

Well-led review of the Faculty Office: findings report

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1. Findings

1. This report sets out the findings from the Legal Services Board's ("LSB") review of the Faculty Office of the Archbishop of Canterbury ("FO") under the Well-led standard of the Regulatory Performance Assessment Framework ("the performance framework")¹. Under this standard, we expect all regulators to demonstrate the leadership, capability and capacity, and appropriate corporate governance to manage their organisation effectively; and to have a culture that encourages and uses learning to improve performance and promotes a transparent and consumer-focused environment.
2. Our findings are drawn from material that we requested from the FO under section 55 of the Legal Services Act 2007 ("the Act"), including documentation on the FO's governance arrangements and decisions made by the Master of the Faculties ("the Master") as well as other information published on the FO's website and provided to us by the FO. We also observed meetings of the Quarterly Master's Council ("MC"), Advisory Board ("AB"), Qualifications Board ("QB") and the Master's Audit Committee ("MAC") and interviewed the Master, FO staff and various board and committee members.
3. The scope of the review is limited to the regulatory functions performed by the Master in regard to notaries and does not consider the other non-regulatory responsibilities of the Master, which include the issue of Special Marriage Licences and the legal work for the awarding of what are known as Lambeth Degrees by the Archbishop of Canterbury.
4. We note the unique structure of the FO that, due to the length of its history and strong ecclesiastical context, is not present in other regulatory bodies covered by the Act (although we should also note that each of the regulatory bodies has its own unique features of governance). The Master exercises the decision-making powers that a board would typically have, and the FO is the office administering the responsibilities of the Master, which is run by the Senior Officers (Registrar, Deputy Registrar, Chief Clerk, Deputy Chief Clerk) and supported by various boards, committees and occasional working groups. This is largely because the Master's jurisdiction over notaries dates to the 16th century and the governance arrangements have evolved over this time. The structure of the FO is set out in Annex A to assist with the understanding of this report. The FO is one of the smallest regulators covered by the Act and at the time of the report licenses approximately 730 notaries.
5. We aimed to conduct the review in a proportionate manner, so we focused it on the FO's governance and decision-making processes over a period of two years, from October 2018 until September 2020. Detailed information about the background to the review and the process we followed, including the lines of enquiry, can be found in Annex B.

a) Purpose of the review

6. The purpose of the review was for the LSB, as the oversight regulator of legal services in England and Wales, to gain assurance that the FO meets the Well-led standard of the Regulatory Performance Assessment Framework.
7. The performance framework provides for a more in-depth review when our ongoing monitoring identifies that we do not have sufficient assurance about an area of a

¹[https://www.legalservicesboard.org.uk/news_publications/LSB_news/PDF/2017/Regulatory_Performance_Standards_December_2017_\(final\).pdf](https://www.legalservicesboard.org.uk/news_publications/LSB_news/PDF/2017/Regulatory_Performance_Standards_December_2017_(final).pdf).

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regulator's performance or identify an area as one of concern.² In November 2019 we carried out our annual performance assessment of the FO under our regulatory performance framework. We found that the FO did not meet outcomes WL3 and WL4³ of the framework and set out actions for the FO to complete which would enable it to meet these outcomes and asked it to provide us with information as to how it would do so by 31 January 2020. While the FO provided us with information that showed it had taken some steps towards meeting WL3 and WL4, this did not assure us that it met these outcomes. We therefore determined in March 2020 that due to our ongoing concerns about the transparency of information published, the FO's approach to risk management and how the FO's stakeholder engagement programme informed its regulatory work, that it was necessary to carry out a review of the FO's performance under the wider Well-led standard. In our September 2020 Practising Certificate Fee (PCF) decision, we noted our concerns about the way in which the FO was managing its finances and resources (relevant to WL2⁴) and that this would also be considered further in this review.⁵

8. We sought assurance on the transparency of the FO's governance arrangements; the transparency of the FO's decision making and performance; and evidence that learning and engagement informs the FO's regulatory work.
9. We began our review formally in September 2020. Details of the review process are set out in Annex B.

b) Review findings

10. Our findings are primarily based on the material the FO provided that related to the period of the review (October 2018 to September 2020). We recognise that both during and after the review period, the FO has taken steps to address some of the issues we found. Where appropriate, we have recorded these actions and steps in this report.
11. As we note in paragraph 4, the FO has an exceptionally long history and unique governance arrangements, based on a strong ecclesiastical context, which have evolved over time. This has resulted in a unique structure. Some of the concerns we raise in this report arise from these characteristics. However, we note that none of the regulators we oversee is alike, and each has unique features of governance that often derive from their history and context. While we recognise, therefore, that the solutions are likely to differ from regulator to regulator, it is important that each is governed in a way that is transparent and supports its important public interest role. The FO is no different in that respect.

Co-operation

²https://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/2017/08122017_Regulatory_Performance_Process_Document.pdf.

³ WL3: The regulator is transparent about its own: decision-making; regulatory approach; the risks it and its regulated community faces and how these are being mitigated; performance; regulated community and related markets; financial costs. WL4: The regulator learns from its own work, stakeholders, the legal sector and other sectors and uses that learning to improve its work.

