

FACULTY OFFICE

LSB Diversity Progress Report for the LSB – June 2020

Characteristics of a well-performing regulator	Relevant activity	Learning
<ul style="list-style-type: none"> <li>An understanding of the composition of their regulated community</li> </ul>	<p>The introduction of NotaryPro in the Autumn of 2019, which is an online registration and practising certificate application portal, has enhanced our ability to gather and record data on the regulated community replacing an entirely paper-based renewal process which was both time consuming to administer and collate the data. NotaryPRO provides a facility to ask additional questions of the regulated community and gather additional data on the profession's composition.</p> <p>In the Autumn of 2020 we will be issuing our agreed triennial diversity questionnaire – work has begun to prepare the questionnaire to ensure that it captures the relevant diversity data including all the protected characteristics. This year we intend to issue the questionnaire through the NotaryPro portal to ensure that it captures a 100% return from all those seeking to renew their practising certificate, albeit with the option of 'Prefer not to say' for those who do not wish to disclose their data.</p>	<p>The full capability of the NotaryPro system and its use as a tool in understanding the composition of the regulated community still being explored. However, we already have a better understanding of the financial turnover of the profession as to which see further below. We are also able to monitor the supervision of newly admitted notaries (those in their first two years post-admission) through a requirement to upload an annual supervision report from their supervisor.</p> <p>Diversity questionnaire – when we first started collecting diversity data in 2011 we achieved a response rate of 49% increasing to 87% on the third collection round in 2017 by explaining to notaries why the data was important. An 87% response rate from a voluntary survey is considered exceptional. However, we are committed to increasing this and following the lead of other Regulators we intend to make completion of the questionnaire a requirement of the practising certificate renewal process, subject to the option to indicate a preference not to say against each question.</p>

<ul style="list-style-type: none"> <li>An understanding of the barriers to entry and progression within the regulated community and a programme of activity to mitigate those barriers with measures in place to evaluate their effectiveness</li> </ul>	<p>Both the Master's Advisory Board and the Qualifications Board have considered the barriers to entry to the profession. A joint working party from both Boards together with representatives of the Faculty Office met during 2019 and reported back to the relevant full Boards (see Annex 1) which culminated in a paper presented to the Master (see Annex 2).</p> <p>The Qualifications Working Party considered, <i>inter alia</i>, the value of the Notarial Practice course currently run by University College London as a non-diploma post-graduate level both as regard its cost- and educational-effectiveness. The Working Party also considered whether it was appropriate that the profession should remain a graduate entry requirement accepting that this is a potential socio-economic barrier to entry. Their report suggested considering other legal professions for exemptions to the degree requirement.</p> <p>So far as progression within the profession is concerned, the barriers are perhaps less pronounced than in some other professions given the fact that most notaries are sole practitioners and thus have a more flexible approach to their own working hours and practices without third-party (or employer) imposed expectations for promotion and progression.</p>	<p>It is accepted that the requirement for a degree level education and/or membership of another relevant legal profession represents a barrier to entry into the profession, particularly a socio-economic barrier which must be weighed against the requirement for a rigorous academic qualification to ensure the highest possible standards are maintained. Any diminution of standards would have an adverse affect on the standing of the profession amongst its international equivalents particularly in the civil law jurisdictions of major trading partners within the EEA. The barriers include the cost and completion of academic requirements within 5 years.</p> <p>The Master's Qualifications Board uses a holistic approach with solicitors in general practice in assessing their qualifications and requirements for entry onto the Notarial Practice Course. The Faculty Office, in conjunction with the Boards, is actively considering widening the qualifications route by considering whether other regulated professionals could be made exempt from the requirement for a degree, to potentially improve access to the profession. One avenue being explored is opening up access to the course to appropriately qualified Licensed Conveyancers and we intend to follow this up with the CLC. There has been some evidence of this working following the change in the Qualifications Rules to allow appropriately</p>
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		<p>qualified Chartered Legal Executives with a number of applications received in 2020.</p> <p>The Qualifications Working Group considered that the UCL course was value for money in the context of legal qualifications legal sector context. Given the size of the profession and the numbers of applicants to join the profession, it is not considered to be cost effective to run a second course through another provider. The UCL course, whilst based in London, provides the majority of its teaching through online distance-learning modules which means it is as available to those not based within ready reach of London.</p> <p>The Master's Advisory Board has received encouraging reports from the professional bodies of a growing interest in the profession from younger people and an increase in enrolment on the UCL course of younger people. We are working on a data concordat with UCL which it is hoped will enable them to release formal data on the student body on the course which they run.</p>
<ul style="list-style-type: none"> <li>Measures in place to understand any differential impact on protected characteristics within their disciplinary/enforcement procedures.</li> </ul>	<p>The Faculty Office has very few disciplinary cases annually. It would therefore become clear very quickly if there were a disproportionate impact on notaries within specific protected characteristic groups, particularly around gender, ethnicity and/or age both as regard the regulated population and complainants.</p>	<p>The Notaries (Conduct &amp; Discipline) Rules were amended in 2019; a review of the Rules confirmed to the Faculty Office that the Commissary has sufficient flexibility both in terms of venue &amp; procedure to accommodate any differential impact on protected characteristics during Court of Faculties disciplinary hearing.</p>

