



THE FACULTY OFFICE OF THE ARCHBISHOP OF CANTERBURY
CONTINUING PROFESSIONAL EDUCATION REGULATIONS 2010
NOTARIES (POST-ADMISSION SUPERVISION AND TRAINING) RULES 2019
RESPONSE TO CONSULTATION ON PROPOSED AMENDMENTS

The Faculty Office consulted on its intention to amend the Continuing Professional Education Regulations 2010 and the Notaries (Post-Admission Supervision and Training) Rules 2019. The consultation ran from 13th May 2021 until 7th July 2021.

Introduction

The Faculty Office consulted on two main proposals:

1. Giving a power to the Master of the Faculties to mandate a particular subject or a specific accredited activity in the continuing professional education that some or all notaries have to do on an annual basis. The particular subject in contemplation is anti-money laundering and terrorist financing where the proposal is to require, for the time being, notaries to do an hour of focussed training on this every year. However, the power would not itself be prescriptive and give the Master the ability from time to time to mandate other subjects or accredited activities if the need arose.
2. Giving a power to the Master of the Faculties to direct that a notary who has ceased to practise as such for any reason for a period of two years or more shall complete such period of continuing education to the extent and for such period that the Master considers suitable. The premise behind this is that some notaries returning from a career break might need to undergo further continuing education to catch-up with changes in law and practice during the time that they have been away from their work.

Additionally, the opportunity would be taken to make the Continuing Professional Education Regulations 2010 and the Notaries (Post-Admission Supervision and Training) Rules 2019 gender neutral in accordance with the Faculty Office's gender neutral drafting policy.

Further details about the proposals and the reasons for them can be read in the [consultation itself](#).

The Questions

The following questions were asked as part of the consultation:

1.1 Question 1:

Do you agree that there should be provisions for the Master to stipulate training requirements either for all notaries or a class of notaries or a specific notary?

1.2 Question 2:

Do you agree that there should be provisions for the Master to determine the subject matter or specific CPE activity, eg AML?

1.3 Question 3:

If so, do you have any views on where the focus should be? Please provide details.

1.4 Question 4:

Do you agree that the Master of Faculties should have the option of requiring CPE provisions for notaries that have been away from practise for more than 2 years? If not, please explain your reasoning.

Responses

15 responses were received. Two of the responses were from the notarial societies: the Notaries Society and the Society of Scrivener Notaries. Almost all notaries are members of one of the two societies and the two societies act generally to represent the interests of the notarial profession. The other responses were from individual notaries, including those involved in providing CPE. No responses were received from other bodies or consumers, perhaps understandably because of the limited range of the proposals, because the main impact is on notaries and because of the essentially technical nature of the drafting changes.

Question 1:

Do you agree that there should be provisions for the Master to stipulate training requirements either for all notaries or a class of notaries or a specific notary?

Broadly, 80% of the respondents agreed with the proposition, 7% disagreed and with 13% the position was not entirely clear from their answer. Most respondents agreed that there would be circumstances where it would be appropriate for the Master to stipulate training requirements, but several respondents said that this ought to be in specified circumstances. In particular, the Notaries Society stated that the Master should only be able to mandate specific training:

“1.1 For the purposes of assisting notaries returning to practice

1.2 For those against whom complaints may have been made where the resolution is a recommendation that additional training would benefit the notary and serve to protect the public and in general

1.3 For matters where the Regulator’s responsibilities are such that requiring additional training or an element of compulsory training would be a core element of any Regulation or where such compulsory training would benefit the profession and/or enhance its international reputation.”

Faculty Office view

We are not persuaded that the Master’s discretion to mandate training requirements should be limited to prescribed circumstances, even as elegantly and reasonably capaciously envisaged by the Notaries Society. We consider that the public interest is better served by the regulator being able to mandate training requirements as the circumstances require and do not wish to find that we have to amend our regulations again in years to come if the prescriptions are found to be too limiting. Nonetheless we would wish to give a public assurance here that the Master would only use such power in a relevant and proportionate manner and in that sense, the wording suggested by the Notaries Society would be our policy.

Question 2:

Do you agree that there should be provisions for the Master to determine the subject matter or specific CPE activity, eg AML?

