

## **Master of the Faculties' action plan to increase market transparency arising from the recommendations of the CMA Market Study into legal services**

The action plan annexed follows the format provided by the LSB in its response to the CMA Report and Recommendations. The LSB has identified four 'high-level outcomes' to address the CMA's concerns over the lack of transparency in the legal services market:

- To assist consumers understand the price and service, what redress is available and the regulatory status of their provider and to enable them to compare providers
- To promote the use of independent feedback platforms
- To facilitate the development of an intermediary market through making data available to comparison tools
- To make better information available to assist consumers to identify their legal needs and how these might best be met

Our action plan sets out the proposals which the Faculty Office (FO) believes represent an achievable and proportionate response to the recommendations set out in the CMA report. They are designed to encourage the profession to be transparent in both their offering and marketing of services in advance and in the information provided to consumers upon instruction.

Clearly, some of the proposals will require changes in the way that information is provided to both potential and actual consumers of notarial services and the FO acknowledges that some aspects may represent unwelcome additional burdens on the profession. However, we believe that the proposals are balanced and recognise that the notarial profession is both small and, perhaps to a greater degree than the other Approved Regulators' regulated communities, unique.

The plan has been considered by the Master's Advisory Board and, following their advice, approved by the Master.

**29 June 2017**

## Master of the Faculties' action plan to increase market transparency

The Master of the Faculties (MoF) is the Approved Regulator for the profession of Notary Public in England & Wales<sup>1</sup>. The notarial profession consists of 775<sup>2</sup> individually regulated providers of four of the Reserved Legal Activities<sup>3</sup> set out in the LSA 2007 one of which, Notarial Activities, is unique to the MoF. Notarial Activities are almost exclusively legal services which are provided to consumers who are engaged in transactions in jurisdictions outside of England & Wales.

LSB high-level outcome	Current and planned actions by the MoF	Timings for each action with key milestones	Review date
Action to deliver a step change in standards of transparency to help consumers (i) to understand the price and service they will receive, what redress is available and the regulatory status of their provider and (ii) to compare providers	<p><i>Description of current and planned actions, including scope of action (ie types of provider/ consumer/ services affected)</i></p> <ul style="list-style-type: none"> <li>• The Notaries Practice Rules 2014<sup>4</sup> supplemented by the Code of Practice<sup>5</sup> require that a notary makes known in advance to any new client "the basis upon which (the) fee will be calculated or the fee to be charged for the work done"<sup>6</sup> and also that he or she signposts the right to make a complaint<sup>7</sup> in the form prescribed by the MoF.</li> <li>• The MoF will bring forward proposals for consultation to amend rules 8 and 18 to require enhanced transparency in the provision of</li> </ul>	<p><b>Consultation September 2017</b></p>	

<sup>1</sup> The MoF also appoints and regulates notaries in certain overseas jurisdictions pursuant to his inherent powers contained in the Ecclesiastical Licences Act 1533 including The Channel Islands, Gibraltar, the Australian State of Queensland, New Zealand and Norfolk Island

<sup>2</sup> As at 1 April 2017

<sup>3</sup> Notarial Activities, Reserved Instrument Activities, Probate Activities and the Administration of Oaths

<sup>4</sup> <http://www.facultyoffice.org.uk/wp-content/uploads/2014/09/Notaries-Practice-Rules-2014.pdf>

<sup>5</sup> <http://www.facultyoffice.org.uk/chapter/legal-and-regulatory-obligations/#1481700327958-6a101db2-2d74>

