

FACULTY OFFICE

WORKING PARTY OF ADVISORY AND QUALIFICATIONS BOARDS

REVIEW OF THE PROFESSIONAL QUALIFICATIONS AND TRAINING OF NOTARIES AND CONTINUING PROFESSIONAL EDUCATION

Recommendation & Discussion Paper

The working party¹ met on two occasions in late 2019 to consider the discussion paper (copy appended) concerning the review of the professional qualification and training of notaries and continuing professional education. The working party can now offer the Qualifications and Advisory Boards the following report which contain recommendations for consideration by the Boards.

1. Whether or not the profession should continue to be a graduate one – see Rule 3.3 of the 2017 Qualification Rules

It was noted that the requirement for a degree did not pertain if the applicant was a solicitor, barrister at law or a chartered legal executive.

On the continent of Europe in civil law jurisdictions, notaries are required to have degrees in law, often a masters degree. From an international perspective it is important not to diminish the standing of a notary of England & Wales by diminishing the academic requirements.

In former times, Scrivener Notaries did not need to be university educated but the courses they were required to do and the examination required, could be equated to a masters level requirement.

If the Faculty Office drop the entry-requirement for a degree, it may be necessary to increase the requirements for qualification elsewhere in the Qualification Rules, eg introduce a very difficult "super-exam" or augment the Notarial Practice Course to make it degree level.

The requirement for a degree serves three main possible purposes:

- (i) it provides "respectability", eg a graduate profession might be more highly respected by the client, by other professionals and internationally. However, degrees had to an extent been "devalued" due to the growth in the provision of Higher Education by a vast range of accredited providers.
- (ii) it equates to "knowledge", but it was recognised that this did not necessarily follow – the degree need not be in a legal subject at all

¹ The working party comprises Sophie Milburn (Senior Partner Saville Notaries LLP), Christopher Vaughan (Consultant and Notary Public, Scott Fowler), Elaine Standish (Elaine J Standish & Co Notary Public), Anna Ostrowska (Notary Public & Associate Solicitor Roger Green & Co), Scott Samuel (Notary Public & Solicitor) and Emily Boccock (Trainee Solicitor Lee Bolton Monier-Williams). Nicola Plant (Partner at Thomson Snell and Passmore LLP and Notary Public) was a member of the committee by correspondence. It was convened by Ian Blaney (Deputy Registrar, Faculty Office) and Neil Turpin (Chief Clerk, Faculty Office).

- (iii) it acts as a "filter" as a test of more than basic competence in reading, writing, analytical skills etc. CILEx courses are not sufficiently rigorous replacements for a university degree as one can be "spoon-fed" information with a view to getting through exams.

The downside however, is that university tuition has become more expensive. It is also not necessarily relevant to what notaries do. The requirement for a degree can discriminate against those from less socio-economically favoured groups.

The different approaches for dealing with any loss of the degree requirement the Committee discussed are:

- (a) develop the Notarial Practice Course into an LLB/LLM level course

Several members of the working party were intrigued with this as a possible way forward. However, the course would have to be expanded in duration and cost. It would probably impede access to the profession, not facilitate it

- (b) establish a "super exam" for would-be notaries which would apply a higher rigour than the Notarial Practice Course

It was thought that this would help maintain and improve standards and weed out the less academically competent applicants. But questions remain around how this might fit with the Notarial Practice Course, as any exam would call for tuition, and whether it would impede access to the profession, rather than facilitating it

- (c) adding other groups to those who are exempted from the requirement to have a degree

The only other group which was thought could be a candidate was that of the licensed conveyancers. However, research would have to be done to establish whether they were at an equivalent level to chartered legal executives.

- (d) allowing for a dispensation in the Qualification Rules on a case by case basis

This would leave the requirement for a degree as the "default" while allowing for the Qualifications Board or Master to exempt worthy candidates on a case by case basis. However, this raises the question of what might be a worthy case and how one could assess an applicant objectively. It is only likely to arise with older applicants who have never gone to university but nonetheless have a long experience of legal practice. An exemption already applied to solicitors.