Broadly, 86% of the respondents agreed with the proposition, 7% disagreed and with 7% the position was not entirely clear from their answer. Generally, respondents considered that there would be few subjects that the Master should reasonably mandate and that otherwise it should be left up to individual notaries to determine what their training needs are. Several respondents held up AML as an example of the sort of subject matter that the Master could reasonable stipulate that all notaries have to do. One notary suggested that “Possibly however this should not be too heavily geared towards compliance topics”. Another notary said that “this should only be used exceptionally where there is a perceived serious gap across the profession or a regulatory requirement. It would be better for the Master or the Faculty Office to simply make recommendations and leave it to us to find training.” The Notaries Society while supportive of the proposal in principle, stated:

“2.1 ... the Society would hope that such decisions would be based following discussion with all interested parties to ensure that the requirements are proportionate and likely to be of benefit to the profession.

2.2 Onerous and out of proportion training requirements should not be imposed as a substitute for actual regulation no matter how attractive the idea may be in terms of keeping the costs of regulation down.”

Faculty Office view

The Faculty Office notes that there was a general understanding amongst respondents of the relevance of AML training. We do however accept that the purpose of CPE should not be just to tick a “regulatory box” and mandate training in compliance topics. Notaries need to be able to engage in training that helps them flourish and develop as practitioners and much of that needs to be notary-led. We would seek to consider the views of the profession and others (including the principal suppliers of CPE) when making such stipulations. Chosen topics would need to be proportionate and achievable – including having regard to how much training was available. At the present, our intention is only to require one hour in AML every year until further notice, and we would not seek to monopolise the CPE provision by packing it solely with compliance topics or stop notaries finding courses that are of interest and importance to them in other topics.

Question 3:

If so, do you have any views on where the focus should be? Please provide details.

The Faculty Office were very interested in the responses they received to this somewhat “open” question which allowed respondents to set out what they thought the benefit and purpose of CPE is.

The focus on AML

Several respondents, while accepting the relevance of some AML training for notaries, suggested that it was not important enough to become an annual requirement – instead every three years might be sufficient. Concerns included:

- If notaries are acting purely as a public certifying officer, the HM Treasury approved guidance makes clear that they are outside of the terms of the Money Laundering Regulations, and

therefore AML will only have limited relevance to those who do not do “regulated business” within the terms of the Regulations.

- Notaries could end up doing very basic courses in AML year after year and not learning anything new.
- The focus on AML could push out other subjects.

Faculty Office view

The Faculty Office continues to consider that there is a present need to have one hour prescribed training in AML on an accredited course annually for the time being. While it may be the case that pure certification work is likely to fall outside of the Money Laundering Regulations, the sanctions regime and the regime set up under the Proceeds of Crime Act applies to all legal professionals whether or not engaged in regulated work. For this reason, and because the boundaries between regulated and non regulated business can be “fuzzy”, the Faculty Office mandated that all notaries must have and supply the Faculty Office with their practice risk assessments for AML. We are not convinced that all notaries fully appreciate the capaciousness of the regime under the Proceeds of Crime Act where any extent of dealing with “proceeds of crime” can carry strict liability. Additionally, the AML requirements are changing every couple of years at the moment and best practice is continually changing. The National Economic Crime Centre and other bodies which work in combating financial crime are regularly putting out new updates about the ways criminals are seeking to launder money. New countries and persons become highlighted in sanctions and warning lists on a fluctuating basis. Generally, we consider that the level of risk is sufficiently high to warrant one hour of prescribed CPE a year in the area.

The Faculty Office would encourage notaries not to take entry level courses on any subject repeatedly and would be surprised if notaries are enrolling on such courses. Notaries will remain able, under the regulations, to choose CPE that is at the correct level and relevant to their practice. As to AML law, the Law Society Annual AML Conference is usually a day-affair (this year and last split over two days and provided online) and presents a great deal of new content every year. We would suggest that that AML is not a stagnant subject but there is sufficient new material year on year to make an annual course more than a refresher. Notaries can of course do more than one hour annually, but one hour will be the minimum requirement.

If however, we find that the perceived regulatory gap closes and we get to a stage where AML law does become more static and notaries do not need to attend an hour of training every year, the Master will review the situation, and consider removing the prescription to undergo annual participation.

