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CONSULTATION ON THE PROPOSALS SET OUT IN THE MASTER OF THE FACULTIES ACTION PLAN TO DELIVER TRANSPARENCY FOR CONSUMERS IN THE LEGAL SERVICES MARKET ARISING FROM THE RECOMMENDATIONS OF THE COMPETITION AND MARKET AUTHORITY'S MARKET STUDY INTO LEGAL SERVICES

- 1 The Master of the Faculties (MoF) is the Approved Regulator for Notaries Public in England & Wales under the Legal Services Act 2007 (the Act). Acting through the Faculty Office (FO), the MoF is responsible for the appointment, authorisation and regulation of Notaries Public in England & Wales (and certain overseas jurisdictions which are not directly affected by these proposals). The Notarial Profession consists of 793¹ individually regulated providers authorised to undertake four of the Reserved Legal Activities² set out in the Act, namely, Notarial Activities, Probate Activities, Reserved Instrument Activities (Conveyancing) and the Administration of Oaths. The first of these is unique to notaries and the MoF. [Notarial Activities are legal services which are almost exclusively provided to consumers who are engaged in transactions in jurisdictions outside of England & Wales.] Notaries are also entitled to offer non-reserved legal activities to consumers in which capacity they remain regulated by the MoF. The proposals which follow are designed to encourage the profession to be transparent in both their offering and marketing of services in advance to permit consumers to make an informed choice of provider and in the information provided to clients on instruction.
- 2 This consultation will close at 5pm on **Thursday 30th November 2017**.

¹ As at 28 September 2017

² Section 12 Legal Services Act 2007

- 3 This consultation sets out the FO approach to delivering the Competition and Markets Authority (CMA) recommendations set out in its Market Study into Legal Services [final report](#) dated 15 December 2016.
- 4 We welcome responses from members of our regulated community and other stakeholders including consumers of legal services, consumer organisations and any other interested parties.
- 5 The CMA carried out a study into the legal services market study during 2016. It looked at a range of different legal areas focussing on those which are accessed by individual consumers and small businesses including notarial activities but paying particular attention to areas such as conveyancing, will-writing and probate, immigration, family and employment law.
- 6 The CMA concluded that the legal services market is not working as well as it might for individual consumers and small businesses. Consumers find it hard to make informed choices about legal services providers because of lack of transparency about price, service and quality. The CMA recommended (indeed, required) that legal regulators act to ensure legal service providers deliver a step change in transparency. These recommendations include work:
- 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
 - Introducing a single digital register of legal service providers with regulatory and consumer information.
- 7 The CMA recommendations require a significant increase in transparency in the legal services market to assist consumers to make an informed decision when instructing a lawyer. The FO proposals acknowledge that many consumers of notarial services often do not fully understand why they require the services of a notary public (as distinct from, for example, a solicitor) and our approach reflects the fact that we regulate a relatively small number of individuals delivering legal services largely outside of the core areas of law the

CMA's recommendations focus on. For those areas at which the CMA recommendations were directed, principally conveyancing and probate, where the MoF has a very small number of individuals carrying out work and which other Approved Regulators' communities (in particular the SRA, CLC and CILEX Regulation) have a much larger market share, it will be important for the FO to collaborate with those regulators to ensure that the information which is required is consistent across the legal market if consumer transparency is to be enhanced in a meaningful way.

8 In this consultation, the FO set out its proposals for the information which its regulated community will be required to publish. The FO will take your views into account as we further develop our proposals to deliver the CMA's recommendations.

9 The FO have considered whether it needs to change the Notaries Practice Rules 2014 (as amended) to prescribe the publication of transparency information by notaries, or whether changes to the Code of Practice (which sets out best practice and sits beneath the Practice Rules) would suffice. We concluded that a change to the Rules would, in most instances, be the best approach, not because we wish to be overly prescriptive but because we have taken the view that a simple, proportionate and targeted rules-based system of regulation best meets the needs of notaries and consumers alike.