⁴ WL2: The regulator understands the resources (financial, human and technical) and organisational structure it needs to carry out its regulatory functions (including authorisation, supervision and enforcement) effectively and efficiently and these are implemented.

⁵ <https://legalservicesboard.org.uk/wp-content/uploads/2020/09/FO-PCF-Decision.pdf>

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12. We have very much appreciated the FO's cooperative approach to our review and its willingness to treat the review as a constructive opportunity to learn how it could improve. Soon after being advised of our intention to undertake the review, the FO responded⁶ with four significant actions that it would introduce (and has since done), which it hoped would provide some assurance of its intent to meet WL3 and WL4 and cooperate fully with our review. These actions were the establishment of the MAC; the introduction of a dedicated risk agenda item at quarterly MC meetings; the acceleration of work to improve transparency by developing the FO website; and the recruitment of a Deputy Chief Clerk with a risk and compliance focus to support the Chief Clerk. The impact of these actions is considered in the report. Overall, these proactive steps have the potential to improve the FO's governance and performance against the Well-led standard, alongside the wider action plan that it has developed following this review (see [insert link when published]).
13. We welcome that the FO has seen the review as an opportunity to consider and improve its performance and are grateful for its efforts to provide information requested, for the time given up by individuals for interview, and for the invitation to observe meetings.

Transparency of governance arrangements, decision making and performance

14. **We found that the FO does not have a complete and comprehensive set of governance arrangements in place to ensure effective regulation.** While the FO does follow some practices that we would expect from a Well-led regulator, its governance procedures are largely unwritten and rely heavily on custom and practice developed over many years. We do note that since the period of the review, the FO has begun working towards the development of a complete and comprehensive set of governance arrangements to ensure effective regulation and expects that process to be completed this year. In addition, **there is insufficient transparency around processes for decision making and of decisions that are taken. As a result, it is not possible for the LSB, or anyone else, to have assurance that decisions are taken with due regard to the regulatory objectives, based on sound evidence and taking account of risks.** For example, we found that the following key matters were not documented:

a. Governance procedures

The FO does not have comprehensive documented governance arrangements, processes or systems.⁷ We also identified some specific examples of policies and procedures that are missing, including those for managing potential conflicts of interest⁸ and recruitment of staff⁹ or appointments to boards and committees. While there are some requirements for membership of the FO's boards and committees, there are no documented recruitment procedures nor is there a transparent selection process. The FO is now working to develop comprehensive arrangements to address these issues.

b. Decisions made by the Master

⁶ Email from Howard Dellar to Matthew Hill of 27 April 2020

⁷ Response to s55 Information Request 3(a) – Terms of Reference: Response to s55 Information Request; 3(c) – Delegation of decision making

⁸ Response to s55 Information Request 3(b) – Conflicts of Interest

⁹ Response to s55 Information Request 3(n) - Recruitment

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We found no documentation setting out how the Master makes regulatory policy decisions and takes account of the regulatory objectives and risks in doing so¹⁰, nor how these decisions are recorded and communicated to the regulated community and to wider stakeholders and consumers.¹¹ While the material the FO supplied enabled us to understand some of its decision-making processes, it was not always clear how decisions were made, particularly in respect of the FO's budgeting and other financial matters and its work on "growing the profession". In both these cases, we found that there was limited transparency about: (1) how and when the Master was involved in the decision-making processes, (2) the advice staff provided, and (3) what the Master did with that advice. There does not appear to be a wholly consistent approach to assisting the Master in making decisions. We note that the FO has only recently introduced systems for managing the risks it itself faces¹² and we welcome that the FO has set up the (MAC) to advise on these issues and ensure that its new risk register is accurate and current.¹³ We also found that there was limited scrutiny of financial matters but understand that the MAC is now providing scrutiny and oversight of the FO's budget and financial management.¹⁴

c. Delegation of decision-making by the Master

All FO policy decisions require final approval from the Master, with FO staff progressing policy work and taking decisions which are later endorsed by the Master as appropriate.¹⁵ However, there are no descriptions of the roles of the FO staff, nor are there complete delegation arrangements in place. For example, apart from explicit references in various Rules to when and how delegation to the Registrar and Chief Clerk can be made, there is no documentation which sets out how the delegation of decision-making powers is conferred by the Master to Senior Officers and between FO staff¹⁶. Even where there were references to powers being delegated under its Rules, the FO was not able to provide examples of the Orders or arrangements in place to make these delegations¹⁷. As such, it is not clear when FO staff are in fact taking decisions for the Master, and what decisions the FO team has the authority to take on the Master's behalf. We expect the FO to develop both written role descriptions for its staff and a written delegation scheme to address this point. The FO should also ensure that all powers delegated to its Boards are also documented.