- (e) requiring a lower level of qualification for those notaries who are not carrying out complex or high-value work

Without a return to the concept of the district-notary, it the working party do not consider it practicable to have different tiers of notary with corresponding educational requirements. Notaries are free to move and it might be overly complicated to restrict what certain notaries do.

Recommendations:

- Entry into the profession is not wholly restricted to graduates qualification as a solicitor, barrister at law or a chartered legal executive removes this requirement.
- It is recognised that the requirement for a degree is not wholly relevant but without revamping the Notarial Practice Course to a great extent (and thereby making it more expensive, lengthy and exclusive) it is difficult to justify dispensing with it. Such an augmentation of the Notarial Practice Course would likely defeat the object of removing disproportionate barriers to entry into the profession.
- The Qualifications Board should consider whether qualification into any other profession aside than those allowed, should also dispense the candidate from the requirement to hold a degree. This would depend on the experience, skills, literacy and intellect that practice in such a profession would indicate the candidate possessed. In particular, the Qualifications Board should consider whether licensed conveyancers should be added to the list.

2. The required syllabus and whether it is still appropriate (schedule 2 of the Rules), especially the "core" subjects.

The submission from Michael Orton Jones had challenged the requirement that all notaries satisfy the requirement of Rule 7 and Schedule 2, namely that they shall have undertaken and attained to a satisfactory standard in a course or courses of studies covering all the "core" law subjects, eg contract law, law of property, equity and the law of trusts. However, the working party was unanimous in dismissing this objection. It considers that all notaries needed to have at least a foundational understanding of the laws of England and Wales. There are two main reasons for this:

- (i) whether the notary was to practice in each and every one of them, a basic "background" knowledge was essential to practice effectively and without serious error
- (ii) although much of the work of a notary public of England and Wales is destined for an overseas jurisdiction, they are still a branch of the legal professions in England and Wales and could be expected to be knowledgeable in the local law. They could also be called upon by overseas persons to give opinions on the content of the local law.

The working party agreed with the submission of Iain Rogers that notaries cannot be appointed to serve one community and not the public at large.

While the law is always changing, the subjects in schedule 2 is still considered correct. E.U. law will remain important whether or not the UK departed from the European Union. Public and Constitutional law is useful background.

The working party does not wish to express an opinion on whether the new Solicitors Qualification Exam is a sufficient examination in the core subjects of schedule 2. The Qualifications Board as a whole ought to make this determination.

Recommendations:

- To retain the existing syllabus contained in schedule 2 of the Qualification Rules.
- That the Qualifications Board reviews the content and assessment of the new Solicitors Qualification Exam to ensure that it is a sufficient examination in the core subjects of schedule 2.

3. The content of the Notarial Practice Course (the "professional" subjects) and whether it continues to be appropriate.

While the working party did not have the evidence that individual student feedback would provide, it comments that:

- Different views exist about the relevance of Roman Law. It is taught as an introduction to civil-law systems rather than as pure Roman Law but nonetheless its relevance to day to day notarial practice is limited. In civil law jurisdictions, notaries are expected to study and be examined in pure Roman Law. It is not right that it should be abandoned from the domestic curriculum. However, the working party recommends that the balance on the course be adjusted with more content on modern civil law systems (eg France and Germany). This would mean less time for pure Roman Law.
- Although the working party has sympathy for those who have studied Roman Law and are asked to study it again as part of the course, the course is designed as a whole and the working party does not recommend to exempt students from any part of it.
- Private International Law is essential.
- Notarial practice is essential.
- The course is fit for purpose and is being taught and administered effectively and successfully. However, there are some concerns around students "graduating" with a bare pass (ie more than 50%). While this may be sufficient for University College London's academic controls it does mean that some candidates might be entering into the notarial profession with less than excellent credentials. It is recommended that the pass mark for Year II be increased as a student with a mark of 51% in notarial practice could be a liability. The working party recognises however that the University has its own requirements that could prove difficult to tamper with.
- One possibility is to replace a final exam in Year II with continuing assessment which would keep students more on their toes and make the most of the interim work and increase participation in group work.
- Year II is already full of content and it was not thought appropriate to add to it.
- There are no adverse comments or issues. Feedback could be given to the tutors. The working party were not aware of systematic feedback but this can be raised with the University.
- The expense of the course (£8,500 over two years) is considered reasonable. By comparison the legal practice course retails at about £15,000 for a year.