## Master of Faculties Outcomes:

Outcome from January 2019 assessment	Progress made
<p><b>Outcome 1:</b> The regulator continues to build a clear and thorough understanding of the diversity profile of its regulated community (beginning at entry), how this changes over time and where greater diversity in the workforce needs to be encouraged.</p> <p><b>LSB expectations for 2019:</b></p> <ul style="list-style-type: none"> <li>• MOF to demonstrate the steps taken to being proactive in considering ways to make progress against all the outcomes including engaging with other regulators.</li> </ul>	<p>The MoF collects diversity data on a triennial basis due to the relatively small size of the profession and the limited numbers joining and leaving the profession annually (an average of around 30 at either end). Since the first data collection in 2011, which achieved a 48.3% return, we have achieved a progressive increase in response rates (68.7% in 2014 and 87.7% in 2017). However, taking a lead from other regulators in the sector, we are intending to require completion of the diversity questionnaire by every member of the profession applying for a practising certificate when the survey is repeated this Autumn.</p> <p>The data will be collected in electronic format which will assist in the manipulation and analysis of the data to provide us with an even clearer picture of the trends over the last nine years and to identify other areas where progress may need to be made.</p>
<p><b>Outcome 2:</b> The regulator uses data, evidence and intelligence about the diversity of the workforce to inform development of, and evaluate the effectiveness of, its regulatory arrangements, operational processes and other activities.</p> <p><b>LSB expectations for 2019:</b></p> <ul style="list-style-type: none"> <li>• MOF to have further developed policy and/or regulatory arrangements to show progress against this outcome in particular how it intends to attract new and younger entrants to the profession</li> </ul>	<p>The joint Qualifications Working Party to which reference has already been made had, as part of its remit, to identify barriers to entry. A second committee, chaired by the Registrar, has considered ways of increasing the size of the profession and a confidential paper has been discussed by the Master's Advisory Board. It was brought back to the Advisory Board at its recent meeting for advice as to whether the proposal remained suitable particularly in light of Covid-19 and the impact anticipated on the income to the Professional Bodies, the Faculty Office and the profession. The Advisory Board engaged in a detailed discussion of the proposal but no formal view was reached and the matter will be considered further once the impact of Covid-19 becomes clearer.</p> <p>It was noted, however, that a good number of enquiries and applications for Certificates of Exemption to permit enrolment on the UCL Course had</p>

been received in recent months and UCL had at least 40 students signed up for the course commencing in September 2020, which is approaching its current capacity. No demographic/diversity data is collected as part of the application process but the impression from members of the Qualifications Board was of greater numbers of younger applicants and those from more diverse cultural backgrounds. The UCL open day in 2019 also saw a younger demographic attending than in previous years.

<https://www.ucl.ac.uk/laws/study/continuing-professional-development/notarial-practice-course>

These are considered these to be encouraging indicators of a growing and younger profession. The professional bodies are also keen to ensure a continuing influx of new admissions and the current steps to encourage more to join the profession included visiting University Law Faculty career days (currently on hold due to the pandemic) and encouraging practising notaries to encourage others at CPE training courses. We are also considering preparing a video promoting the profession to be published on our website and those of the professional bodies as a way of compensating for the lack of physical promotion able to take place because of the Covid-19 pandemic restrictions.

In terms of policy decisions made to take into account diversity of the workforce and by way of example, in considering the amendments to the Notaries Post-Admission Supervision and Training Rules 2019, and particularly the new Rule 11, we took a policy decision to set the requirement for additional supervision for those returning to the profession after a career break at 5 years so as not to disproportionately affect those taking parental leave whilst balancing the requirement to ensure that notaries returning to work continue to be competent to practice for the better protection of the consumer.