¹⁰ Response to s55 Information Request 3(d) – Processes for decision making

¹¹ Response to s55 Information Request 3(e) - All relevant documents and information that describe and provide for making and recording out-of-committee decisions; Response to s55 Information Request 3(g) - All relevant documents and information that describe and provide for the publication of material relating to the Master, Senior Officers and any sub-committees or working parties including the Advisory Board, Qualifications Board and Audit Committee; Response to s55 Information Request 3(i) - s.55 LSA 07 3(i) All relevant documents and information that describe and provide for communications (including of Master's, Senior Officers', Qualifications Board or other decisions) and consultations with stakeholders; Response to s.55 LSA 07 3(k) All relevant documents and information that describe and provide for communication with stakeholders relating to consultations and decisions by the Master, Senior Officers, the Qualifications Board and any other persons or bodies.

¹² Response to s55 Information Request 3(f) – Risk Management

¹³ Response to s55 Information Request 5(a) – Creation of Audit Committee

¹⁴ Response to s55 Information Request 5(f) – Financial Controls, Note of interview with FO Financial Officer

¹⁵ Interview with FO Registrar

¹⁶ [Response to s55 Information Request 3\(a\) – Terms of Reference](#): There are no formal documents setting out the terms of reference for Senior Officers. Terms of reference for Senior Officers are firmly established in precedent developed over the Faculty Office's near 490 years' service as regulator of the notarial profession. Powers of delegation from the Master are granted in the Rules. The Senior Officers also take specific instructions from the Master during Senior Officers Meetings and Quarterly Masters Council meetings as well as on a more informal basis via ordinary correspondence with the Master.

¹⁷ The LSB's s55 Information Request 3(c) asked for all relevant documents and information that describe and provide for the delegation of decision-making between the Master and Senior Officers, and if applicable, to any relevant sub-committees and working parties including, but not limited to, the Advisory Board, Qualifications Board and Audit Committee in relation to policy decision (major and minor), rule changes, disciplinary proceedings, financial and corporate matters and awards of exemptions from the academic stage of training.

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d. Publication policy

We have found that the FO has an inconsistent approach to transparency. We recognise that the FO has become significantly more transparent in its publication of agendas, papers and minutes from its meetings, in part thanks to improvements to its website. However, some inconsistencies remain, such as the AB's minutes being published while the QB's are not¹⁸. There is an issue for the QB in terms of applicants' privacy being maintained, but a simple exercise in redacting information in that category could address this, allowing the QB minutes to be published. As far as meetings where the Master makes decisions are concerned, the FO publishes the minutes of its quarterly Master's Council meetings. The FO should reflect on any other forums in which the Master makes decisions and ensure that these decisions are transparently recorded, noted in the minutes of the next Master's Council meeting and, where they would have a significant impact on the regulated community, published on the FO's website. The FO should provide transparency of its decisions on financial matters, given their relevance to the regulated community.¹⁹ To ensure consistency in future, the FO should develop a publication policy or other process.

15. Further to paragraph 14, the presence of the two notarial societies on the AB (although the AB has no decision-making powers) and the fact that under the Notaries Qualification Rules 2017, the Master consults, separately from the AB, with the two societies about the appointment of notary members to the QB²⁰ potentially raises concerns of undue influence by representative bodies in the FO's regulatory activities, and about the FO's independence and compliance with the LSB's Internal Governance Rules ("IGR"). These arrangements are also atypical of those that exist between other legal professional representative and regulatory bodies. It is, however, well recognised that the FO's structure and the notarial societies' involvement is very longstanding, and that the FO has only ever had regulatory functions, while the societies have never had any regulatory functions. The appearance of a potential conflict with the IGR is increased by the current absence of both documented processes for AB members' appointment and transparent selection criteria (see paragraph 14(a)). A policy covering the appointment of members to the FO's various boards and committees, including the AB and QB, would assist in addressing the appearance of any such conflict. The AB chair also confirmed that AB agendas are reviewed rigorously to ensure agenda items were clearly related to notarial regulation and not just the concerns of the notarial societies.²¹ However, we consider that the lack of a conflict-of-interest policy means that the FO has no way of recording any potential conflicts which may arise during the AB's operations. The FO has described some practices to protect against regulatory capture, such as requiring QB and MAC members to sign statements of independence, which shows that it has recognised the risk of conflicts. However, the risks in this area are such that we would expect the FO to develop ***a policy governing the appointment of members to the Advisory and Qualifications Boards to ensure that there is no undue influence from the notarial societies in the regulatory functions on the FO.***

16. **We are concerned about the potential conflict of interest arising from the arrangement between the FO and Lee Bolton Monier and Williams (LBMW).** The FO jointly employs its staff with a law firm, (LBMW), to provide its staff and carry out both its

¹⁸ Response to s55 Information Request 3(g) – Publication of Material

¹⁹ Minutes of Senior Officers' Meetings of 24 February 2020 and 23 March 2020

²⁰ [Notaries \(Qualification\) Rules 2017 Schedule 1](#) - The Board shall comprise not more than 10 persons appointed by the Master after consultation with the Company (the Incorporated Company of Scriveners of London), the Society of Scrivener Notaries and the Notaries Society and such other persons or bodies as the Master may consider appropriate.