Question 1: Do you agree that changes to the Practice Rules is the best way of achieving the changes which the CMA recommendations require? If not, how else might this be achieved?

10 The FO considered limiting our proposals, at least in the first instance, to those notaries undertaking conveyancing, probate activities and/or will-writing as notaries as these areas, as well as being a particular focus of the CMA recommendations, perhaps lend themselves more readily to a system of fixed pricing and service comparison. The FO rejected this approach because the numbers involved are so small (less than 40 individuals) that it did not consider it sufficiently large a group to obtain realistic data on the impact that the proposals would have nor would they deliver the sector wide step change that has been called for by the CMA report. We believe that it would be preferable to extend the proposals to the full ambit of work provided by notaries³, so that the profession as a whole is seen to be

³ The proposals do not extend to the Administration of Oaths as for documents for use within the legal jurisdiction of England & Wales statutory fees apply.

responding positively to the concerns which the CMA recommendations seek to address rather than a very small discrete section of it.

- 11 We acknowledge that this will provide challenges, particularly in the pre-engagement provisions, and we are open to considering cogent and reasoned arguments for limiting the proposals to discrete areas of practice in the initial stages.
- 12 We are also aware that there are particular challenges surrounding 'pure' notarial work which need to be addressed where in many cases services must be tailored to a consumer's specific needs and circumstances and which the consumer him/herself may not (fully) understand. With so many variables (including, but not limited to, the type or number of documents, the specific requirements of the receiving jurisdiction, the costs of consular validation etc) we recognise that provision of price information can be more challenging than in more transactional areas of law like conveyancing.
- 13 Recognising these issues, the proposals do not, therefore, require notaries to provide fixed-price information at the pre-engagement stage. Rather, notaries might provide illustrative price and service scenarios on their websites for, say, three of the most common types of instructions which they have received in the last year or so. For example, the execution of a Power of Attorney for a property transaction in Spain; the authentication of a University Degree or other Professional Qualification for use in the United Arab Emirates; the preparation and notarisation of a Consent to Travel document for a Minor for South Africa.

Question 2: Do you have any comments on the proposals to extend the transparency requirements to all the areas of work which a notary undertakes?

Question3: If you think the proposals should be limited to discrete types of work undertaken by notaries, what areas should be covered and why? Please also give your reasons for not including other types of work.

TRANSPARENCY INFORMATION

- 14 We intend to require notaries to publish information on price, service, redress, and regulatory status which are the core areas which the CMA report identifies as being

important to consumers and to enable them to make an informed choice of, and between, providers.

- 15 The Notaries Practice Rules 2014 (as amended) already require notaries to provide clients with redress (right to complain) information (rule 8⁴) and fee information (rule 18.1⁵) at the point of instruction, typically in a client care letter. The proposals will include a requirement that notaries put the information in the public domain so that consumers can access it before they choose a notary to instruct.
- 16 The proposals will also extend the required information to include information on the level of Professional Indemnity Insurance which a notary carries (our rules currently require a minimum sum insured of £1m but many notaries carry a higher level of cover), the level (or seniority) of the notary (or notaries) in terms of their years of experience (similar to a Barrister's year of Call) – as an indication of their experience – and other qualifications and competencies in languages. This information will be expected to be provided on their websites, prominently and in an easy to understand format, to assist consumers to compare legal services.
- 17 If a notary does not have a website, we will expect that they supply the information in writing on request.
- 18 Where a notary operates his or her practice in conjunction with, for example, a firm of solicitors and reference is made on the firm's website to the provision of notarial activities, we will expect the notary to ensure that the transparency information makes it clear to consumers that the services are being provided by the individual notary in his or her capacity as a notary rather than as a solicitor. We will expect the relevant page of the website to contain the transparency information on price, service, redress and regulatory status in such a way as to comply with the requirements of the FO as the regulator of the individual providing the service.