<p><b>Outcome 3:</b> The regulator collaborates with others to encourage a diverse workforce, including sharing good practice, data collection and other relevant activities.</p> <p><b>LSB expectations for 2019:</b></p> <ul style="list-style-type: none"> <li>• MOF to show collaboration with other regulators will provide an opportunity for it to learn how it can encourage a diverse workforce by improving its ability to collect data on its regulated community, and ensure this is used to inform policy development.</li> <li>• MOF to inform LSB of outcome of engagement with the Notaries' Qualifications Board to promote and encourage diversity in recruitment</li> </ul>	<p>The Faculty Office is an active participant in the Regulators Forum which has considered diversity issues at a number of its meetings. As a result of discussions at these meetings we have made the decision to make the collection of the EDI data compulsory to establish whether this will provide a fuller picture of the diversity of the profession. The use of NotaryPro has increased the capability of the Faculty Office to gather information on the regulated community. The Faculty Office is also a participant in the Legal Choices website which has published a number of articles with a diversity focus.</p> <p>The note prepared for the Master on the outcome of its working party on qualifications is annexed. See also the information provided at Outcome 2 above.</p>
<p><b>Outcome 4:</b> The regulator accounts to its stakeholders for its understanding, its achievements and plans to encourage a diverse workforce:</p> <p><b>LSB expectations for 2019:</b></p> <ul style="list-style-type: none"> <li>• MOF to account to stakeholders for its achievements and plans for any policy work with a diversity focus or any work that has been informed by the diversity data collected.</li> </ul>	<p>The Faculty Office has taken significant steps to increase the level of information which it provides to its stakeholders by publishing the agendas, supporting papers and minutes of the Advisory Board and the Master's Meeting with the Senior Officers in addition to other information including the text of the Master's Annual Address to the Notaries Society Conference, the Registrar's Annual Report.</p> <p>A new website to be launched on 3 July will make this information much more accessible.</p>

Faculty Office

1 July 2020

## ANNEX 1

### 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 party<sup>1</sup> 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:

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<sup>1</sup> 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 Bocock (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).

- (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
- (iii) it acts as a "filter" as a test of more than basic competence in reading, writing, analytical skills etc.

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 recommended 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 of 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) 2015

Regulations 2013, the Consumer Rights Act

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)

13<sup>th</sup> January 2020



## ANNEX 2

### FACULTY OFFICE

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

##### Briefing paper for the Master of the Faculties

One of your priorities for 2019 was a review of the professional qualifications required by you and your Qualifications Board to become a notary in England and Wales and the regime of continuing professional education.

This priority was then formulated around the following questions:

1. Whether or not the profession should continue to be a graduate one – see Rule 3.3 of the 2017 Qualification Rules
2. The required syllabus and whether it is still appropriate (schedule 2 of the Rules), especially the "core" subjects.
3. The content of the Notarial Practice Course (the "professional" subjects) and whether it continues to be appropriate.
4. Whether the consent and delivery of the Office Practice Course is appropriate – see Schedule 5 of the 2017 Qualification Rules
5. Whether the requirements as to Continuing Professional Education are right – see the Notaries (Continuing Professional Education) Regulations 2010

A working party comprised of members of both the Advisory and Qualifications Board<sup>2</sup> met on two occasions in late 2019 to consider a Faculty Office discussion paper. A recommendation paper of the working party dated 13th January 2020 was tabled at the Advisory and Qualifications Boards on 22nd January 2020.

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<sup>2</sup> The working party comprised 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 Bocock (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).

The Advisory Board were pleased to endorse the recommendations of the paper. The Qualifications Board were generally pleased to endorse the recommendations of the paper but having been provided with an oral account by Dr Ugljesca Grusic, Course Director of the Notarial Practice Course at University College London, and from Mr Iain Rogers, Convener of Notarial Practice Course Year II, wished to hold back on some of the suggestions that had been made in connection with the Notarial Practice Course. Generally, in relation to those suggestions, the Board considered that UCL ought to be formally appraised in writing of the suggestions and that they formally respond. It was anticipated that many of the suggestions would be found to be unworkable or expensive or difficult to implement. The Faculty Office wrote formally to the Course Director on 20th February 2020. Due to the demands of coping with Covid-19's effect on teaching at UCL, the Faculty Office has been told that they will be unable to respond until the situations caused by Covid-19 are more settled.

You have seen the recommendation paper of the working party and the purpose of this briefing is to consolidate the views expressed into policy recommendations of the officers of the Faculty Office to you with a view to making certain decisions at the Senior Officer's Meeting on 25th March 2020. The purpose of this paper is not to set out in length the content of the thinking at the working party, for which see the separate recommendations paper.

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

This gave rise to the most lengthy discussion at both the working party and the Qualifications Board. It was recognized that a degree from an undistinguished higher education institution in a non-law subject, would not necessarily be a relevant differentiator, although most applicants do have good degrees in law. The requirement for a degree could lead to disadvantage those from particular socio-economic groups. Nonetheless the working party and the Qualifications Board agreed (with some partially dissenting voices) that to abolish the requirement would require putting something else in its place (eg a "super exam" or augment the Notarial Practice Course) as not to do so could diminish the standing and quality of the notarial profession. These steps would put the cost of qualifying up, not down, and would be difficult to set up for a profession with about only 30 applicants a year. There were some advantages of requiring a degree (see the recommendations paper) and this was not a requirement for those who are qualified as solicitors, barristers or a chartered legal executive. A non-degree holder could qualify by taking the CILEX modules and becoming chartered.

