel that a statement of policy is the most appropriate approach to deal with the ongoing diversity issues within the legal and accountancy professions.

Q9c. Do you have any further comments on our proposals that you would like to share?