



## FACULTY OFFICE

### ANNUAL REGULATORY PERFORMANCE ASSESSEMENT UPDATE

NOVEMBER 2020

Dear Chris

Further to your Information Request dated 8 October, I set out below the steps we have taken to meet the actions set out in your November 2019 assessment, together with responses to the specific questions set out in your Request. I have not included any update on the areas covered by the ongoing Well-led review.

**RA2: So they are effective and operate as intended, regulatory arrangements and supporting guidance documentation are regularly reviewed and, where necessary, updated based on a robust evidence-base.**

**LSB Assessment:** A key component for meeting this outcome is effective engagement with the LSB's rule approval process. The quality of the Faculty Office's rule change applications in 2019, means that we cannot consider this outcome is met. In respect of the rule change applications, some of which have proposed to implement significant policy changes, there have been a number of issues which have had an impact on the LSB's ability to assess these applications. These issues range from:

- the LSB's Rules and Guidance for rule change applications not being adhered to,
- the applications lacking significant information
- significant delays in responding to LSB enquiries once an application has been submitted.

**Action needed:** The Faculty Office to review its current procedures and take the necessary steps to ensure that future rule change applications are complete and that all quality issues have been addressed before applications are submitted for approval.

**Action taken:** We have not submitted any application for rule changes since the LSB's last review on which any further assessment can be based. However, we have taken account of the comments set out in the review and in the approval letter in relation to the amendments to the Notaries Practice Rules and we are confident that these will be addressed in forthcoming applications. We accept that this may mean that this Outcome will have to remain as Not met: action being taken.

**RA5: The regulator understands the impact of its regulatory arrangements and guidance on consumers, the regulated community, the market and the regulatory objectives**

**Question:** We have had previous discussions with you about how you assess the impact of the Faculty Office's work on consumers, the regulated community, the market and the regulatory objectives. For example, the Faculty Office has said previously that it would consider appointing a consumer champion to its Advisory Board or working with other regulators to understand regulatory impacts on consumers.

a) What progress have you made with understanding the impact of your regulatory work on consumers?

b) In what other ways do you assess the impact of your regulatory approach and who and what do you consider when doing so?

**Response:**

a) Consumers of notarial services remain difficult to access. However, we did ask the LSCP to include specific reference to Notaries/Notarial Services in the 2020 Tracker Survey and we are grateful to the Panel for arranging thus. Although only 1% of respondents indicated they had used the services of a Notary in the relevant period it was encouraging to note that those consumers scored consistently between 70% & 80% very/quite easy to obtain information against the transparency measures introduced by the Notaries Practice Rules 2019. Although we cannot compare this against previous data as notaries were not previously included as a separate category, it will be interesting to see the results from the next Tracker Survey.

We are still seeking to appoint additional lay members to the Master's Advisory Board with a consumer background/focus and although, to be conversant with notarial work, this is likely to need to be a 'professional' consumer of notarial services rather than an individual/SME consumer this will nevertheless strengthen consumer engagement. We have prepared a draft advert for members and intend to advertise for independent members. We will be liaising with the LSCP for guidance as to where an advert might best be placed.

b) We have expanded the reach of our consultations on rule changes and PCF levels beyond the Councils of the representative bodies. All consultations are now published on our website and information is provided by email alerts to the entirety of the profession. Although engagement with Consultations continues to be difficult to secure, the recent PCF consultation elicited responses from 9% of the profession which although still disappointingly low, in percentage terms, is greater than many other Approved Regulators achieve from their published data.

We undertook a desktop review of websites to review compliance with the transparency rules and, although there is still work to do (and further/ongoing reviews are planned) there were high levels of compliance. Where issues were identified and notified, most were remedied in short-order. In assessing the information provided we also consider the way in which the information is presented to ensure, so far as possible, that it is accessible to consumers.

**E3: The enforcement process and any associated appeals process is: consistent; independent; risk-based; evidence-based; documented; transparent; proportionate; focused on consumer protection, maintaining professional principles and protecting the public interest.**

**Question:** On your new website, information about the handling of conduct complaints and the Faculty Office's disciplinary processes is provided. Can you please provide some clarity on the following points:

- a) How does the Faculty Office communicate with complainants and notaries during disciplinary processes?
- b) Who can be appointed as a lay person to the Court of Faculties?
- c) How will the Faculty Office's key performance indicators be used to inform arrangements for enforcement?

**Response:**

a) Communication with complainants and notaries during a disciplinary process is by way of official communications from the Court of Faculties which are by letter or email. The formal Complainant under the disciplinary process is the Nominated Notary and it is part of their role to keep the original client of the Notary against whom the complaint is made informed of progress. The staff of the Faculty Office are the Officers of the Court of Faculties, sitting as a disciplinary tribunal, and we are not therefore in a position to advise or directly assist either of the parties other than in terms of explaining and facilitating process.

b) A lay assessor in the Court of Faculties is defined in the Notaries (Conduct & Discipline) Rules 2015 (as amended) as a non-Notary and that is the principal pre-requisite. In practice, lay assessors have tended to be recently retired professional people who would also be lay according to the definition in the Legal Services Act 2007 but, in an appropriate case, it may be that a person with a legal background or training might be appointed.

c) Our current Key Performance Indicators are intended to provide data on, principally, the timeliness of the conduct of disciplinary matters. Clearly, there can be a wide divergence in the nature, seriousness and complexity of disciplinary complaints all of which will affect the timescales within the process but timeliness remains a fundamental pillar of a fair and just outcome for both the complainant and the Notary. However, we are also conscious that timeliness is not the only measure of good performance and further work is planned, particularly around the diversity agenda to ensure that the disciplinary process and wider enforcement regime do not adversely impact on any particular groups.

**Outcome WL7: The Approved Regulator/Regulatory Body meets the outcome to ensure regulatory independence:**

- The Approved Regulator has the necessary delegation arrangements in place and gains assurance that its regulatory functions are effectively carried out in line with the IGR.
- The Regulatory Body carries out its regulatory functions in line with the IGR and provides assurance to its Approved Regulator as required by Section 28 of the Legal Services Act 2007

**Question:** Please provide an update on any relevant actions or developments which have taken place since the submission of your certificate of compliance and the end of the transition period on 23 July 2020.

**Response:**

The principal action required in relation to IGR Compliance was to ensure that the Master's Qualifications Board had a majority lay membership without losing the required experience

in legal education and qualifications essential to assessing a candidate's academic qualifications and professional experience. We confirm that the voting membership of the Board does now have a lay majority under its existing lay chair. Input and guidance to the Board remains available from non-voting member attendees but all decisions are made by the voting members of the Board.

In addition, as indicated above, we are proposing to expand the membership of the Master's Advisory Board which, whilst not having any formal regulatory decision making powers, will result in a majority lay membership with a lay chair.

If I can clarify anything set out above, or if further information is required, please do not hesitate to contact Neil Turpin or I.

With kind regards

Howard Dellar

**Registrar**

**The Faculty Office – 5<sup>th</sup> November 2020**