



THE FACULTY OFFICE OF THE ARCHBISHOP OF CANTERBURY

NOTARIES (PRACTISING CERTIFICATE) RULES 2012

Consultation Practice Fees 2022/22– July 2021

The Faculty Office is consulting on its intention to maintain the current practising certificate fees and bands for the practising certificate year 2021/22 and to charge an additional levy to recover the deficit and build a reserve.

The consultation will close on 13 August 2021.

Introduction and background

The past year has been interesting, challenging, educational, exhausting and any number of other things. We have all had to learn new ways of working, meeting and interacting with people some of which will be retained and others will fall away as the country begins to get back to whatever a post-pandemic 'normal' will look like. But, for the most part, the work of providing legal services to consumers of notarial activities and the regulation of those activities has continued.

Notaries will know that one of the priorities which the previous Master, Charles George QC, set for the FO in his last six months in office was a reduction in the historic 'notarial deficit' in the FO accounts. The FO budgeted for a surplus of £36,645 in the financial year ending on 31 March 2021. As will be seen from the accounts in the annex to this Consultation, due to a number of pandemic-related factors (notably a reduction in direct expenses and a marked increase in the time spent on the ecclesiastical work of the FO – largely additional time rather than a reduction in staff time spent on our regulatory work), the end of year surplus was £125,790, effectively halving the accrued notarial deficit which now stands at £117,000.

However, there is still some way to go to clear the deficit and build up an appropriate level of reserve to ensure the financial 'independence' and resilience of the regulatory arm of the FO and this continues to be one of the priorities of the current Master, Morag Ellis QC.

One of the previous Master's priorities, the incorporation of the Faculty Office, was achieved (registered at Companies House under company no. 12221896) during the financial year 2020/21.

Other ongoing priorities for the FO include:

- continued work on our Anti-Money Laundering supervisory role in line with the action plan agreed with OPBAS¹;

¹ Office for Professional Body Anti-Money Laundering Supervision

- further work on the Regulatory Standards action plan agreed with the LSB including on Equality, Diversity and Inclusion, further consumer engagement work including a revised consumer survey and work streams stemming from the LSB's 'Well-led Review' of the FO.
- Engagement with LSB work streams on Ongoing Competence and Quality Indicators.

The principal source of income to fund the regulatory work of the FO is, of course, the annual practising certificate fee (PCF) – amounting to some 90% of our income. PCF income may only be spent on one or more of the permitted purposes² which are:

- the regulation, accreditation, education and training of relevant authorised persons and those wishing to become such persons, including—
 - the maintaining and raising of their professional standards, and
 - the giving of practical support, and advice about practice management, in relation to practices carried on by such persons;
- the payment of a levy imposed on the approved regulator under section 173;
- the participation by the approved regulator in law reform and the legislative process;
- the provision by relevant authorised persons, and those wishing to become relevant authorised persons, of reserved legal services, immigration advice or immigration services to the public free of charge;
- the promotion of the protection by law of human rights and fundamental freedoms;
- the promotion of relations between the approved regulator and relevant national or international bodies, governments or the legal professions of other jurisdictions.

The majority (in excess of 90%) of the PCF income is spent on (a); the levy paid to the LSB and OLC account for a further 4.5% with the remainder split between (c) and (f).

Current position

The introduction of five turnover-based fee bands for the practising certificate year 2019/2020 (following two consultations) has been broadly welcomed recognising, as it does, the very wide divergence in turnover across the profession. The bands were based on turnover in the notary's accounting year immediately preceding practice renewal. The vast majority of notaries (81%) were in the two lowest bands.

The fees for 2020/21 were:

Table 1

Turnover	Practising Certificate Fee	Contingency Fund contribution	Total
Up to £15,000	£470	£0	£470
Up to £50,000	£580	£0	£580
Up to £150,000	£820	£0	£820
Up to £300,000	£1,020	£0	£1,020
Over £300,000	£2,270	£0	£2,270

² See S.51(4) Legal Services Act 2007

This generated an income of £470,777 (up from £434,687 the previous year).

In the practising certificate year 2020/21 the Faculty Office lowered the contribution to the Contingency Fund for all notaries from £20 to £0. This was possible due to the recovery of costs in disciplinary cases ordered to be repaid to the Contingency Fund resulting in the fund maintaining a healthy balance as at 31 March 2020 of £154,414.

Proposals for practising certificate year 2021/22

Contingency Fee

The Faculty Office Contingency Fund balance at 31 March 2021 stands at £166,146. Although there are a small number of disciplinary cases and investigations pending, the Master does not consider it necessary to add to the Contingency Fund balance in this practising certificate year and intends to maintain the Contingency Fund contribution at £0 across all bands.