Question 4: What are the challenges and opportunities for notaries of publishing transparency information that is helpful to consumers:

- on a notary's own website;

⁴ Rule 8 Notaries Practice Rules 2014 (as amended) <http://www.facultyoffice.org.uk/wp-content/uploads/2017/09/Notaries-Practice-Rules-2014-As-Amended-July-2017.pdf>

⁵ Rule 18.1 Notaries Practice Rules 2014 .*ibid*

- on the website of a firm of lawyer's of which the notary (who may also be a solicitor, for example) is either a partner, consultant or employee?
 - where a notary does not have a website?
-

PRICE – information to be provided

- 18 As we have already noted, there are challenges in providing a 'one-size-fits-all' approach to the provision of pricing information. We appreciate that notaries calculate costs in different ways and may wish to charge different rates for what, at its most basic level, may appear to be the same work required for different classes of consumer. For example, the fees charged to a large international corporation for the execution of a Power of Attorney authorising the execution of documents for a multi-million dollar deal in the US may be significantly different from the charges levied to an individual consumer executing a Power of Attorney to facilitate the sale of a property in Spain. Thus requiring detailed pricing information to be provided in advance for the full ambit of notarial work is, we accept, unrealistic. However, we will continue to ask notaries to make it clear to consumers what the likely total cost of a legal service will be.
- 19 We set out below the minimum price information we will expect notaries to publish on their website or have available in written format. The price information must be clear and presented in a way that is easy for consumers to understand and should clearly set out:
- a) the total cost of the transaction to the consumer;
 - b) the basis on which costs are calculated, for example, fixed fee, hourly rate or a percentage of the value of an asset;
 - c) all other costs and disbursements payable, for example, search fees, legalisation and consular fees together with a clear explanation of what the cost is for;
 - d) which costs attract VAT and the total amount of VAT payable;
 - e) examples of the circumstances in which costs might vary from those published, supported by a short and clear explanation.

20 Just as there is no one-size-fits-all approach to how price information is calculated, there is no single appropriate manner in which the information should be presented and we do not currently propose to prescribe how the minimum price information is presented⁶. We will expect notaries to clearly set out the required information in an appropriate and easy to follow manner. We will monitor websites and other approaches taken through our existing Inspection Regime and if further prescription or guidance is required to address concerns we will do so at a later date.

Question 5: What challenges do you foresee in providing advance pricing information at the pre-engagement stage?

Question 6: Could fixed fee pricing be used more widely for consumers of notarial services and, if so, how might this be achieved?

Question 7: What are the challenges and benefits, to notaries and consumers, of different approaches that notaries can take to publishing price information?

Question 8: To what extent would notaries welcome a more prescriptive approach to presenting information?

Question 9: Do you have other comments on presentation of price information?

SERVICE – information to be provided

21 Pricing information in isolation presents only part of the information which a consumer might require when choosing between what notaries offer. Additional information about service, redress when things go wrong and regulatory status, as a minimum, allows consumers to compare offers from different providers and choose the service which best meets their need.

22 We will expect notaries to publish the following minimum service information:

⁶ The CMA report sets out examples of good practice at Appendix D

- a short explanation of the service to be provided in plain consumer friendly language;
- key stages of a transaction with likely timescales for these stages, together with a short explanation of circumstances in which timescales may change.

23 We acknowledge that notaries may wish to provide additional information about what they can offer consumers, such as experience (in terms of years in practice), languages spoken, consular services accessibility, opening hours, contact details, car parking, consumer feedback and information about client complaints. Provided that the minimum service information is provided, we do not wish to mandate what else is published. We will ask notaries to ensure, however, that all information is provided in a clear and consumer friendly format.

REDRESS – information to be provided

24 We will expect notaries to publish the following minimum information:

- details of the relevant first tier complaints handling procedure (ie approved procedure operated by the Notaries Society or the Incorporated Company of Scriveners respectively for their members or by reference to The Faculty Office);
- information about referring complaints to the Legal Ombudsman (LeO), with time limits;
- confirmation that the notary has Professional Indemnity Insurance (PII) and Fidelity Insurance covering all services provided and the level of that cover.