The recommendation of the Boards and your Faculty Office is to retain the existing requirement, but 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. *May we suggest that this be a matter for the Qualifications Board to consider further?*

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

The working party and Boards agreed that the syllabus remains appropriate. They did not want to create different syllabi for different kinds of notary (eg a notary only doing a particular kind of work) as this was considered impractical to divide the profession into differently qualified types of notary.

It was raised by Michael Lightowler of the Qualifications Board and he has since written, proposing that notarial candidates not be required to complete modules in conveyancing and wills, probate and the administration of estates before going on the Notarial Practice Course. He points out that this is an obstacle for many candidates who do not practice in these areas and who took their qualifications more than 5 years ago, and could discourage applications if they know that they have to do Cilex Level 6 in those modules or equivalent before enrolling at UCL. His proposal is that if notaries want to do conveyancing or probate, they should do those activities but regulated by another regulator and to satisfy that regulator of sufficiency in probate and conveyancing. It would also reduce the risk profile for the Faculty Office as these are higher-risk areas of work. The view of the Faculty Office is that we consulted widely on ceasing to regulate probate and conveyancing work approximately 2 years ago. The context of that was looking at regulatory risk and cost. After that consultation you made a decision not to withdraw from regulation of probate and conveyancing but to introduce new requirements to improve regulation of those areas and to manage the risk. The Faculty Office consider that it is too early to reconsider the matter substantively. The Faculty Office recognizes that many difficult applications before the Qualifications Board tend to be from applicants who can more easily satisfy the Board of their qualifications or experience in the other topics but fall down on probate and conveyancing (company law can also be problematic) but the Faculty Office does not recommend to you that these difficult decisions are made easier by you only regulating notarial practice and withdrawing from probate and conveyancing. The issue and related issues concerning probate and conveyancing are likely to recur, but we advise that this is not the juncture to re-open an issue that was only recently considered, albeit for other reasons.

The recommendation of the Boards is to retain the existing syllabus contained in schedule 2 of the Qualification Rules.

It is also recommended 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 recommended 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 had 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, one or two on the working party had 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 was queried whether this might 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 recognised 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) was considered reasonable. By comparison the legal practice course retails at about £15,000 for a year.

It was the view of the working party and accepted by the Boards that the

- The content of the Notarial Practice Course is appropriate.
- The delivery of the Notarial Practice Course is fit for purpose.

The working party made several recommendations:

- University College London should be asked to consider adjusting the balance of 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.

When this was discussed at the Qualifications Board, Dr Grusic pointed out some significant practical problems with adjusting the balance of the course although UCL remained open to going over to more continuing assessment (but that would require investment and considerable thought). Iain Rogers assured the Board that marking was conducted on a "driving test" model where a 51% mark (many students get much higher marks) was safe to practice and below that unsafe.

The Faculty Office has formally written to Dr Grusic and we await his reply to the points raised by the working party and we therefore recommend at this time that you await that letter.

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

The working party advised, and their views were accepted by the Boards, that the Office Practice Course is fit for purpose both in content and delivery.

The working party recommended that 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. At the Qualifications Board Iain Rogers made the case that some elements of the Office Practice Course were covered on the Notarial Practice Course but not examined. He explained that resources and time to examine these matters on the NPC was not available. The Board accepted Iain Rogers' comments and the matter was again put to Dr Grusic in the Faculty Office's letter of 20th February 2020 for formal response.

The Faculty Office recommend that there are no changes made by the Master at this time but will await the formal response of Dr Grusic.

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

The working party considered that the balance between accredited and non-accredited activities is correct and the number of points/hours required in each is also proportionate. Generally, it is considered that the CPE regime is working well.

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.

The working party supported by the Boards recommend that the Master be given a discretionary power to make provision for extra training for someone who had not held a practicing certificate for 2 until 5 years (at 5 years there is already a provision). *This is will require an amendment to the Notaries (Practicing Certificate) Rules.*

For probate and conveyancing CPE it is appropriate to retain the distinct requirement in these areas at the current level. It was not thought appropriate to create a distinct requirement in any other area of the law although it was recommended that the Faculty Office 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. The working party recommended that you 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. The Qualifications Board went one stage further and recommended that the you require a point in AML annually until further notice. It was considered important enough and that there was sufficient new material that notaries would need to get on top of year on year. There was some difference of opinion about whether this should be part of the existing points required to be obtained or additional to them and this is for discussion with you. The Faculty Office support the recommendation that the AML point be required annually until further notice. *This will require an amendment to the CPE Regulations 2010. It would be a regulation that the Master may from time to time direct that the notaries must obtain a credit point or points on a particular area of legal knowledge or practice.*

20th March 2020