



## THE FACULTY OFFICE OF THE ARCHBISHOP OF CANTERBURY

### NOTARIES

#### Assurance Policy

#### (Risk Assessment and Supervision)

#### The Purpose

The purpose of this Assurance Policy is to identify the risks applicable to the regulation of the notarial profession and to set out the risk management tools which are in place to address those risks.

#### The Context

The number of Notaries entitled to practise in England and Wales at 1 April 2020 was 742... (2019 758).

Each year on average 30 are admitted as notaries.

Notaries may undertake reserved legal services comprising:

- notarial activities
- reserved instrument activities
- probate activities
- administration of oaths.

However, only a small number (approximately 31 undertake reserved instrument and probate activities under the authorisation of the Faculty Office.

Notaries have been regulated by the Master of Faculties since 1533 with additional statutory powers conferred on the Master under s57 the Courts and Legal Services Act 1990 (as amended).

Notarial Activities are legal services which are almost exclusively provided to consumers who are engaged in transactions in jurisdictions outside of England and Wales. It might be said that Notaries are primarily concerned with the authentication and certification of signatures, authority and capacity relating to documents for use abroad such as powers of attorney. However, Notaries must

be satisfied that their clients understand the nature and effect of the document which may not necessarily be written in English.

Traditionally a “rules based” regulatory regime, the Faculty Office has been moving towards an outcome focussed framework but the Faculty Office has always regulated from a position of confidence in the professional and the ethical values which are embedded in the profession.

### **The Regulatory Objectives**

The Legal Services Act 2007 sets out the regulatory objectives of every legal regulator:

- **Protecting and promoting the public interest;**
- **Supporting the constitutional principles of the rule of law**
- **Improving access to justice**
- **Protecting and promoting the interests of consumers**
- **Promoting competition**
- **Encouraging an independent strong diverse and effective legal profession**
- **Increasing the public’s understanding of the citizens legal rights and duties**
- **Promoting and maintaining adherence to the professional principles**

The “better regulation principles” inform the approach:

- **Proportionality**
- **Accountability**
- **Consistency**
- **Targeted**
- **Transparency**

### **The Overall Approach**

Notaries engage with the Faculty Office in two capacities:

- as individuals through the training and admission process and in meeting continuing professional development requirements.
- as practitioners (in a number different practice models from sole practitioner to partnerships) through initial supervision and then the annual monitoring and inspection programmes.

Each of these is subject to the oversight of the Faculty Office.

A small agile team at the Faculty Office is responsible for the regulation of notaries.

Regulatory functions are not carried out in separate departments and each member of the Executive will be part of the admission, regular engagement and (ultimately) disciplinary processes.

### The Risk Model

The Faculty Office identifies two primary risks:

- **Services undertaken for vulnerable (that is “novice”) clients. Notarial services are often “one off” purchases by individuals undertaking transactions overseas and particular trust is placed in the Notary.**
- **The risk associated with the holding of client money.**

There are other risks caused by:

- **Internal factors** associated with governance and management.
- **Economic and external conditions and influences** which affect the way that the notary profession functions, particularly due to its cross border role.

It is, of course, up to each individual notary and firm to identify and control the risks arising from their activities and to assure the regulator, through reporting and other mechanisms, that they have in place all appropriate safeguards and controls.

How the Faculty Office weighs these factors in its risk assessment is a matter of judgment of:

- **The potential harm to the client or the wider public.**
- **The ability of the notary to manage the risk posed.**

### The risk assessment will be informed by:

- **The self reporting processes which form part of annual practising certificate renewal and continuing professional education certification.**
- **The annual financial reporting requirements.**
- **The annual reports of the Inspectors which cover individual practices but also identify common themes.**

### And Also

- First tier complaints reports from the notarial societies and complaints reports issued by the Legal Ombudsman.
- Contact with clients and the public.