25 We do not propose to be prescriptive as to how the information is presented at the pre-instruction stage provided that it is expressed in plain and consumer friendly language. Rule 8 of the Notaries Practice Rules 2014 (as amended) already provides an approved form of Complaints wording which consumers must be given once the notary has been instructed. For those notaries who conduct conveyancing and/or probate activities or who offer Will-writing as notaries, we will recommend that they follow the approach which the legal sector as a whole develops so that consumers are more readily able to compare their services with other professionals in the sector (see paragraph 7).

Question 10: Do you have any comments on the proposal to allow notaries to provide the required information in a format that suits them rather than being prescriptive (save as to the requirement that it is in plain and consumer friendly language)?

Question 11: Would you prefer a more prescriptive template format? If so, do you have any suggestions as to what a template might look like?

Question 12: Do you agree that notaries offering conveyancing, probate activities and/or will-writing should provide information, so far as possible, in legal sector-wide standard format to better assist comparison by consumers?

REGULATORY STATUS – information to be provided

26 The FO regulated community is currently required to indicate on their written communication that they are regulated but we do not prescribe the format in which that appears. This has provided a variety of approaches including:

- Regulated by the Master of the Faculties
- Regulated by the Faculty Office of the Archbishop of Canterbury
- Regulated by the Archbishop of Canterbury

27 We acknowledge that this may lead to confusion and therefore intend to set out a form of words that our regulated community must use to ensure a consistency of approach. We do not currently have a logo for use on websites and business communications which many of the Approved Regulators do offer. If we were to develop such a logo to be used in conjunction with a regulatory statement about their authorisation this might give consumers confidence that they are using a regulated individual and the benefits which this gives. We are aware that a logo or branding takes time both to develop and to become recognised or trusted and, equally, that this could be open to fraudulent use.

Question 13: What are your views on the provision of a prescribed form of wording for use on business communications and websites to confirm the regulated status of a notary?

Question 14: Do you believe that a logo for use in conjunction with the regulatory statement referred to above would be helpful for consumers?

CLIENT CARE INFORMATION ON INSTRUCTION – information to be provided

- 28 The FO regulated community will continue to be required to comply with the provisions of Rules 8 and 18 of the Notaries Practice Rules 2014 relating to the provision of complaint signposting (redress) and detailed pricing information on the point of instruction. We propose to expand these rules to include information on the level of Professional Indemnity and Fidelity Insurance which a notary carries and an indication of the likely timescale for the transaction and other service information in the client care letter or email communication at the start of an instruction. This will need to be tailored to individual client's needs but will be required to contain the same basic information which is required at the pre-instruction stage set out above.
- 29 The Code of Practice, published on our website, sets out the standards expected of a notary across the full range of the principles set out at rule 4 of the Notaries Practice Rules 2014⁷. We will provide additional guidance in the Code of Practice in relation to Client Care letters drawing on the joint regulators research report published in October 2016.

Question 15: Do you agree that expanding the rules to require additional redress and service information at the point of instruction will be beneficial to consumers?

Question 16: Do you agree that the Code of Practice is the appropriate place for guidance as to the content and style of Client Care letters/emails?

PUBLICATION OF DISCIPLINARY DECISIONS

- 30 We currently publish the Decisions of the Court of Faculties following a disciplinary hearing where a finding has been made against a notary on our website⁸. However, there is currently no link between the Decision and the name of the notary appearing in our online directory⁹.
- 31 The FO does not currently publish advance notice of hearings in the Court of Faculties or other details of a complaint in advance on its website. Publication is only effected once an

⁷ <http://www.facultyoffice.org.uk/notary/code-of-practice/#structure>

⁸ <http://www.facultyoffice.org.uk/notary/the-faculty-office-as-regulator-of-the-notarial-profession/disciplinary-decisions-of-the-court-of-faculties/>

⁹ <http://www.facultyoffice.org.uk/notary/find-a-notary/>

adverse finding has been made. This is not consistent with other Approved Regulators, particularly the SRA (and the SDT) which publishes notice of its hearings and all its findings.

