



The Faculty Office

Response

Notaries (Practice Certification) Rules 2012

Practice Fees 2019/2020

The Consultation

The Faculty Office recently closed its consultation on the proposed practice fees for 2019/20.

For the reasons outlined at length in the consultation, the Faculty office intends to introduce a practice fee based on the turnover of the notary's notarial practice.

<http://www.facultyoffice.org.uk/wp-content/uploads/2019/05/Consultation-Practice-Fees-May-2019.pdf>

Budget information published on the website and included in the consultation showed deficit budgets for 2019/20 and 2020/21.

Numbers in the profession dropped in 2019 to 751 (2018: 758)

The profession provided details of their turnover as part of last years practice renewal application. These figures informed the determination of the bands and the practice fee for each band.

The Responses

23 individual notaries replied.

The Society of Scrivener Notaries also replied. The reply is attached at **Appendix 1**. We will be taking up their offer of further assistance.

The new turnover formula was overwhelmingly supported. Many took the trouble to acknowledge the pressing need for a different approach – even when their own fees would increase (for which we thank you!).

There was some comment on the details:

- Some notaries thought a flat fee for all notaries with a turnover "top up" would be an easier approach. *[This was also raised by the Society of Scrivener Notaries. This is likely to be the approach once entity regulation is introduced.]*
- The banding was considered too "coarse". *[For the reasons explained we think the banding is fair but also easy to manage. We will keep the bandings under review and may introduce further bands to narrow the wider bands in due course.]*
- Two notaries (also solicitors) commented that as notarial fees are included in their solicitors' practice fees, they would, in effect, be paying twice. *[The SRA specifically directs solicitors to include their notarial fees. The basis of the calculation may be the same (or similar), but they are separate qualifications.]*
- One notary (also a solicitor) thought there would be difficulties in splitting out "notarial turnover". *[The Faculty Office will gladly assist.]*
- One notary was concerned that unbilled work should not distort the figures *[Work-in Progress is to be excluded for the purposes of the calculation.]*

A number of notaries indicated support for an additional risk-based fee for notaries undertaking conveyancing and probate (which remains under consideration for future years).

The 2019/20 Practice Fees

The practice fees are confirmed as set out in the Consultation and are set out below:

Turnover	Fees
Up to £15,000	£450
Up to £50,000	£560
Up to £150,000	£800
Up to £300,000	£1,000
Over £300,000	£2,250

This will generate income from practising fees of **£480,000 (2019: £406,951)**

The contribution to the Contingency Fund will also be decreased as indicated in the consultation (to £20)

The Budget

The budget to the end March 2020 (with indicative budgets for the following two accounting years) are set out in **Appendix 2**.

This new approach to the calculation of practice fees has made it possible:

- to address the shortfall in income.
 - ***Please note that the accounting year for the Faculty Office and the PCF year are not the same. PCF income is spread across two accounting years and the accounts will move into surplus in the accounting year beginning 1 April 2020***
- to develop a budget which did not require cost cutting (and generate a modest surplus).
- to recognise the wide spectrum of income profiles in the profession (and reduce practice fees within the lowest band), and

Core Metrics

The Core Metrics for 2019 will be published separately but total expenditure to 31 March 2019 will be reported at **£462,693 (2018 £420,316)**

External Costs

There are fees over which the Faculty Office has no direct control:

The Legal Services Board Levy – £15,963

The Legal Ombudsman Levy - £5,000

OPBAS Levy - £5,000 (this is an estimate)

SARs Reform Levy – not yet known (HM Treasury and the Home Office are about to launch a consultation on the way in which a levy might operate but appear to be clear that they will expect all those involved in Anti-Money Laundering supervision, including the professional body supervisors of which the Faculty Office is one, to contribute to the costs of the SARs reform project)

Legal Choices project - £4,000 (the Faculty Office is reviewing its participation in the Legal Choices website)

Further Comments

The Faculty Office has two main roles: notarial regulation and the issue of special marriage licences. The Faculty Office occupies serviced accommodation with associated other services. These costs (shown as "Management Charge") are shared 65% notaries and 35% licences.

Projected direct expenses will drop from £191,000 to £157,00. The current IT Project will be completed in 2020 and this has had the largest impact on this projection.

Definition of Turnover

The Faculty Office will adopt the following definition:

gross fees (turnover) is all the fee income of the notarial practice (and whether or not notarial services) but excluding VAT and excluding client and third-party disbursements and before deduction of expenses.

Unlike the SRA formula Work in Progress is not taken into account. WIP can be overstated and will be included as turnover once billed.

Guidance on client and third party "disbursements" will be issued in due course.

Calculation

To calculate an individual practice fee, the total turnover for a LLP, partnership or limited company will be divided by the number of practising certificates issued by the Faculty Office to that "body of persons".

The fee will, therefore, be spread evenly between all regulated persons.