Subjects other than AML

Views include:

- *"In my view, the focus should be on areas where there is a risk of serious financial claims against Notaries and consequent harm to the reputation of the profession. AML has been given as a specific example (with which I agree). I suggest Qualification Fraud (not simply Degree fraud) as another."*
- *"I think the focus needs to be on risk assessment & risk management, anti- money laundering, complaints, compulsory regulatory information, supervision, and inspections. As regards notaries under supervision the focus should be on all the above subjects and record keeping, practice rules, code of practice, and terms and conditions."*
- *"This should concentrate on two main areas: 1. documents that many notaries only see a few times a year example DBS certificates university degrees documents or a document for foreign*

incorporated company to remind as an aide memoir how to deal with these and any changes in the way to verify 2. areas where there is suddenly a lot of notarial work eg a few years ago clients were all buying in Bulgaria so training on what documents to expect from the Bulgarian lawyer and how to complete them was useful.”

- *“No – subjects come and go. Risk management, AML, GDPR and so on. You should be careful not to be over-prescriptive. I think the present system works well with individual notaries and course providers managing to work out between them what the current needs are.”*
- *“Particular issues of importance at present are: Anti Money-laundering regulations, sanctions, electronic certification and remote certification by video-link.”*
- *“The topic that concerns me most is the form and presentation of the notarial certificate.”*
- *“Stimulating and rewarding CPE for notaries should include any topic of general legal practice: company law, practice management, business law. There is no need for experienced practitioners to undergo annual refreshers on elementary subjects, such as passport certification.”*
- *“Comparative law – an area that I think is lacking in both the UCL course and post-qualification training is an understanding of how civil law systems actually work and the roles of notaries in them. The Scriveners have to do an overview module of a foreign jurisdiction. This is one option. However, possibly a better one is examined modules in the following areas of comparative law (England v France, Germany and Spain) in so far as they are relevant to notaries:*
 - *Comparative company law and practice;*
 - *Comparative property law and practice;*
 - *Wills and probate law and practice; and*
 - *Family law and practice.”*
- *“Authentic instruments law and practice – I think that this is a crucial module. All notaries are taught about “public form acts” on the UCL course. However, I do think that formal education is required on the history, law and use of authentic instruments so that notaries have a real appreciation for these as they are the main function of the civil law notaries. Victoria in Australia is considering introducing legislation to make clear that Victoria notaries can receive authentic instruments. I think we should be pushing for the same in England but it is difficult to do so if notaries haven’t really been educated fully in them.”*

Faculty Office view

The Faculty Office will keep under review through the Advisory Board and generally whether any other subjects ought to be mandated in future years. In particular, we would single out data protection as being highly relevant to all notaries and an area of the law that is both complex and not static. However, generally we would hope not to be mandating other topics or courses but instead working with the CPE training providers to ensure that they have a relevant, interesting, challenging and reasonably broad content available to notaries. In particular, as many notaries achieve their annual accredited CPE through the two societies, the Faculty Office will continue to work with both notarial societies in promoting the educational initiatives of those societies and attending conferences of those societies to make presentations to the profession about regulatory matters.

Question 4:

Do you agree that the Master of Faculties should have the option of requiring CPE provisions for notaries that have been away from practise for more than 2 years? If not, please explain your reasoning.

100% of the respondents saw the benefit of and generally agreed with this proposal. In particular the Notaries Society commented:

“Yes, the Society agrees with this. Notarial practice is an evolving world. Countries change, their requirements change, laws change, membership of the EU has changed, pandemics occur, and the digital world of electronic notarial documents is changing daily. Anyone out of practice for 2 years or more at any point from now on, will be significantly out of date and will need refresher training.

... In the case of specific programmes of additional or refresher training, the Society has worked very well with the Regulator up to now in putting together bespoke programmes of continuing professional education whenever the Regulator has asked for it and the Education Secretary has assisted in recommending areas where the ‘out of practice’ notary might benefit from training. The Society is more than willing to continue with providing refresher bespoke training but it would be helpful if the returning notary were advised that such additional training may not necessarily be available the day after the Master requires it and they will have to pay for it!

...If the Regulator were able to build in some measure of a timetable for any notary enquiring about returning to work so that the Society had time to put together the programme and the notary had the time to complete the training before being allowed to practice, this would help all parties.

...The Society has a lot of online courses already written that are easy to combine into a bespoke programme but there may well be instances where a returning notary needs training in topics that are not already covered in existing courses. In such instances a bespoke in person training course could be extremely costly for the notary so the Society would wish to collaborate with the Regulator from an early stage to work out a programme that is both suitable and economically viable for the returning notary.”