- 32 The FO does not currently have a set view as to whether it is appropriate to amend our publication policy nor whether we should link disciplinary decisions of the Court of Faculties to the directory and we are seeking views on this aspect. Clearly, whilst consumer protection is paramount, there is a balance to be struck between providing increased protection for consumers and allowing the public to access the information they need to make properly informed choices and being unduly prejudicial to a notary and potentially adding to any sanction already imposed.

Question 17: Do you think it would be in the interests of the Consumer to provide a link from the Directory on our website to related disciplinary decisions of the Court of Faculties where there has been a finding against a notary?

Question 18: If a link is provided, should this be time limited or permanent?

Question 19: Do you think it would be in the interests of the Consumer and the profession to provide notice of an intended hearing in the Court of Faculties in advance and to link that entry with a entry in the Directory?

Question 20: Do you have any other views on the linkage of disciplinary or complaints information with an entry in the Directory and the balance to be struck between assisting a Consumer to make an informed decision and being unduly prejudicial to the notary's practice?

ENGAGEMENT WITH THIRD-PARTY INTERMEDIARIES

- 33 We know that third-party intermediary websites are not working well in the Legal Services market generally. There are a number of reasons for this ranging from the lack of supply through to the complexities of the market. We believe that such websites may well have a useful role to play in the more transactional areas of legal services such as for conveyancing and will-writing.
- 34 We are not, yet, clear how useful or appropriate such sites may be in relation to notarial activities although we are aware that a new notary specific provider has entered the market

since our Action Plan was published at the end of June. We do not propose to require our regulated community to engage with the current provider (or others which may enter the market in the future) as we do not believe that it is appropriate for an Approved Regulator to be seen to endorse one provider over another. However, and subject to the consent of the individual members of the regulated community being obtained, we will make basic contact data available to enable providers to contact notaries to invite them to join and we will ask our regulated community to participate. Increased levels of engagement with intermediary websites by legal service providers could assist consumers with helpful information to enable them to make more informed choices on a provider, particularly for the more transactional work-types.

Question 21: Do you agree that the MoF should encourage notaries to engage with third-party intermediary websites but that he should not mandate such engagement through changes in the rules?

Question 22: Do you have any comments on the place which client feedback and online review sites might have in enhancing consumer information/ consumer choice in relation to the areas of work in which notaries are routinely instructed by individual consumers and/or small businesses?

FIRST TIER COMPLAINT INFORMATION

35 We have considered the CMA's recommendation on publication of first-tier complaints information. Complaints against notaries remain very low. In the last two years, the approved complaints procedure for service complaints operated by the Incorporated Company of Scriveners for its members, and that operated by the Faculty Office for notaries who are members of neither professional body received no complaints. The equivalent procedure operated by the Notaries Society received 12 complaints in 2015 and 7 in 2016 but not all of these were pursued following the initial contact. No complaints were dealt with by LeO in the same period, so far as we are aware.

36 We do not, therefore, think it would be helpful or proportionate to publish First Tier complaint information other than in general terms.

Question 23: Do you have any comments on our approach to first-tier complaints data?

AND FINALLY

37 This Consultation does not cover the final two bullet points of paragraph 6. This is because the majority of the work under these headings in the MoF Action Plan is being addressed through the FO engagement with the Legal Choices website¹⁰. The FO will continue to participate in this consumer facing platform. The provision of a legal-sector wide single digital register is a project which is being led by the SRA and with which the FO intends to engage subject to the development and running costs being proportionate.

Question 24: Do you agree that the development of the Legal Choices website is the appropriate platform to achieve the CMA’s recommendation that better information be made available to assist consumers to identify their legal needs and how these might best be met.

Question 25: Do you have any views on the development of a single digital register of legal service providers which you wish us to take into account?

Question 26: Do you have any other comments on the MoF Action Plan or the proposals which it does (or does not) contain?