²¹ [Note of IV with Mark Craig, AB and MAC Chair](#)

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notarial regulatory and ecclesiastical work. Both of the FO's most senior officers, the Registrar and Deputy Registrar, are also partners of LBMW. LBMW and its antecedents have provided these services to the FO for approximately 100 years and our understanding is that this relationship has worked well.²² However, there is a lack of clarity about the separation between responsibilities that staff have to LBMW and their notarial regulatory work for the FO. A documented FO policy would help address this issue by providing transparency as to how individuals who have roles in both organisations manage competing priorities which could give rise to conflicts of interest, especially given that the largest component of the FO's expenses is LBMW's management fee. **A contract or service-level agreement between the FO and LBMW is also necessary for providing oversight of the relationship between them.** The Master has a responsibility to ensure that the FO is resourced appropriately and provides value-for-money regulation to the notarial profession. **We expect the Master should take proactive steps to introduce a method to review periodically the current arrangement with LBMW to ensure that it provides value for money, including considering regular open tendering processes for the provision of notarial regulatory services to the FO.**

17. **We did not receive sufficient assurance that the FO understands the resources it needs to perform its regulatory duties and that it manages its finances accordingly.** A key consideration here is that the FO's regulation of notarial services should be paid for by the notaries it regulates and not be subsidised by the FO's ecclesiastical work. Historically, this has not been the case, and this has resulted in a longstanding 'notarial deficit'. As set out in our 2020 approval of the FO's PCF application²³, the historic deficit has been funded by the ecclesiastical arm rather than notarial reserves, which was not apparent until the FO changed to its current accounting approach a few years ago. The FO needs to be transparent about its approach to reducing this deficit and achieving its target level of reserves for its notarial activities. **We expect the FO to provide clarity on these in its future PCF applications and in the accounts the FO will be required to compile due to its incorporation.**
18. The FO does not have a recruitment policy for its officers, board or committee members, although encouragingly it has already begun to conduct open recruitment processes for new members of its Advisory Board. Until recently it routinely made such appointments through direct contact with individuals, such as its appointments to the newly created MAC. We note the FO's view that these appointments were needed to establish the new MAC quickly, and its commitment that open processes for all boards, committees and staff will take place in future.
19. The FO noted that staff are generally jointly employed by solicitors firm LBMW and the FO, so recruitment is usually handled by LBMW under the firm's policy. The FO generally recruits staff who work wholly or mainly on FO matters through an open advertised process but with succession planning for internal candidates. For example, the recent appointment of a Deputy Chief Clerk with a risk and compliance focus (who is jointly employed by the FO and LBMW but spends 100 percent of her time on the regulatory functions of the FO), was the result of an open process. This process was carried out by the FO team as the post holder will be working on solely notarial matters. Sometimes, candidates (especially for administrative or temporary roles) are found from

²² Note of Interview with FO Registrar

²³ <https://legalservicesboard.org.uk/wp-content/uploads/2020/09/FO-PCF-Decision.pdf>.

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within LBMW. The FO told us that the Registrar, Deputy Registrar and Chief Clerk are jointly employed by LBMW and the FO and carry out both notarial and ecclesiastical work.²⁴ **We expect the FO to develop its own policies for staff and board and committee recruitment.**

Evidence that learning and engagement informs the FO's regulatory work

20. The FO has well-established processes for gathering information about notaries, but it should engage more **with consumers of notarial services to develop and demonstrate a sufficient understanding of the issues facing both notarial consumers and the profession.** This offers the opportunity for the FO to use its learning and engagement to inform its regulatory approach and make evidence-based decisions. The FO should also ensure it has consistent approaches to how it consults and responds to consultations.
21. The FO did not provide us with details of its policies or procedures for conducting consultations but did explain that it typically consults for at least four weeks (preferably six), that responses are analysed and considered by the Master and that both consultation and response documents are published on the FO's website.²⁵ We reviewed several of the consultations held during the review period. We found that these were generally consistent with the process described above. In particular, the FO's PCF consultations for 2019 and 2020 were straightforward to understand and the response document for the 2020 consultation contained a helpfully detailed breakdown of responses and answers to questions raised. That said, our decision on the FO's 2020 application did set out an expectation that the FO should provide a more detailed explanation in its 2021 application of how it considers consultation responses, whether these have resulted in changes and the FO's reasons for its decisions.
22. We found some instances where the FO could have consulted more widely, such as the development of its policy on continuing professional education (CPE). This is a topic likely to be of interest to the whole profession, and the FO could have engaged with the notarial profession and other stakeholders. The FO will need to consult about any changes it wishes to make to its CPE regulations, and we expect it to take stakeholders' views into account and demonstrate that it has done so.
23. In respect of the FO's consultation on changes to its Notarial Practice Rules intended to introduce new transparency standards, we found that while the FO's consultation was clear about the proposed changes and the rationale for them, the consultation response document could have more clearly explained how the FO used the consultation responses in reaching its decisions. In this example, we also noted that there were no formal responses from consumers or consumer representative bodies, which is of concern given that this initiative was intended to benefit consumers.
24. In particular, we found that:
 - a. **Information about notarial consumers**
25. The FO should do more to rectify its lack of engagement with people who use, or might use, notarial services, in addition to meeting the Legal Services Consumer Panel (LSCP). The FO did not refer to any other engagement with consumers or consumer