Recommendations:

- The content of the Notarial Practice Course is appropriate.

- The delivery of the Notarial Practice Course is fit for purpose.
- However, University College London should be asked to consider adjusting the balance or the Roman Law module so that there is more content on modern civil law systems (eg France and Germany).
- University College London be asked to consider the going over to more continuing assessment and to report to the Qualifications Board on the merits and demerits of this.
- University College London be asked to increase the pass mark for Year II from 51% unless it reports that it is prevented from doing so due to the University's own academic rules.

4. Whether the consent and delivery of the Office Practice Course is appropriate – see Schedule 5 of the 2017 Qualification Rules

By way of background a need was identified very early on in the Cambridge diploma days, for the training to include content over and above the academic topics taught as part of the postgraduate course, to include practical advice such as what equipment to buy, how to get insurance, and so on. There was also a very real concern particularly from the Notaries Society that a newly qualified notary could set up as a sole practitioner without ever having worked in a legal practice and with no experience of running an office or business. While a one-day Course cannot possibly teach business skills, nor can it ever be considered as a substitute for experience, it can serve to highlight the basic things a new notary has to consider when setting up his/her practice. It also became apparent early on that a large number of newly qualified notaries lacked confidence and the Office Practice Course is an opportunity to try and address this by doing some basic practical exercises.

Topics covered in the Course for office setup which is usually in the form of a 2-hour interactive talk:

1. NPR and Code of Practice
2. Banking
3. Stationery
4. Notarial Records – paper or electronic storage
5. Notarial Seals and Security of documents
6. Security of premises/personal security on home visits etc
7. Resources – reading lists, websites to bookmark etc
8. DX/Royal Mail Special Delivery/Courier account
9. Cost Structures
10. Staffing
11. Companies House

12. Terms of Business, complaints procedure and client care
13. The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, the Consumer Rights Act 2015
14. Third party intermediaries
15. Fees and Fee Sharing
16. Accounts, Taxes, Auditing
17. Advertising and Promotional Materials
18. Data Protection
19. Anti Money Laundering Regulations and Sanctions
20. Insurance – PI and fidelity
21. Practising within a firm -fees, DP etc
22. Legalisation – how to do it etc
23. Continuing Education requirements and compulsory courses
24. Conduct, discipline and complaints against you

The second part of the Course (another 2 hours or so) is based on some exercises which the notaries have done as homework – a group discussion on how to tackle the sample documents during which notaries practise binding, sewing and sealing documents. The Course is usually around 4-5.5 hours long (with a short break for lunch) depending on how many questions are asked.

Notaries must have completed the Office Practice Course before they are allowed to practice and although they are supervised for two years this is by no means the same level of supervision as a trainee solicitor would have. It is not possible within a day to do more than to point newly qualified notaries to what they need to be thinking about as they begin practicing. As well as raising awareness, the practical exercise in the second half of the Course, is intended to reassure notaries. The Course is followed with a meeting with the supervisor which should reinforce the lessons of the Course and the period of supervision commences. It is an interactive Course with many questions asked. It is considered useful and feedback is good.

The notary has to pay the costs of the Course which are about £150 and take time out of work for it. The Course is approved by the Master under the Qualifications Rules but at present provided by the Notaries Society.

Should the Course be mandatory for all notaries, including scrivener notaries who have been in apprenticeship for several years? The working party considers the Course to be worthwhile and it is helpful for the scriveners to be present and to benefit from their experience. All notaries can set up on their own and leave their established firm and so it is difficult to make one rule for some notaries and another for the rest.

The requirements on trainee solicitors to attend courses and take exams while trainees including courses on solicitors accounts and business. There are 3 compulsory elements and 4 electives. In comparison, the burden on newly qualified notaries is slight.

The requirement to take the Course is not onerous on scrivener notaries and while they were less likely to get a benefit, some would benefit.

There is also a social element to the Course.

The contents of the Course as set out above are more definitive than the list in Schedule 5 but it is helpful to keep Schedule 5 general as individual sub-categories would change from time to time.

There had been some consideration as to whether the Course could be delivered online but the Course teachers consider that the benefits of physical attendance outweigh the inconveniences.