This will apply whether or not the individual notary is an employee, a salaried or equity partner or director or shareholder.

Thus, in short, it is fee income and not salary/profit share which will drive the calculation.

The Faculty Office recognises that partnership shares and dividends may not be shared equally.

Notaries are invited to contact the Faculty Office over the summer to agree the calculation and a single amalgamated payment will be encouraged.

This will have the benefit of allowing firms (if the practice fees are not treated as a central overhead) to redistribute internally individual notary liability for practice fees.

Next steps

The Faculty Office is intending to apply to the Legal Services Board for approval of the fees scheme during the week commencing **Monday 5 August**.

Anyone wishing to comment on the budget proposals may do so before **COB Friday 2nd August**

Please respond to The Faculty Office:

By email to: consultations@1thesanctuary.com

Please put **“PRACTICE FEES CONSULTATION BUDGET RESPONSE”** in the subject line of your email.

[8th July 2019]

APPENDIX 1

The Faculty Office
1 The Sanctuary
London SW1P 3JT

1 July 2019

Dear Sirs,

CONSULTATION - changes to the practice certificate fee

Please find enclosed the response of the Society of Scrivener Notaries.

We would ordinarily have followed the questions as set out in your questionnaire. However, there were too many issues raised for us to adhere to this rigidly.

We welcome your proposal to review the regime for notarial inspectors and supervisors and to seek additional members for the panels.

Enforcement

We regret that we do not share your belief that notaries will always act with integrity when assessing their own income/turnover. If notaries always acted with integrity then there would be no need for the Notaries Inspections Regulations 2014 or for Rule 24.3 of the Notaries (Conduct and Discipline) Rules 2015. No enforcement makes it too easy for a minority of notaries to game the system.

Having said this we accept that the Faculty Office is not in a position to audit the figures produced by every notary each year.

We have set out below an overview of our understanding of how the profession is currently structured. All the categories (a) to (e) below will have accounts, even if this limited to the "self-employment" supplement contained in an individual tax return. Indeed, notaries in categories (b) and (c) are already required to maintain separate accounts under Rule 18.3 of the Notaries Practice Rules 2014. It is not unreasonable for the Faculty Office to request from a percentage of the profession evidence of turnover when applying for a practice certificate. The possibility of detection should be sufficient to deter those who might otherwise be tempted to take a risk.

The basis for calculation - fixed fee, turnover, or both?

The narrative to the consultation describes the intention to introduce a "target and calculated" practice fee consisting of:

(i) a fixed fee, paid by all notaries

(ii) a "top up" fee based on gross turnover

(iii) a client money supplement

(i) and (ii) are similar to arrangements used by the Council for Licensed Conveyancers and the Solicitors Regulation Authority. The CLC distinguishes between a "licence" fee and a "practice" fee. The former is set per practitioner, the latter is based on the business.

At the time of writing you have published a model based on a turnover fee that would generate an income of £484,160. There is no fixed fee element included. Is this the intention?

Analysis of the market for notarial services

In considering how the Faculty Office may be properly funded we have considered the current state of the market for notaries. We see it as divided into:

- (a) sole practitioners in self-employment
- (b) sole practitioners whose notarial fees are shared with their legal practices. (of these, they may be able to retain 100% of their income or alternatively, their firm retains a percentage to cover the cost of training, overheads etc.)
- (c) legal practices with more than one notary - with the same fee-sharing issues as (b)
- (d) limited companies (being used a notary or notaries in order to limit liability or for tax planning) - in this case the notary's income may be a combination of salary + dividend
- (e) partnerships of notaries, whether traditional or with limited liability
- (f) other businesses (such as consular companies) which are unauthorised to offer notarial services

The Faculty Office is well aware of this Society's concerns about category (f). Whilst we do not seek to have such this category included in consideration of how the regulator is funded, we do consider it of public interest to remind you that it is possible to run a commercial business that includes notarial services without the "burden" of regulatory costs.

We know from experience that categories (d) and (e) may employ notaries as part of their business. Notaries within categories (b) and (c) may be employed by solicitors practices. Employed notaries may be receiving an **income**, which may or may not be enhanced by some incentive.

Partners, directors and employees will receive a profit share or salary. None of them has an individual turnover.

Privacy issues

We believe that individual notaries have hitherto answered questions about their individual incomes in a spirit of co-operation, recognising that the profession and regulator is adapting to change. However, this is unlikely to be justifiable in the long run. It requires practitioners to continue to disclose details of individual profit shares or income. Notaries have a right to privacy. The Faculty Office is not a public authority having the same role as HM Revenue & Customs. Requests for disclosures of individual salaries and profit shares are open to challenge under Article 8 of the ECHR.

We suggest a more practical approach. The Practising Fee Rules 2016 made by the Legal Service Board define a person as including "*a body of persons (corporate or unincorporated)*". The regulator is on much stronger ground in expecting turnover details from a "*body of persons*".