²⁴ Note of interview with FO Registrar

²⁵ Response to s55 Information Request 3(j) and 3(k) - Consultations

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groups during the review period. The FO noted difficulties in engaging with notarial services consumers but accepts it could do more to obtain their views. Encouragingly, the FO is currently seeking to recruit two additional lay members with consumer expertise to its AB and is externally advertising these opportunities. The FO has said that it will, through that process, seek to secure a wider diversity of representation on the AB. In addition, as one of the smaller regulators, the FO will also need to develop ways, possibly in cooperation with others, to fulfil its obligations to engage with consumers of notarial services, as well as the profession. ***We expect the FO to develop a strategy and means for engaging directly with consumers and using their views in making policy decisions.***

b. Information about notaries

The FO systematically and proactively gathers information about notaries by using its PCF renewal cycle to collect data about insurance, diversity, training records, complaints and practice risk assessments. It also gathers information from its inspections regime, CPE records, disciplinary processes and trainee notary supervision reports.

c. Information about issues facing notaries and the wider notarial market

The FO has a largely reactive approach to gathering information about the issues facing notaries. It undertakes limited horizon scanning and tends to engage directly with individuals, particularly contacts from the Notaries Society and Society of Scrivener Notaries. ***In future, the FO should proactively undertake horizon scanning and research about notarial market issues.***

d. Policies and procedures for conducting consultations

While the FO has a process for conducting consultations, it does not always apply it consistently, both in respect terms of how widely it consults and how it demonstrates that it has taken account of consultation responses. ***We expect the FO to develop a policy or other process to ensure it consistently undertakes consultations in an effective and transparent manner.***

c) Conclusion and next steps

26. Our review covered the period from October 2018 to September 2020, and our conclusions are primarily based on the material the FO provided that related to that period. Both during and after the review period, the FO has taken steps to address some of the issues we found during our review.

Our conclusions are as follows:

- We found that the FO follows governance procedures that we would expect from a Well-led regulator, however, there is very little documentation to support its governance arrangements, which rely heavily on custom developed over many years. The following key matters were not documented: decisions made by the Master, delegation of decision making by the Master, governance procedures and publication policy.
- We are concerned that the FO's decision-making processes and the decisions it makes in respect of its notarial activities are not always as transparent as they should be.

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- We found that the FO often makes appointments through direct contact with individuals and does not tend to conduct open recruitment.
- We are concerned about the potential for conflicts of interest and that there is no documented policy to guard against this.
- We are concerned how the FO will reduce its long-standing deficit and reach its target level of retained reserves.
- We found that the FO has well-established processes for gathering information about notaries, but the insight it has about issues facing notaries and consumers of notarial services is limited.

27. This review of the FO's performance against the Well-led standard was carried out under the LSB's performance framework. It was initiated in response to the FO's ongoing failure to meet outcomes WL3 and WL4 of the standard. However, the opportunity provided by the review to look in detail at the FO's policies and procedures gave rise to further concerns in some related areas. While we know it will be disappointing to the staff and leadership of the FO who provided us with outstanding levels of co-operation from the outset of the review, we are obliged to conclude that two further components of the Well-led standard are currently not being met::

- WL2 (The regulator understands the resources (financial, human and technical) and organisational structure it needs to carry out its regulatory functions (including authorisation, supervision and enforcement) effectively and efficiently and these are implemented).
- WL6 (The regulator communicates with a diverse range of stakeholders, for example its regulated community, the approved regulator, its representative body(ies), students, consumers, government, etc. to account for its plans, progress and performance; ensure appropriate and accurate information is effectively taken into account in its work).

28. This is set out in the revised [insert month 2021] performance assessment available on our website [to be published]

29. We hope that the FO will recognise the benefit from having this fuller view of the scope of the improvements we see as being necessary so that it can pursue them as part of the coherent programme of modernisation on which, to its credit, it has already embarked. We should like to stress that these further conclusions should not be taken as a criticism of the FO's staff, but rather as a reflection of the historic origins of the FO, a point made strongly by the FO itself.

30. The FO has also indicated that, it is already considering further actions, such as (1) establishing documented governance arrangements for making and delegating the power to make decisions, (2) improving the transparency of its decision-making processes, particularly in relation to recruitment and financial matters, and (3) developing its ability to gather information about the issues facing notaries and consumers.

31. The FO has committed to an Action Plan [insert link when published], which is available on our website, which sets out how it will address our findings. Accordingly, in our latest assessment of the FO's performance against the Well-led standard (see paragraph 27) we have recorded the actions that we see as relevant to each of the outcomes we have

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assessed as 'not met'. We will monitor the FO's progress in delivering against its action plan and seek evidence that it is meeting all the outcomes under the Well-led standard.