<sup>6</sup> Rule 18.1 Notaries Practice Rules 2014

<sup>7</sup> Rule 8.1 *ibid*

	<p>costs/fee information, professional indemnity cover, experience of the provider (in terms of PQE in years – which is the only level of seniority of regulatory status available to us), additional qualifications and competencies in languages and redress. This will also take into account the insights gained from the joint regulators' research in Client Care Letters which was published in October 2016.</p> <ul style="list-style-type: none"> <li>• In line with our commitments under the LSB Regulatory Standards Action Plan, we have added a consumer guide to complaints on our website.</li> <li>• The MoF has published guidance on the nature of the notarial profession and the service which is expected from providers within its Code of Practice. This will be developed further and we will provide a brief guide for consumers separately.</li> <li>• The MoF will bring forward proposals for additions to his Code of Practice to provide guidance to providers on the content of websites focussed on issues in relation to price, service and redress. This will also include a requirement to make it clear that the provider is regulated by us.</li> <li>• The MoF will amend its inspections regime to bring the content of websites and other publicity material within its scope to ensure compliance with the changes proposed above. This will not require any formal amendment to our regulatory</li> </ul>	<p><b>Application to LSB for amendment to regulatory regime November 2017</b></p> <p><b>Completed: May 2017</b></p> <p><b>December 2017</b></p> <p><b>Consultation Autumn 2017</b></p> <p><b>2018 inspection round and thereafter ongoing</b></p>	
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	<p>regime. In addition, the MoF will monitor website content as part of its overall regulatory activity.</p> <p><i>If no action is planned, please (i) give the reasons why taking action in relation to this outcome would not be proportionate or necessary; and (ii) describe the process used to reach this decision</i></p>		
<p>Promotion of the use of independent feedback platforms to help consumers to understand the quality of service offered by competing providers</p>	<p><i>Description of current and planned actions, including scope of action (ie types of provider/ consumer/ services affected)</i></p> <ul style="list-style-type: none"> <li>• The MoF will encourage its regulated community to participate in any online consumer feedback platforms which third party providers make available. Given the small size of the notarial profession and the very specialist nature of notarial activities we do not anticipate much of a market for such provision but will be pleased if this proves not to be the case. It may be that the very small number of notaries undertaking conveyancing and probate <i>qua notary</i> will be able to participate in sector wide platforms set up for those discrete service areas and, again, the MoF will encourage participation.</li> </ul> <p><i>If no action is planned, please (i) give the reasons why taking action in relation to this outcome would not be proportionate or necessary; and (ii) describe the process used to reach this decision.</i></p>		

<p>Facilitation of the development of a dynamic intermediary market through making data more accessible to comparison tools and other intermediaries</p>	<p><i>Description of current and planned actions, including scope of action (ie types of provider/ consumer/ services affected)</i></p> <ul style="list-style-type: none"> <li>• The MoF provides on its website an up to date list of the names, addresses, contact details, language specialities of all notaries authorised and regulated to practice in England and Wales<sup>8</sup>. This is the definitive list of practising notaries to confirm their regulatory status.</li> <li>• In compliance with the LSB data transparency requirements, the MoF also makes available annually an open data downloadable list<sup>9</sup> of the names, addresses and contact details of all notaries regulated and authorised to practice as an Excel Spreadsheet. The MoF is aware that this provision is used by providers of CPE courses to notaries but has no current evidence of any interest from digital comparison tools or other third party intermediaries.</li> <li>• The information provided on the 'Find a Notary' section of our website is also updated in real time on the European E-Justice portal<sup>10</sup> which assists consumers from across the European Union to access legal services.</li> <li>• The MoF is working with other Approved</li> </ul>		
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<sup>8</sup> <http://www.facultyoffice.org.uk/notary/find-a-notary/>

<sup>9</sup> <http://www.facultyoffice.org.uk/notary/the-faculty-office-as-regulator-of-the-notarial-profession/access-to-data-notaries-a-z-spreadsheet/>

<sup>10</sup> <https://e-justice.europa.eu/home.do?plang=en&action=home>

	<p>Regulators to explore the feasibility of a single digital register. As noted above, the MoF already participates in the European E-Justice portal.</p> <p>[The cost to the notarial profession in England &amp; Wales of joining the portal (which was split between the MoF and the two representative societies) was in the region of £9,000 which included provision of the required IT infrastructure and certificates to facilitate real-time updates of the information from the FO website. We would need to assess, against proportionality, the likely costs (both set up and ongoing support) of such a provision within England &amp; Wales before committing to full engagement.]</p> <p><i>If no action is planned, please (i) give the reasons why taking action in relation to this outcome would not be proportionate or necessary; and (ii) describe the process used to reach this decision</i></p>		
<p>Making better information available to assist consumers when they are identifying their legal needs and the types of legal services providers (both regulated and unregulated) who can help them</p>	<p><i>Description of current and planned actions, including scope of action (ie types of provider/ consumer/ services affected)</i></p> <ul style="list-style-type: none"> <li>• The MoF has been a participant in the Legal Choices Website project since its inception and is grateful to the SRA for taking the lead in setting up and promoting the site which has seen significant growth in consumer engagements. We will</li> </ul>		

	<p>continue to play an active role, in conjunction with the other participating Approved Regulators in the development of the content of Legal Choices and refine how we market it and engage with consumers (subject to costs remaining proportionate).</p> <ul style="list-style-type: none"><li>• A link to the Legal Choices platform has appeared on the Notaries section of the Faculty Office (FO) website since its inception. We have recently added a link on the home page of the FO website to take consumers directly to the Legal Choices website.</li><li>• The MoF will continue to promote the Legal Choices website through its regulated community and encourage them to make consumers aware of the site as part of our commitment to its ongoing development and marketing.</li></ul> <p><i>If no action is planned, please (i) give the reasons why taking action in relation to this outcome would not be proportionate or necessary; and (ii) describe the process used to reach this decision</i></p>	<p><b>Completed: February 2017</b></p>	
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