- Disciplinary Cases.
- Information shared by and joint research and other projects undertaken with other legal regulators.
- Surveys and questionnaires of the whole of the profession, which provide up to date information on work being undertaken, profiles of firms and attitudes to regulation. Typically responses to date have been c90%.
- Thematic reviews implemented by the Faculty Office as required by the Master of the Faculty and/or recommended by the Advisory Board.
- The ongoing consumer survey on the Faculty Office website.

### Assurance in Practice

### Notary (admission and development)

To qualify each notary must:

- pass or be exempted from academic examinations in a wide range legal subjects:
  - Public & Constitutional Law and (separately) EU law
  - Contract Law
  - Property Law and (separately) Conveyancing
  - Equity and Trust law and (separately) Wills, Probate and Administration
  - Law and Practice of Companies and Partnerships
- pass a professional practice examined course delivered by University College London over 2 years covering:
  - Roman Law as an Introduction to Modern Civil Law Systems: Year 1 – September to January
  - Private International Law: Year 1 – February to May
  - Notarial Practice: Year 2 – September to May

The applicant must also satisfy the Master of the Faculties that they are a fit and proper person to be admitted through the provision of:

- a Certificate of Fitness from a notary.
- a Certificate of Good Character from a professional person who has known the applicant for at least 5 years.

Newly admitted notaries must attend bespoke courses every year during the period of **supervised practice** (see below) including Notarial Practice and Professional Conduct

Following completion of the period of supervised practice each individual notary is required to undertake continuing professional education (CPE) of a minimum of 6 hours in relation to notarial activities and (if they undertake these activities) an additional six hours for each of conveyancing and probate and to certify compliance annually to the Faculty Office.

## Notary (as practitioner)

**The following assurance mechanisms are at the heart of client protection.**

### Supervision

On admission a notary is subject to a period of practice under supervision by an experienced and senior notary for a number of years as follows:

- all notaries must be supervised for a period of 2 years
- notaries undertaking conveyancing must be supervised for 3 years
- notaries undertaking probate activities must be supervised for 3 years

Visits by the Supervisor to the office of office of the newly admitted notary are to take place:

- within a month of admission
- for a second time within 12 month of the first visit
- (and if the notary is undertaking conveyancing or probate) within 12 months of the second visit.

On each occasion, the Supervisor will inspect the records and accounts of the newly admitted notary

Additionally the supervised notary will visit the offices of the Supervisor at 6 monthly intervals.

A report of each visit is provided and kept on the register of each notary (and includes a record of advice and guidance given).

### Inspection

The Faculty Office has powers of inspection of the premises, practices and records of notaries.

In addition to this general power, the Faculty Office has a programme of annual inspections. Each year the premises, records and practices of at least 20 notaries are inspected by a senior notary.

In addition to the individual reports, the Inspectors issue a summary which is published

### Financial Reporting

The Notaries Accounts Rules require every notary who, in their capacity as a notary, holds or receives client money paid into client account to obtain an Accountant's Report, prepared by a qualified and practising accountant, relating to client's money so held or received and to submit the Accountant's Report with practising certificate renewal applications.

### Enforcement

Complaints are few:

2019 First Tier Complaints (3)

Complaints to Legal Ombudsman (1)

Disciplinary (2)

2018	First Tier Complaints (7)	Complaints to Legal Ombudsman (0)	Disciplinary (0)
2017	First Tier Complaints (10)	Complaints to Legal Ombudsman (0)	Disciplinary (2)
2016	First Tier Complaints (7)	Complaints to Legal Ombudsman (0)	Disciplinary (0)
2015	First Tier Complaints (12)	Complaints to Legal Ombudsman (0)	Disciplinary (0)
2014	First Tier Complaints (10)	Complaints to Legal Ombudsman (0)	Disciplinary (2)

In addition one notary was struck off by consent following criminal conviction but not for activities that they performed as a Notary.

The Faculty Office has published guidance on the complaints process.

The constructive engagement of notaries with the Inspection Programme enables any matters of concern to be addressed pro-actively and effectively.