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2. Annex A

a) About the FO

1. The origins of the FO date back to 1533 and the English Reformation. The FO currently has three main functions, the issuing of special marriage licences and awarding Lambeth Degrees (ecclesiastical) and the appointment and regulation of notaries (legal services regulation). For our purposes, we are only interested in how the FO regulates notaries and not its ecclesiastical work. However, in areas such as the FO's budget, these two fields of work may affect each other.
2. Since 1533 there have been several Acts of Parliament about the regulation of notaries. This means that unlike most of the other legal regulatory bodies, the FO did not come into existence because of the Act, and it is important to understand this when considering how the FO's structures and internal processes have developed so far.
3. It should also be noted that the Master is named as the 'approved regulator' for notaries in the Act and that it has never had any representative functions. This means that the FO is both an 'approved regulator' and 'regulatory body'. Neither the Notaries Society nor the Society for Scrivener Notaries have any residual regulatory role under the Act, unlike other representative bodies in other parts of the legal services sector.

b) Structure of the FO

4. Unlike the other regulatory bodies, the FO does not have a board which makes decisions for the organisation. The decision-making powers that a board would typically have are exercised solely by the Master. There is no single document which sets out the Master's role, responsibilities and duties, but these are referenced in several pieces of legislation. The current Master is Morag Ellis QC who took on the office from 8 June 2020 following the retirement of her predecessor, Charles George QC.
5. The Master is supported by FO staff, including the Registrar, who is the equivalent of a Chief Executive Officer, and several committees or boards:

The Advisory Board

6. The AB is currently convened under the published Advisory Board Rules 2008 ("AB Rules"), but we were told in interviews that it existed before 2008. It has no decision-making powers but exists to provide advice to the Master on any matter pertaining to the notarial profession. Under the AB Rules matters can be referred to it by the Master, the Registrar, by either of the notarial societies, or by any other body or person provided that the AB considers the matter is relevant to the notarial profession. The AB can also initiate the consideration of any matter relevant to the notarial profession or its regulation.
7. The AB consists of six persons appointed by the Master. Currently the AB Rules require that these are two practising notaries; the Secretaries of the Notaries Society and the Society of Scrivener Notaries; and two independent non-notaries. It meets quarterly and the Master sets yearly priorities for the AB.

The Qualifications Board

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8. The QB is currently convened under the Qualification Rules. Unlike the AB it does have some decision-making powers, which are delegated to it by the Master under the Qualification Rules. These powers enable the QB to grant exemptions from all or elements of the academic stages of notarial training to prospective notaries who can provide evidence that they already have sufficient qualifications, training and/or experience.
9. Under the Qualification Rules, the QB also provides advice to the Master about the following:
 - whether a degree or other qualification course should be approved by the Master for those qualifying as a notary.
 - On the standard of the qualifications of any person applying for admission as a notary.
 - On the qualifications and experience of persons applying for recognition that they are eligible for admission as a notary having been admitted or qualified as a notary in another jurisdiction.
10. The QB consists of up to 10 persons appointed by the Master following consultation with the Incorporated Company of Scriveners (the Scrivener Notaries' City Livery Company), the Society of Scrivener Notaries, the Notaries Society and any other persons or bodies the Master considers appropriate. There must be a lay majority to ensure compliance with the IGR²⁶. The QB is supported by three expert advisers who also attend its meetings, which usually happen four times per year. The QB has a sub-committee, consisting of at least three members, which looks in detail at prospective notaries' exemption applications and reports to the QB.

Master's Audit Committee

11. The MAC was established in 2020 to provide advice to the Master as requested on the finances, financial control and financial liabilities of the FO, covering both ecclesiastical and notarial functions. There a wide range of issues the MAC could be asked by the Master to advise on, which are set out below. It can also raise issues directly with the Master. It has no decision-making powers.
 - Development of the annual budget including advice to the Master on the accommodation arrangements, employment arrangements and the division of the total budget of the FO between the notary and the marriage licence functions.
 - Consultations on fees and other financial matters.
 - Submission of the application for the LSB for approval of the annual practice fee for notaries.
 - Review of and recommendation to the Master for approval of the annual financial statements and their publication.
 - Strategic and long-term financial planning including the financing of capital projects and provision for reserves.
 - Any concerns of alleged fraud or irregularity in the FO's financial and other control systems and the steps necessary to correct or otherwise address them.
 - The adequacy and effectiveness of the FO's systems of internal control and risk management and the FO's Risk Register.
 - Review of AML processes and procedures including the FO's Risk and Assurance policy.

²⁶ [Response to s55 Information Request 3\(h\)/4\(a\) 9 – IGR Compliance Certificate 23 March 2020](#)

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- The FO's whistleblowing statements.
 - Statutory liabilities.
 - Any other matter affecting the finances or financial liabilities of the FO (at the request of Master or Registrar or on their own initiative).
12. The MAC consists of a minimum of three and a maximum of four members, of which three must be independent non-notaries. While it is scheduled to meet twice a year, it can do so more frequently if necessary.