THANK YOU FOR YOUR TIME

CONSULTATION QUESTIONS

Question 1: Do you agree that changes to the Practice Rules is the best way of achieving the changes which the CMA recommendations require? If not, how else might this be achieved?

Question 2: Do you have any comments on the proposals to extend the transparency requirements to all the areas of work which a notary undertakes?

Question3: If you think the proposals should be limited to discrete types of work undertaken by notaries, what areas should be covered and why? Please also give your reasons for not including other types of work.

Question 4: What are the challenges and opportunities for notaries of publishing transparency information that is helpful to consumers:

¹⁰ <http://www.legalchoices.org.uk/>

- on a notary's own website;
- on the website of a firm of lawyer's of which the notary (who may also be a solicitor, for example) is either a partner, consultant or employee?
- where a notary does not have a website?

Question 5: What challenges do you foresee in providing advance pricing information at the pre-engagement stage?

Question 6: Could fixed fee pricing be used more widely for consumers of notarial services and, if so, how might this be achieved?

Question 7: What are the challenges and benefits, to notaries and consumers, of different approaches that notaries can take to publishing price information?

Question 8: To what extent would notaries welcome a more prescriptive approach to presenting information?

Question 9: Do you have other comments on presentation of price information?

Question 10: Do you have any comments on our proposal to allow notaries to provide the required information in a format that suits them rather than being prescriptive (save as to the requirement that is in plain and consumer friendly language)?

Question 11: Would you prefer a more prescriptive template format? If so, do you have any suggestions as to what a template might look like?

Question 12: Do you agree that notaries offering conveyancing, probate activities and/or will-writing should provide information in legal sector-wide standard format to better assist comparison by consumers?

Question 13: What are your views on the provision of a prescribed form of wording for use on business communications and websites to confirm the regulated status of a notary?

Question 14: Do you believe that a logo for use in conjunction with the regulatory statement referred to above would be helpful for consumers?

Question 15: Do you agree that expanding the rules to require additional redress and service information at the point of instruction will be beneficial to consumers.

Question 16: Do you agree that the Code of Practice is the appropriate place for guidance as to the content and style of Client Care Letters/Emails.

Question 17: Do you think it would be in the interests of the Consumer to provide a link from the Directory on our website to related disciplinary decisions of the Court of Faculties where there has been a finding against a notary?

Question 18: If a link is provided, should this be time limited or permanent?

Question 19: Do you think it would be in the interests of the Consumer and the profession to provide notice of an intended hearing in the Court of Faculties in advance and to link that entry with an entry in the Directory?

Question 20: Do you have any other views on the linkage of disciplinary or complaints information with an entry in the Directory and the balance to be struck between assisting a Consumer to make an informed decision and being unduly prejudicial to the notary's practice?

Question 21: Do you agree that we should encourage notaries to engage with third-party intermediary websites but that we should not mandate such engagement through changes in our rules?

Question 22: Do you have any comments on the place which client feedback and online review sites might have in enhancing consumer information/ consumer choice in relation to the areas of work in which notaries are routinely instructed by individual consumers and/or small businesses?

Question 23: Do you have any comments on our approach to first-tier complaints data?

Question 24: Do you agree that the development of the Legal Choices website is the appropriate platform to achieve the CMA's recommendation that better information be made available to assist consumers to identify their legal needs and how these might best be met.

Question 25: Do you have any views on the development of a single digital register of legal service providers which you wish us to take into account?

Question 26: Do you have any other comments on the MoF Action Plan or the proposals which it does (or does not) contain?

HOW TO RESPOND

Please respond in writing by **5pm on Thursday 30th November** to The Faculty Office:

- By email to: faculty.office@1thesanctuary.com (please put "CMA CONSULTATION RESPONSE" in the subject line of your email)
- By post to: The Faculty Office, 1 The Sanctuary, Westminster, SW1P 3JT
- By DX to: The Faculty Office, DX 145940 WESTMINSTER 4.