One working party member would like to see more of the Course content backed into the Postgraduate Diploma and merged more, perhaps on a phased basis. Another said that it is difficult to introduce practical elements. During the Postgraduate course the students are less interested with those practical elements and are more concerned with passing the exam. The necessity of learning the practical craft arises upon qualification.

Recommendations:

- The Office Practice Course is fit for purpose both in content and delivery.
- University College London should be asked whether it can back into the Notarial Practice Course more elements which would later appear on the Office Practice Course and to report on the merits and demerits of this.

5. Whether the requirements as to Continuing Professional Education are right – see the Notaries (Continuing Professional Education) Regulations 2010

It is considered that the balance between accredited and non-accredited activities is correct and the number of points/hours required in each is also proportionate. To increase the commitment would be overly burdensome.

Accredited activities give insight into what the notary might do by way of follow up as non-accredited CPE. Some notaries get all their points from accredited courses.

The main providers of CPE in the area of Notarial Practice are at present Notary Training, the Notaries Society and Lisa Preuveneers.

There is no enthusiasm for ceasing to make CPE compulsory and a fear that it would drop off notaries' list of priorities should that happen.

Accredited courses, particularly the Notaries Society Annual Conference brings notaries together and facilitates notaries learning from each other. It builds up collegiality and prevents notaries from being isolated.

As to the "lacuna" that CPE has to be obtained in the immediately previous year, and so one might be able to skip the requirement if not having had a practicing certificate in that year, this is not a serious problem. It would adversely effect paternity rights to be too stringent.

However, the working party recommend that the Master be given a discretionary power to make provision for someone who had not held a practicing certificate for 2 until 5 years (at 5 years there is already a provision).

For probate and conveyancing CPE it is appropriate to retain the distinct requirement in these areas at the current level. There are many providers of CPE in this area which can be accredited by the Faculty Office. Both are areas of particular risk. Law also advances quickly and notaries need to remain up to date.

What if a notary is practicing in an area of law not falling within the main heads of reserved legal activity, notarial practice, conveyancing and probate, eg family law? Does CPE need to be calibrated so that the notary would be under a requirement to do courses in these other areas which would be relevant to their practice and their risk? Do we need to have an outcome focused CPE in the area of work of the notary? The Faculty Office had not received complaints about notaries carrying out outlying areas of legal work and it had not come through the disciplinary process.

It is difficult to legislate for this. Legal practice does not normally neatly come under any one heading and is subject to change. That is why the Legal Services Act captures particular legal actions, such as applying for grant of probate. It is better to rely upon the Rule 4 of the Practice Rules, the notary's general duty of care and skill and acting in the public interest, and rely upon notaries to select such CPE that they consider to be relevant to them within the main heads of notarial practice, conveyancing and probate. The Faculty Office ought to keep under review developing areas of practice if they did not fall within the CPE Regulations.

There was some discussion around the current importance of anti-money laundering and terrorist finance. Should it be mandated that notaries must do at least 1 CPE point in the year on AML? It is recommended that the Faculty Office consider whether it can require a point in AML once every three years as part of their three accredited notarial practice points. This is on top of the notary's pre-existing duty to be cognizant of the AML Regulations and to declare to the Faculty Office as such.

There was some discussion of the outcomes focused CPD that the Solicitors Regulation Authority has inaugurated. It is understood that in such a wide field of solicitors that solicitors would need to determine for themselves what their training needs are. But it is a much narrower field for notaries and less room for notaries to be taking irrelevant courses.

The Faculty Office requires course providers to provide details of their content and delivery prior to accreditation and sometimes takes expert advice on whether such a course is likely to be satisfactory.

Recommendations:

- Generally, it is considered that the CPE regime is working well.
- The Faculty Office should consider whether it can require a point in AML once every three years as part of their three accredited notarial practice points.
- The Faculty Office should keep under review developing areas of practice for notaries in case the system needs to adjust in the future to cater for such practice.
- The Master be given a discretionary power in the Notaries (Practicing Certificate) Rules to make provision for someone who had not held a practicing certificate for 2 until 5 years (at 5 years there is already a provision)

13th January 2020