Senior Officers' Meetings and Master's Council

13. Although decision-making powers are vested in the Master and the FO does not have a typical board structure like other regulatory bodies²⁷, the Master does have regular formal meetings with FO staff. These are the Senior Officers' meetings and the Master's Council meetings ("MCs").
14. These meetings cover both notarial and ecclesiastical matters. The Senior Officer's meetings take place monthly, and MCs are held quarterly. They are regularly attended by the Registrar, Deputy Registrar and Chief Clerk and occasionally by the Financial Officer. The Chair of the AB and MAC attends MCs.

²⁷ It is worth noting that while having a single decision maker rather than a decision-making board may be atypical amongst legal regulators, there are regulators in other sectors, e.g., the Groceries Code Adjudicator, which have this structure.

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3. Annex B

a) Background

1. In November 2019, we carried out our annual performance assessment of the FO under the framework. As the statutory oversight regulator for legal services, we routinely assess the performance of regulatory bodies, including the FO, as part of our ongoing monitoring of regulators' performance against standards of regulation under the Act. At that time, we assessed that the FO did not meet outcomes WL3 and WL4 of the framework,

WL3: 'The regulator is transparent about its own: decision-making; regulatory approach; the risks it and its regulated community faces and how these are being mitigated; performance; regulated community and related markets; financial costs.'

WL4: 'The regulator learns from its own work, stakeholders, the legal sector and other sectors and uses that learning to improve its work.'

2. In the assessment, we said in respect of each outcome:

WL3: 'The transparency obligations on decision-making and key performance indicators have not been met.'

The Faculty Office has confirmed that monthly meetings are held to discuss regulatory matters with the Master, and these are usually oral and do not include written reports. For seven of the meetings held in 2019, brief two-page notes of the decisions made have been published. Supporting papers have not been published for these meetings. Advice from the Advisory Board and minutes from Advisory Board meetings are made available to the Master but are not published. The Faculty Office has confirmed that it intends to publish Advisory Board minutes and relevant papers in January 2020.

The Faculty Office has confirmed it intends to develop and publish KPIs in relation to the timeliness of applications for admission to the register, the progress of disciplinary cases and its inspection work. The KPIs will be embedded in 2019/20 and reviewed after 12 months of reporting. Publication of KPIs will commence in 2021.

While the Faculty Office is making progress towards meeting this outcome, the changes it is implementing are not imminent and in relation to KPIs remain more than a year away. We do not see this length of delay as acceptable...'

WL4: 'The main action was for the Faculty Office to improve the transparency of how its evidence base is regularly shared with the Master (along with the Master's Qualification Board and Advisory Board where relevant) and utilised to drive/change developments, for example risk management, guidance and revised policy.'

The Faculty Office has provided a list of the "Outreach events" it participated in during 2019 which it has used to engage with members of the notarial profession and other stakeholders. A working party, established for the Faculty Office's examination and qualification regime review, met in October and November. The working party will be preparing a report for the Advisory and Qualifications Boards in January 2020

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ahead of their provision of guidance to the Master on any changes recommended by the working party. No information has been provided on the timing of the Master's consideration of this work, or how it will potentially inform any improvements to the Faculty Office's examination and qualifications regime.

There remains limited evidence of how the Faculty Office has used the learning from its engagement with the notarial profession or other stakeholders to improve its work..."

3. Information provided by the FO in January 2020 did not provide sufficient assurance that the FO met WL3 and WL4. We determined it was necessary to carry out a review of the FO's performance under the wider Well-led standard and advised the FO of our intention to carry out the review.²⁸ The framework provides for a more in-depth review when our ongoing monitoring identifies that we do not have sufficient assurance about an area of a regulator's performance or identify an area as one of concern.

b) Process

4. The review formally commenced in September 2020. We followed the steps set out below to carry out the review.

Step 1: Pre-review discussion

This was an opportunity for us to discuss and agree the scope of the review with the FO. We proposed that the review would focus on the FO's decision-making processes covering a period of two years between October 2018 and September 2020, to which the FO agreed. We also discussed the lines of enquiry, which are set out at c).

Step 2: Terms of engagement letter

We finalised the scope and timeline for the review.

Step 3: Review initiation meeting

This was an opportunity to discuss and agree the information to be requested under Section 55 of the Act. At the meeting we explained that we intended to introduce a specific information request about the FO's budgeting and targets for deficit reduction and reserves and noted that this activity was covered by regulatory outcome WL2. The FO said it would be content with this but was given an opportunity to review and comment on a revised version of the s.55 information request, including this specific request. The FO subsequently confirmed that it had no comments on the revised s.55 request.

Steps 4 and 5: Request and provision of information

The FO provided the following information as requested or noted its unavailability:

- general corporate documents, including terms of reference for the Master, Senior Officers, the Master's Council, Senior Officers' Meetings and the FO's various Boards, committees and working parties, schemes of

²⁸[Notification of review – letter to FO advising of review – 27 March 2020.](#)

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delegations for the FO's staff and its Board and Committees schemes of delegations and policies including those for risk management, consultations, and recruitment

- all relevant documents that describe the FO's general processes for decision making and recording of decisions.
- all relevant documents providing for communication with stakeholders relating to the FO's consultations and decisions , including primary evidence sources, informing the FO about its regulated community and the issues facing it.
- Evidence of how the FO has engaged with and gathered evidence from its regulated community
- Evidence of how the FO makes decisions in relation to financial matters including its budget, practicing certificate fees and targets for reserves and reduction of deficits.