Faculty Office view

The Faculty Office notes that all respondents were supportive of the proposal. It notes the comments of the Notaries Society that any CPE requirement for a notary returning to work should be made only after considering how it is best that such training can be provided to ensure that the training requirement can be fulfilled without undue cost or difficulty. Additionally, when prescribing further CPE, the Faculty Office intends to take into account indirectly discriminating a notary returning to work after taking maternity leave

Other comments arising out of the consultation

Several comments were made outside of the more limited scope of the questions and relate to CPE generally.

Non-accredited CPE

One comment was that:

“It seems to me that the Faculty Office is missing an opportunity with the non-accredited CPE requirement. Most notaries struggle to know what they should do to meet this requirement but if the FO worked with the Notaries Society, I am sure that the notaries could be nudged in the right direction to educate themselves on AML procedures, FO rules, the code of conduct and any other subject matter that the Master deems beneficial. If there was a section of the Notaries Society website that provided a source of non-accredited CPE material which was guaranteed to

be accepted by the FO, then the notaries would flock to this area and the FO would achieve its objective in ensuring that the profession is adequately trained each year."

Faculty Office view

The non-accredited (ie self-study component) of the CPE regime deliberately gives a large degree of autonomy to notaries to pursue their own learning objectives and make use of what materials they would be using regardless of the CPE regime to improve themselves and to be informed about the law. However, we will consider further the suggestion that notaries might value suggestions about what notaries can or should be doing to satisfy the non-accredited component, eg putting links to articles on our website or suggesting that notaries might want to read the various sources of information that appear on the Faculty Office website (eg the annual report of the inspectors or the notaries diversity survey data).

In-person vs online courses

One notary (who provides CPE courses) stated:

"One issue not raised is online CPE it is assumed in the future CPE accredited points will be a mixture of online and personal attendance. The previous Master I believe considered a minimum personal attendance very helpful and useful as there is no substitute for live face to face discussion and the opportunity to discuss in private practice issues and to learn from other notaries in coffee breaks etc. Once COVID is over consideration should be given to at least one accredited point by personal attendance at an accredited course with the balance permitted by attending an online course. The rationale for one accredited point face to face is that a Notary could attend a local accredited event for example in the evening at minimum cost and minimum disruption to earning capacity during the day."

Faculty Office view

We do not wish to require in-person attendance as some notaries may for reasons of distance, disability or family responsibility not wish to travel to such an event, putting aside the restrictions caused by Covid-19. Video-training does have a place. We do however recognise that engagement can improve if in-person and peer-to-peer interaction can be better. We hope and trust that most notaries will still want to attend some in-person events such as the annual conference of the Notaries Society. What we will seek to do however is to continually consider how beneficial certain courses are when being asked to accredit them, and courses that provide for higher levels of interaction such as though Q and As, tests and workshops will be encouraged.

The Covid-19 lockdowns have caused an improvement in the take-up of online presentations and generally we consider this to be good development in making training accessible and affordable but we will continue to consider how best to encourage in-person training where that increases more meaningful interaction between trainer and student and peer-to-peer support between notaries.

Conclusions

The Faculty Office will be recommending to the Master that the proposals contained in our proposal paper and summarised below should be taken forward and the consent of the Legal Services Board obtained to make those changes. We will however also pass to the Master the comments made by respondents in the consultation which concern issues of proportionality, relevance and taking into consideration the views of professionals and CPE providers when making decisions about stipulated CPE topics and courses.

First proposal

The Faculty Office proposes to update the Continuing Professional Education Regulations 2010 and include a new Regulation 15 as follows:

Regulation 15 - Specific requirement as to subject matter

The Master may by order made before the commencement of a continuing professional education period require that a particular notary or some or all notaries obtain in that coming period, one or more of the credit points required to be obtained by them, whether as part of the basic or special continuing professional education requirement, in a particular subject or through a specific accredited activity.

Beginning 1st November 2021 all notaries will be required to obtain one of their three CPE points in accredited activities which focuses on the topic of anti-money laundering and terrorist financing. This will be an annual requirement until further notice.

Second proposal

The Faculty Office also propose to amend Rule 11 of the Notaries (Post Admission Supervision and Training) Rules 2019 to include paragraph 1A as follows:

Regulation 11 - Resuming practise after career break

...

(1A) The Master may direct that a notary who has ceased to practise as such for any reason for a period of two years or more shall complete such period of continuing education to the extent and for such period that the Master considers suitable.

Generally

To make both the Continuing Professional Education Regulations 2010 and the Notaries (Post-Admission Supervision and Training) Rules 2019 gender neutral in their drafting.

The Faculty Office

[draft 20th July 2021]