Our points made above about enforcement apply here too. It is far easier for a regulator to assess the turnover of a sample of practices rather than individual earnings.

We therefore recommend that for notaries who are partners, members, employees or directors of a body of persons that is predominately owned or controlled by notaries, the **turnover fee should be based on the turnover of that "body of persons"** through which the individual notary is practising.

Notaries who practice within a firm of solicitors, i.e. categories (b) and (c) above, should declare their turnover on the basis of the accounts they maintain under Rule 18.3 of the Notaries Practice Rules 2014.

Implications for your current calculations

We recognise that the model used in your consultation is currently based on **the number of individual notaries**.

We have studied the data published enclosed with your consultation paper in order to understand better the numbers of notaries affected and the figures involved.

There is a margin of error within this calculation, as we have made an assumption about the number of notaries being 750. We also rounded up the last category in order to obtain a 100% percentage. However, the total is relatively close to the projected income from practice fees as published in your consultation.

<i>Turnover band in £</i>	<i>% share of the profession</i>	<i>Number of notaries</i>	<i>Proposed turnover fee in £</i>	<i>Revenue in £</i>
< 15,000	47.27	355	450	159536.25
15000 < 49999	33.42	251	560	140364
50000 < 149999	11.58	87	800	69480
150000 < 299999	1.73	13	1000	12975
300000 +	6.00	45	2250	101250
	100.00	750		483605.25

The number of notaries is the multiplier within each of your fee bands. If the multiplier used decreases then to produce the same level of regulatory revenue the fee within each band has to increase by the same proportion. That is a matter of adjustment.

Please note that your proposed "fixed fee" element is absent from this calculation.

For the time being we therefore make the following recommendations:

- identify the number of notaries practising through a "body of persons" - see the Practising Certificate Rules 2016 made by the Legal Services Board. From your analysis, we would guess this being of greatest significance to the notaries in the middle turnover band.

- assuming you wish to include a fixed fee element in the practice fee, publish your projections of what you propose this to be
- adjust the proposed turnover fee accordingly

We appreciate the planning that has been put into the consultation and look forward to being of further assistance in this work.

Yours sincerely,

The Society of Scrivener Notaries
95 Aldwych
London WC2B 4JF

APPENDIX 2

**FACULTY OFFICE BUDGET
YEAR ENDED 31 MARCH 2020**

NOTARIES

£

Income:

Practising Certificates:

England & Wales & Overseas

Accrued income April-October 2019	226,893	
750 Certificates (Nov 2019-March 2020)	201,733	
		428,626

Channel Islands

Accrued income April-December 2019	10,125	
54 Certificates @ £250 (Jan 2020-March 2020)	3,375	
		13,500

UK Appointments		
26 x £625		16,250

Overseas Appointments		
22 x £700		15,400

Notarial Packs		4,220
Certificates of Exemption		9,150

Total Income **487,146**

Less Expenditure:

Management Charge (65%) 325,000

Direct Expenditure **191,000**

Total Expenditure **516,000**

Projected Notaries Shortfall 2019/20 **-£28,854**

**FACULTY OFFICE BUDGET
YEAR ENDED 31 MARCH 2021**

NOTARIES

£

Income:

Practising Certificates:

England & Wales & Overseas

Accrued income April-October 2020	282,426	
740 Certificates (Nov 2020-March 2021)	199,167	
		481,593

Channel Islands

Accrued income April-December 2020	10,125	
54 Certificates @ £250 (Jan 2021-Mar 2021)	3,375	
		13,500

UK Appointments		
26 x £625		16,250

Overseas Appointments		
22 x £700		15,400

Jersey & Guernsey Exams		0
Notarial Packs		4,220
Certificates of Exemption		9,150

Total Income **540,113**

Less Expenditure:

Management Charge (65%) 325,000

Direct Expenditure **157,000**

Total Expenditure **482,000**

Projected Notaries Surplus 2020/21

£58,113

**FACULTY OFFICE BUDGET
YEAR ENDED 31 MARCH 2022**

NOTARIES

Income:	£	
Practising Certificates:		
England & Wales & Overseas		
Accrued income April-October 2021	278,833	
740 certificates (Nov 2021-March 2022)	199,167	
		478,000
Channel Islands		
Accrued income April-December 2021	10,125	
54 Certificates @ £250 (Jan 2022-March 2022)	3,375	
		13,500
UK Appointments		
26 x £625		16,250
Overseas Appointments		
22 x £700		15,400
Jersey & Guernsey Exams		0
Notarial Packs		4,220
Certificates of Exemption		9,150
Total Income		536,520
Less Expenditure:		
Management Charge (65%)	325,000	
Direct Expenditure	157,000	
Total Expenditure		482,000
Projected Notaries Surplus 2021/22		£54,520