



**THE FACULTY OFFICE OF THE ARCHBISHOP OF CANTERBURY**  
**QUALIFICATIONS AND ADVISORY BOARDS**  
**REVIEW OF THE POST-QUALIFICATIONS ENVIRONMENT**  
**JUNE 2023 DISCUSSION PAPER**

**Purpose of paper**

- To set out what the requirements are for new notaries at the moment
- To consider whether the level of supervision for new notaries who wish to practice in conveyancing and in wills, probate and administration is at the right level.
- To make tentative proposals for making improvements in the supervision of notaries who wish to practice in conveyancing and in wills, probate and administration and to invite views from the Qualifications and Advisory Boards on 13<sup>th</sup> June 2023.
- To make suggestions for how proposals agreed in principle might be consulted upon and further advice and information sought to inform decision making.

**Action for the Qualifications and Advisory Boards**

- Ask for clarifications on the paper including how the present system works
- Consider the proposals for discussion (see from page 8) and the recommendations (page 9).
- Consider whether anything is missing from the proposals and whether to accept the recommendations.
- Consider how any proposals advance the regulatory principles.
- Subject to comment by the Qualifications and Advisory Board for the Deputy Registrar to prepare a call for evidence or consultation paper for approval at the Master's Quarterly Council on 3<sup>rd</sup> July 2023.

## Background – how the present system works

The supervision of new notaries is governed by the Notaries (Post-Admission Supervision and Training) Rules 2019. On admission a notary is subject to a period of practice under supervision by an experienced and senior notary for a number of years as follows:

- all notaries must be supervised for a period of two years
- notaries undertaking conveyancing must be supervised for three years
- notaries undertaking probate activities must be supervised for three years.

The new notary may choose any supervisor listed on an approved list maintained by the Faculty Office. At present there are 25 names on that list but only one name is specifically identified as being a supervisor for conveyancing and probate activities. The supervisor must meet with the supervised notary on at least five occasions during the period of supervision as follows:

- (a) First, at the office of the supervisor before any period of supervision commences and after completion of the Office Practice Course (the practical one-day course that all notaries must do before commencing practice);
- (b) Second, at the office of the supervised notary within one month after the supervised notary has carried out their first notarial act having first notified the supervisor and the Faculty Office of having accepted the instruction in respect of that act;
- (c) Third, at the office of the supervisor no later than six months after the visit in (b) above;
- (d) Fourth, at the office of the supervised notary within twelve months of the date of the visit in (c) above;
- (e) Fifth, at the office of the supervisor no later than six months from the date of the visit in (d) above and not less than two years from commencement of the period under supervision.

In respect of a supervised notary who is wishing to do conveyancing or probate as part of their practice, additionally:

- (f) First, at the office of the supervised notary within twelve months of the date of the visit in (e) above; and
- (g) Second, at the office of the supervisor no later than six months after the date of the visit in (b) above.

On each visit specified in this rule the supervised notary shall produce to the supervisor for inspection the records and accounts of the supervised notary.

Where a supervised notary practises as a notary at more than one office, the supervisor must ensure they visit each of those offices at least once during the period of supervision.

The supervisor must take particular care to ensure (so far as they are able) that the supervised notary is aware of, and complies with, all regulatory rules of the Master and the Code of Practice.

On each occasion, the supervisor will inspect the records and accounts of the newly admitted notary. Between times the supervisor must make themselves available to that notary for the purpose of giving advice and counsel on all matters covered by the supervision at reasonable times, subject to the professional obligations of the supervisor.

A report of each visit is completed by the supervisor in a form prescribed and kept on the register of each notary.

A supervisor who undertakes the supervision of a notary carrying out conveyancing as part of their notarial practice shall have carried out conveyancing as a substantial part of their practice in the previous five years whether as a notary or other authorised person. Similarly, a supervisor who undertakes the supervision of a notary carrying out probate as part of their notarial practice shall have carried out probate as a substantial part of their practice in the previous five years whether as a notary or other authorised person. In both cases, the supervisor should also have regard to the requirements of other relevant approved regulators.

Upon completion of the required period of practice under supervision the supervisor must lodge a final report in the format prescribed and indicate whether in their opinion the supervised notary should thereafter be permitted to practise without supervision. The supervisor and the supervised notary must respond in writing to any questions put by the Registrar or the Master in relation to the period of supervision and produce to the Faculty Office such documents as may be requested.

Every supervised notary shall during each year of their period of practice under supervision attend:

- (1) a Continuing Education Course approved by the Master and which shall provide a minimum of four hours of tuition in each course, the content of such courses to be approved from time to time by the Master; and
- (2) if the supervised notary is carrying out conveyancing, a course in conveyancing comprising not less than four hours of tuition approved by the Master; and

(3) if the supervised notary is carrying out probate, a course in probate comprising not less than four hours of tuition approved by the Master.