Similarly the Faculty Office will seek to secure appropriate regulatory undertakings to resolve matters of concern but will take enforcement action if:

- **There is serious misconduct**
- **A risk to the public is identified which cannot be mitigated promptly and appropriately by working with the notary**
- **The notary in question does not engage constructively with the Faculty Office so that the matter cannot be addressed and supervision and formal enforcement is required**

### Working with the Other Legal Regulators

In developing its assurance and supervision policy the Faculty Office has drawn considerably on the approach of other regulators.

The Master of the Faculties is a signatory to a Memorandum of Understanding to provide a framework for information sharing and a cohesive approach to assurance and supervision.

### Transparency

The principle of transparency is at the heart of good regulation. Transparency enables accountability. Without transparency, the other better regulation principles of proportionality, consistency and a targeted approach cannot be measured.

For this reason information on the website includes:

- A register of authorised notaries with details of any conditions imposed on their practice
- Complaints data – disciplinary decisions of the Court of Faculties
- Guides for use of the profession and for consumers
- Some key performance indicators
- Papers and minutes for those involved in governance in the Faculty Office

- Other relevant information

## PART 2 Money Laundering and Terrorist Financing

### Risk Assessment

The threat of notaries carrying out money laundering or terrorist financing is assessed and combated as part of the Faculty Office's general risk assessment and assurance policy. Nonetheless due to the separate regulatory role of the Faculty Office as the Professional Body Anti Money Laundering ("AML") Supervisor, a discrete risk assessment for AML threats is maintained. The Faculty Office is subject to the OPBAS Regulations<sup>1</sup> and supervision by the Office for Professional Body Anti-Money Laundering Supervision ("OPBAS"). The statutory regulatory regime for AML is largely to be found within the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.

Our single point of contact for AML queries is the Chief Clerk, Neil Turpin ([faculty.office@1thesanctuary.com](mailto:faculty.office@1thesanctuary.com), Tel. 020 7222 5381 or 0207 960 7126).

According to the National Risk Assessment<sup>2</sup> notarial work is assessed as low risk for money laundering and terrorist financing. It is also our assessment that notarial work is low risk as the core work of a notary such as the taking of affidavits and declarations, protests, translating, certifying the execution of documents and authentication work in general does not involve or amount to a regulated activity within money laundering and terrorist financing terms and will not require the handling of client monies. This is backed up by the very small number of reports made to the National Crime Agency<sup>3</sup>.

That said, certain notarial work such as preparing a power of attorney over foreign property could form part of an attempt to conceal the proceeds of crime or engage in some other money laundering activity.

The areas of a notary's work are considered higher risk are:

- in conveyancing (when acting as a notary)

The National Risk Assessment states that "the involvement of legal professionals in purchasing property is assessed to be another primary risk area for the sector. NCA analysis of SARs related to the legal sector in 2016 revealed that 50% were linked to the property market. Purchase of property provides an opportunity to launder a substantial sum in a single transaction, is a store of value (and often provides a capital gain) and can also be used to enhance criminal lifestyle. Cases

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<sup>1</sup> The Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017

<sup>2</sup> *National risk assessment of money laundering and terrorist financing 2017*, Home Office and HM Treasury

<sup>3</sup> It is also worth identifying that due to the nature of a notary's work – normally verifying documents – a notary intending to commit a crime is more likely to be creating an instrument of fraud rather than a handling of proceeds of crime - and in which case a referral would be made to the anti-fraud authorities. Again, however, we are not aware of incidences of fraud, aside those which have been perpetrated by non-notaries seeking to pass off their forgeries as genuine notarial acts.

encountered by law enforcement agencies continue to evidence the involvement of legal services (whether unwitting, negligent or complicit) in the purchase of property through overseas companies linked to the proceeds of crime, including high profile fraud and international corruption."