Practising Certificate Fee (PCF)

Notaries will recall that, in 2016, the Faculty Office changed its accounting policy from a cash basis to an accruals basis and the year end was changed to 31st March. Prior to the change income was recognised in the accounts when it was received with the result that practically the entire income arising from the practising certificate fees was included in the year in which the income was received when in fact only 2 months (Nov & Dec) related to that accounting year and 10 months to the following year. The Faculty Office considered that to be an inaccurate reflection of the income generated from the practising certificate fees and so the decision to change to an accruals basis was made. The Legal Services Board have also stipulated that, unless good reason can be shown, Approved Regulators ought to be accounting on an accruals basis. As a result of the change, a prior year adjustment was made to years 2014 and 2015 which resulted in a deficit of £268,549 in 2014 and which, at 31st March 2020, stood at £242,996. Last year, the Faculty Office provided budgets in which it proposed to reduce this deficit to £68,620 in three years.

In its approval of the Faculty Office's PCF application the LSB expressed concerns that the aim of repaying the deficit and achieving a target reserve was "not achievable in a reasonable timeframe"³ and that "A reserves target ought to be achievable within a strategic cycle not exceeding five years. To achieve the required contingency by 2025 would require additional average PCF contributions in excess of £100 per practice (sic). This means that the proposed PCF levels are insufficient to achieve this."⁴

The principle is that the cost of regulation should be met by the profession we regulate and not be subsidised by the Faculty Office's ecclesiastical work. Historically, this has not been the case and this has resulted in the longstanding 'notarial deficit'. This has added impetus for the Faculty Office as the Law Commission are currently engaged in a review of marriage law in England & Wales and, in its recent consultation, appear to be edging toward a recommendation that all marriages in England & Wales ought to be preceded by civil marriage preliminaries (as is the case in Scotland and

³ Para 28 – Approval of 2020 Practising Certificate Fee (PCF) Application dated 18 September 2020

⁴ Para 26 - *ibid*

Northern Ireland). If that recommendation forms part of its final report to the Government due in the Autumn and the Government act upon it, the Faculty Office's ecclesiastical work, and the income derived from it, will all but disappear.

Draft budgets for 2021/22, 2022/23 and 2023/24 are annexed. These have been prepared by our accountant on the basis of no change to the PCF or the banding structure and make a number of other reasonable assumptions (based on her many years of experience). They show surpluses of £74,700, £64,500 and £75,500 for each respective year. This would clear the current notarial deficit of £117,000 and build a reserve of £97,500 by 31 March 2024.

However, it is the view of the Master and the FO (supported by the LSB) that a reserve equal to 6 months expenditure ought to be the aim and this is to be reflected in the FO Reserve Policy. In order to achieve this within the strategic cycle suggested by the LSB, it will be necessary either to revisit the bands and fees or to impose a one-off charge equivalent to £200 per notary which would raise a further £145,000 (based on 725 notaries) resulting in a reserve of just over £240,000 by 31 March 2024.

There are a number of ways this could be achieved. The 'bluntest instrument' would be to impose a one-off levy of £200 on each notary in the next practising certificate year. A second option would be to spread this over the next two years so that the levy is collected at £100 per year.

However, given that we have, in the last two PCF years, moved away from a flat fee payable by all notaries to a turnover based banding system our suggested option is to spread the levy across the bands and over two years. The Master is therefore proposing the following fees for 2021/22 and 2022/23:

Table 2:

Turnover	Practising Certificate Fee	Deficit/Reserve Levy contribution (for 2 years)	Contingency Fund contribution	Total
Up to £15,000	£470	£75	£0	£545
Up to £50,000	£580	£85	£0	£665
Up to £150,000	£820	£135	£0	£955
Up to £300,000	£1,020	£250	£0	£1,270
Over £300,000	£2,270	£300	£0	£2,570

We are keen to hear from notaries as to whether the suggested PCF fee and levy, in order to clear the deficit and achieve an appropriate level of reserves is appropriate, or whether an alternative option should be adopted.

Working with the Faculty Office

The Faculty Office will welcome enquiries from individual notaries how they are to calculate their annual turnover.

Sole practitioners practising though a company (or other corporate structure) will be treated as having generated the declared turnover personally.

The Faculty Office is confident that notaries will act with integrity when assessing the own turnover and agreeing the amount with those notaries with whom they are in partnership. But we are seeking your views.

Covid-19

Once again, the Faculty Office is aware that the ongoing Covid-19 pandemic is likely to have had an adverse impact on some (although by no means all) notarial practices resulting in a downturn in turnover. In order to properly assess this impact we are keen to understand the profession's best estimate of the likely impact the pandemic has had or will have on individual turnover.

We are therefore also requesting your best estimate of any likely change in turnover, caused by Covid-19 in your financial year.