As well as the information requested above, the FO also separately provided copies of agendas, minutes and decision notes from its Master's Council, Senior Officers', Advisory Board, and Qualifications Board Meetings.

Step 6: Fact-finding and analysis

We interviewed the following FO officials and committee members:

- Howard Dellar, Registrar
- Christopher Vaughan, Secretary of the Notaries Society and Member of the Advisory Board
- Mark Craig, Chair of the Advisory Board and Master's Audit Committee
- Jonathan Coutts, Secretary of the Society of Scrivener Notaries and Member of the Advisory Board
- Sue Goss, Financial Officer
- Morag Ellis, Master of Faculties
- Neil Turpin, Chief Clerk
- Ian Blaney, Deputy Registrar
- Michael Heap, Advisory Board Member

We analysed the information provided by the FO, following up for additional information where required.

We also observed meetings of the Master's Council, Advisory Board, Qualifications Board and Master's Audit Committee.

Step 7: Interim report

The review team, with support from inhouse governance colleagues, prepared an interim report setting out our findings and recommendations. Our Senior Leadership Team, including our General Counsel, reviewed the report. It was also shared with a panel of LSB Board members, which provided constructive challenge. It was then provided to the FO for review and comment.

Step 8: Final report and publication

Following consideration of the comments received from the FO, we will publish the final report.

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c) Lines of enquiry

5. The aim of the review was for us to gain assurance that the FO meets the standard of a well-led regulatory body with decision-making processes that are effective and informed by appropriate evidence, including learning; take account of the likely impact of the decisions on the regulatory objectives and in particular consumers; and have regard to the Better Regulation Principles to be transparent, accountable, proportionate, consistent and targeted.
6. We devised the following lines of enquiry in consultation with the FO:

Line of enquiry 1: Transparency of the Master's governance arrangements, particularly delegation to FO staff

Under this line of enquiry the LSB would seek assurance that:

- there is clarity as to the role of the Master and her delegation to FO staff.
- The FO is following appropriate protocols and arrangements for decision making, including use of its Advisory and Qualifications Boards.

The LSB sought the following sources of information to assess this:

- relevant documentation for delegated decision making e.g. delegation agreements (or equivalent) between the Master and FO staff.
- terms of reference for Senior Officers, Advisory Board and Qualifications Board (and any relevant sub-committees).
- conflict of interest policy and Qualifications Board members' register of interests.

Line of enquiry 2: Transparency of the FO's decision making and performance, particularly in respect of decisions made by the Master

Under this line of enquiry the LSB would seek assurance that decisions the Master and/or her staff make:

- are based on appropriate evidence and analysis and that proposals are properly evaluated
- include consideration of the impact of the decision on the regulatory objectives and take account of the Better Regulation Principles
- are informed by an assessment of risk
- are informed by relevant challenges and opportunities facing the regulated community and related markets e.g. wider legal services sector
- take account of stakeholder views and feedback
- are accompanied by appropriate steps to monitor and evaluate the impact and outcomes
- are communicated clearly and publicly to relevant stakeholders in an accessible way.

The LSB sought the following sources of information to assess this:

- a sample of materials e.g. supporting papers provided to assist the Master and/or her staff in making decisions and/or which were used by them in doing so
- a sample of agendas, papers and minutes from Senior Officers, Advisory Board, Qualifications Board meetings or from any other relevant bodies e.g. Qualifications Working Party

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- a sample of supporting papers from Senior Officers, Advisory Board, Qualifications Board meetings or from any other relevant bodies
- LSB attendance at agreed Senior Officers, Advisory Board, Qualifications Board or other relevant meetings as an observer
- interviews with selected Senior Officers, Advisory Board and Qualifications Board members and those from any other relevant bodies
- risk management policies and procedures e.g. risk register.

Line of enquiry 3: Evidence that learning and engagement with the regulated community and other relevant stakeholders informs the FO's regulatory work

Under this line of enquiry the LSB would seek assurance that:

- appropriate opportunities to learn from the regulated community and other relevant stakeholders e.g. in wider legal services sector are identified and utilised
- learning is evidenced and referenced in decisions made
- appropriate consideration is given to when, how and to whom key decisions need to be communicated
- feedback on decisions is sought as is reasonable and reflected in future consideration of related work.

The LSB sought the following sources of information to assess this:

- annual reports and business plans
- intelligence gathering strategies e.g. horizon scanning
- communications strategy
- policies and procedures on publication of Senior Officers, Advisory Board and Qualifications Board material
- consultation policy
- press releases and other communications around a sample of key decisions
- examples of previous consultations, outreach events and research that has been conducted.