- Where the notary holds client monies

The National Risk Assessment states that "Misuse of client accounts represents a further risk around legal services. The majority of cases observed relate to abuse of the property market. Legal service providers often use client accounts to hold and move money on behalf of their clients for related legal services. Money may move through these accounts rapidly and in large sums to third parties. The majority of client account transactions are subject to the [Money Laundering Regulations], and in accordance with professional regulations must be in respect of an underlying transaction rather than in lieu of regular banking transactions.

Law enforcement agencies have observed client accounts being exploited by criminals to transfer funds to third parties, effectively breaking the audit trail to launder funds. The SRA has observed cases of solicitors not carrying out full due diligence on each transaction or facilitating client account transactions before the completion of CDD. Criminals have entered apparently legitimate relationships with legal service providers, securing access to a client account, then changed their arrangements unexpectedly and with little explanation in order to pass funds to a third party."

- In company formation and trust services

The National Risk Assessment states that "The creation of trusts and companies on behalf of clients is assessed to be the legal service at greatest risk of exploitation. Investigations by law enforcement often feature trusts and companies being used to facilitate high-end money laundering by hiding beneficial ownership, undermining due diligence checks and frustrating law enforcement investigations. This is often used in conjunction with other services (in particular the purchase of Property...) to facilitate money laundering."

Only a small number of notaries (23) conduct conveyancing as notaries and this subjects them to a higher degree of regulation and supervision as set out above. The number of notaries conducting probate as such and who are also likely therefore to do estate administration and hold client accounts is small (31) and they too are subject to enhanced regulation and supervision as set out. Further, notaries may also hold client monies for purposes other than the payment of costs. The total number of notaries holding client monies is 34. We are looking at this area, particularly what increased inspection and audit could be made of client accounts. We are not aware of any case past and present of a notary being part of a money laundering offence or having been alleged to have been so. We are however aware of one case (Box) who in her capacity as a solicitor misused her access to client account as part of her estate administration practice to carry out theft and fraud. No money laundering offence occurred but the case is relevant to the misuse of client accounts.

As regard company formation and trust services, this is not something that forms an intrinsic part of what a notary's work is. However, we are aware of the potential for notaries, as they do conduct work destined to be received in foreign jurisdictions, to be involved in this area in the same manner many other legal professionals are.

In addition to sector related risks we also recognise the following aspects have a strong bearing on risk:

- The identity of the client  
Each client is different, and each will have their own risk profile. There are a number of different factors that increase the risk of money laundering presented by clients. Warning signs include clients that want anonymity, clients acting outside their usual pattern of transactions, clients whose identity is difficult to verify or who are evasive about providing proof of identity. Clients who are evasive about proving their identity or who produce non-standard documentation might be considered higher risk, if there is no good explanation for this. The risk posed by the client also extends to the risk posed by the beneficial owner, if applicable. In particular, the Money Laundering Regulations recognise the category of politically exposed persons and their close families and their associates as requiring identification and enhanced due diligence.

The nature of the client's business might increase risk if it is cash intensive and therefore presents a greater risk of disguising illegal funds within legitimate payments. The client's sector or area of work is also a significant risk factor, in particular if they are associated with those with a higher risk of corruption or being used for money laundering, for example those from the arms trade or casinos.

- The nature of the transaction  
There are a number of factors that might make an individual transaction higher risk. Much of identifying risk is being alert for unusual activity or requests that do not make commercial sense. The use of cash or crypto-currency, either as part of a transaction or for payment of fees is inherently higher risk as it has not passed through the banking system and is often untraceable. Money launderers incur a risk with each transaction, and so criminals may seek large or high value transactions to launder as much money as possible in one go. If there is no good explanation for an unusually large transaction, or a client is seeking to make a number of linked transactions this presents a higher risk. If a notary is approached and asked to facilitate a transaction which he or she would not normally provide, there may be reason for suspicion. The changing nature of money laundering means that criminals are always seeking new ways to launder funds as old ways become too risky and loopholes are closed. Moving into a new business area or providing a new delivery channel for services means that a notary may come across new or previously unidentified risks. In moving into a new area, a notary will not necessarily have a previous pattern of transactions with which to compare new behaviour that might be suspicious. Criminals might target firms moving into new areas, because of

the perception that AML policies and procedures are new and untested. Criminals might seek to target loopholes in new technology before they are identified and closed or hide a criminal funds in an over-complex transaction.