HOW TO RESPOND

Please respond in writing by 5pm on 13 August 2021 to The Faculty Office:

By email to:

consultations@1thesanctuary.com

Please put "PRACTICE FEES CONSULTATION RESPONSE" in the subject line of your email

By post to:

The Faculty Office, 1 The Sanctuary, Westminster, SW1P 3JT

Questions about the proposed practising certificate fee and levy

1.	Do you agree with the proposal set out in Table 2?
2.	If the answer to 1 is 'no', which of the following alternatives would you prefer: A. A one-off levy of £200 collected from every notary in 2021/22; B. As A but collected over two years (ie £100 in each of 2021/22 and 2022/23); C. A turnover based banded levy as proposed but collected in the year 2021/22 at double the figures set out;
3.	Do you agree the continued nil rate contingency fund fee?
4.	What is your estimated percentage change in turnover (+/-) caused by the Covid-19 pandemic?
5.	Do you consider that the proposed PCF/levy structure will have an adverse effect on equality, diversity or inclusion within the notarial profession. If 'yes' what do you consider the impact will be?

Annex I – Faculty Office breakdown of the notarial deficit

BREAKDOWN OF NOTARIAL ACCUMULATED DEFICIT @ 31/3/2020 & PROJECTED SURPLUSES FOR YEARS 2020/21; 2021/22; 2022/23

		£
Retained surplus @		
31/12/2006		6,033.00
Y/e 31/12/2007	Shortfall	-15,764.00
Y/e 31/12/2008	Shortfall	-26,090.00
Y/e 31/12/2009	Surplus	15,767.00
Y/e 31/12/2010	Surplus	2,412.00
Y/e 31/12/2011	Surplus	28,260.00
Y/e 31/12/2012	Shortfall	-3,534.00
Y/e 31/12/2013	Surplus	20,119.00
Y/e 31/12/2014	Adjusted Shortfall following change to accruals based accounting	-268,549.00
Y/e 31/12/2015	Surplus	6,220.00
15 months ended 31/03/2017	Surplus	26,383.00
Y/e 31/03/2018	Surplus	9,886.00
Y/e 31/03/2019	Shortfall	-10,945.00
Y/e 31/03/2020	Shortfall	-33,194.00
Y/e 31/03/2021	Surplus	125,790.00
Accumulated deficit @ 31/3/2021		-£117,206.00
Y/e 31/03/2022	Projected Surplus (no levy)	74,700.00
Y/e 31/03/2023	Projected Surplus (no levy)	64,500.00
Y/e 31/03/2024	Projected Surplus	75,500.00
Projected accumulated surplus with no levy @ 31/3/2024		£97,494.00
Y/e 31/03/2022	Projected Surplus (with levy)	147,200.00
Y/e 31/03/2023	Projected Surplus (with levy)	137,000.00
Y/e 31/03/2024	Projected Surplus	75,500.00
Projected accumulated surplus if levy applied @ 31/3/2024		£242,494.00

Annex II - Faculty Office Budgets 2021/22, 2022/23 & 2023/24

FACULTY OFFICE BUDGET YEAR ENDED 31 MARCH 2021

NOTARIES

Income:

Practising Certificates:

England & Wales & Overseas

Accrued income April-October 2021	274,657	
725 Certificates (Nov 2021-March 2022)	194,542	

		469,199

Channel Islands

Accrued income April-December 2021	10,725	
52 Certificates @ £275 (Jan 2022-Mar 2022)	3,575	

		14,300

UK Appointments		
30 x £625		18,750

Overseas Appointments		
10 x £700		7,000

Notarial Packs		0
Certificates of Exemption		10,500

Total Income **519,749**

Less Expenditure:

Management Charge (60%) 282,000

Direct Expenditure 163,000

Total Expenditure **445,000**

Projected Notaries Surplus 2021/22 **£74,749.00**

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**FACULTY OFFICE BUDGET
YEAR ENDED 31 MARCH 2023**

NOTARIES

Income:

Practising Certificates:

England & Wales & Overseas

Accrued income April-October 2022 272,358

725 certificates (Nov 22-March 2023) 194,542

466,900

Channel Islands

Accrued income April-December 2022 10,725

52 Certificates £275 (Jan 2023-March 2023) 3,575

14,300

UK Appointments

30 x £625

18,750

Overseas Appointments

10 x £700

7,000

Notarial Packs 0

Certificates of Exemption 9,000

9,000

Total Income

517,450

Less Expenditure:

Management Charge (60%) 291,000

Direct Expenditure 162,000

453,000

Total Expenditure

Projected Notaries Surplus 2022/23

£64,450.00
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**FACULTY OFFICE BUDGET
YEAR ENDED 31 MARCH 2024**

NOTARIES

Income:

Practising Certificates:

England & Wales & Overseas

Accrued income April-October 2023 272,358

725 certificates (Nov 2023-March 2024) 194,542

466,900

Channel Islands

Accrued income April-December 2023 10,725

52 Certificates @ £275 (Jan 2024-March 2024) 3,575

14,300

UK Appointments

30 x £625 18,750

Overseas Appointments

10 x £700 7,000

Notarial Packs 0

Certificates of Exemption 9,000

Total Income 517,450

Less Expenditure:

Management Charge (60%) 279,000

Direct Expenditure 163,000

Total Expenditure 442,000

Projected Notaries Surplus 2023/24 £75,450.00

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