Money launders can seek to disguise the source of funds by having payments made by associates or third parties or have payments made to third parties. This is a way of disguising assets and therefore notaries must always identify the source of funds and source of wealth. A payment to or from a third party is particularly suspicious if it is unexpected, or claimed that it was made in error with a request for the money to be refunded.

- Method of delivery of services

The way in which services provided by notaries are delivered can increase or reduce risk. Transparency tends to reduce risk and complexity tends to increase it. Notarial work involves meeting clients in person and verifying identity. Not meeting a client increases the risk of identity fraud and may help facilitate anonymity. Although this is less likely to be an issue in pure notarial work, it is a risk in other work. Additionally, having a good understanding of the client may not fully help take away risk where there is a beneficial owner who was not been met and whose identity has not been established.

- Geographical factors

[Countries](#) which have not implemented the recommendations of the Financial Action Taskforce are considered high risk and a higher standard of due diligence is required. The [list](#) compiled by Transparency International of countries prone to corruption is also relevant as is the [list](#) compiled by the Office of Financial Sanctions of countries subject to financial sanctions. Notarial acts destined for or made in connection with countries with a low level of regulation in anti money laundering, anti bribery or which are subject to sanctions, or are prone to terrorism or corruption are likely to be higher risk.

- Risks exacerbated by Covid-19 pandemic

The Covid-19 pandemic may exacerbate the pre-existing risks by imposing limitations on face-to-face contact between notary and client and by criminals seeking to exploit changes to business practices such as increased working from home. Notaries may be encouraged to cut-corners due to the financial pressures and limitations on usual business practices. An [advisory note](#) has been published by the UK Legal Sector Affinity Group highlighting key AML risks and challenges for the legal profession associated with the Covid-19 crisis.

## Assurance

In addition to the generic forms of supervision and regulation set out in Part 1 the Faculty Office as the Professional Body Supervisor has established the following checks and activities:

- **Disclosure and Barring Checks**  
all notaries are required to produce a clean Basic Certificate from the Disclosure and Barring Service to demonstrate that they have a clean criminal record and must renew this at least every five years
- **Supervision of beneficial owners and managers**  
In accordance with Regulation 26 of The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, all Beneficial Owners, Officers or Managers of a notarial firm, or a sole practitioner notary, are required to be approved by the Faculty Office
- **Training**  
AML Risk assessment is part of the training provided on the vocational training required prior to being admitted as a notary at the course provided by University College London. It is both a discrete and a pervasive topic. It is also a component of mandatory continuing professional education.
- **Awareness**  
All notaries are required by our professional rules to have regard to the AML guidance in force, principally the HM Treasury approved legal sector side [Guidance](#) and to confirm their awareness of it. This is buttressed by the Code of Practice.
- **Information gathering**  
Notaries are now asked relevant questions about their AML practices in the annual practising certificate renewal form. In 2019 notaries were required to submit their practice risk assessments<sup>4</sup>. In 2020 notaries will be required to submit both their practice risk assessments and a copy of their policies, procedures and controls.
- **Inspection**  
Inspection of AML now forms a discrete part of the checklist that Inspectors use when carrying out inspections on notaries. In 2019 we aligned the inspectorial regime (for fully fledged notaries) with the post-supervision regime (which is for notaries who have just qualified).
- **Whistleblowing policy**  
This is in [place](#) and signposted on our website to encourage those not in management but aware of AML abuses to make a report.

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<sup>4</sup> A review of a sample of the risk assessments has been completed and [published](#).

The Faculty Office keeps under review the risks of money-laundering and terrorist financing within the notarial profession and will adjust its assurance policies accordingly.

Last updated: April 2020