If a notary has already completed a period of supervision under this rule but did not undergo the additional supervision for notaries carrying out conveyancing and probate and wishes to accept instructions to carry out conveyancing or probate in their capacity as a notary they must apply to the Master to set a period of supervision of three years or less relating solely to conveyancing or probate or both.

The Registrar on behalf of the Master may direct that the period of practice under supervision be extended in any particular case, eg where the supervisor recommends that further supervision is needed.

### How well is the present system working?

There have been no complaints from new notaries, supervisors, members of the public or otherwise about the operation of the present system. There has however been a concern expressed at meeting of the Qualifications Board about new notaries practicing in conveyancing and probate. The Faculty Office also assesses these areas to be of higher risk than ordinary notarial activities. The concerns can be summarised as follows:

- All would-be notaries must satisfy the Qualifications Board that they have passed examinations within five years of their application to the Board in eight academic areas, two of which are conveyancing and wills, probate and administration. Alternatively, they must demonstrate to the Board that they have sufficient professional experience as another regulated lawyer in these subjects. The problem that the Board experiences is that would-be notaries are presented with examination results that are over five-years' old, or where conveyancing and wills, probate and administration were only examined in a cursory manner, or where the applicant's professional experience in these subjects is limited. All notaries must have passed the academic stage of training, including in conveyancing and wills, probate and administration, even if they have no intention of practising in this area. This leads to earnest discussion about how high should be the bar for satisfying the requirement in conveyancing and wills, probate and administration. The majority of notaries never practice in these areas (as a notary), while others could (hypothetically speaking) "set up shop" and do exactly that.
- The Faculty Office assesses the holding of client monies, conveyancing and estate administration as posing a high-risk to the public. This is mainly due to the high value of client

monies and assets and so that the potential loss to the public as a result of negligence or deliberate malfeasance on the part of the notary is greater.

- Two recent disciplinary cases (Coates and Kerr) related to notaries who did estate administration, and in those cases a poor standard of service led to complaints from their clients and they were struck-off.
- Lawyers previously regulated by another regulator (eg the Solicitors Regulation Authority) could (hypothetically speaking) decide to become regulated by the Faculty Office as notaries and do conveyancing and probate activities as such, if they decided that the regulatory requirements and costs as a notary were less.

This all boils down to a general concern around the risk inherent in conveyancing and estate administration. That risk can be addressed in the many ways set out in the Faculty Office Assurance Policy (including monitoring and inspections). Various more radical ways have been looked at in the past including:

- Stop notaries doing conveyancing and probate activities altogether. The Faculty Office consulted upon this in circa 2018 and decided that it did not wish to withdraw from the regulation of conveyancing and probate activities.
- Authorise a branch of notaries to do conveyancing and probate which must conform to a separate qualifications and admissions route. The Faculty Office looked into this as part of its review into professional qualifications in 2019-2020. and decided that it did not wish to establish a separate qualifications route for conveyancing and probate notaries and that every notary would still need to obtain a qualification (or an exemption based upon relevant professional experience in) conveyancing and probate.
- Increase the number and type of inspections for those notaries holding client monies. The Faculty Office looked into this in 2019 and developed some early proposals which involved using the Accounts Rules to send in accountants to carry out a more forensic analysis of client accounts held by conveyancing and estate administration notaries. This work might be taken forward as part of the work into revising the Accounts Rules. If the risk is mainly around client monies, then a forensic attention to the client account might be the most proportionate way of addressing the risk.

The reason for the present view is to consider whether all and everything that should be done at the post-qualifications stage (ie zero to three years post-qualification) to regulate and mitigate the risks of practice in these areas.

## What are the requirements of the other legal services regulators?

The requirements as to supervision of solicitors, barristers, legal executives and licensed conveyancers (the other lawyers who can be authorised to undertake conveyancing as a reserved legal activity) are set out in the attached table. While the length of the supervisory period varies, it is common for solicitors, legal executives and conveyancers to be under the direct supervision of someone more senior and the level of supervision is therefore expected to be more thorough.

## LSB's Ongoing Competence Programme

In its consultation response document<sup>1</sup> to its Ongoing Competence programme the Legal Services Board challenged the assertion by many of the regulators that there is not a problem with providing assurance that their regulated populations are competent. The LSB state that one of the key challenges they are seeking to address is an evidence gap in the sector which has been identified through their own evidence gathering and engagement with stakeholders. They do not consider that any of the regulators can currently provide assurance that they meet the outcomes, because they do not have a comprehensive understanding of levels of competence across their regulated professions. A gap in evidence does not mean that there are no competence issues, or risk of harm to consumers.

The LSB went on to say that regulators should not just be relying on what information is currently available. Rather, they should be looking at where there are gaps, what types of data or information are needed to fill those gaps, and how to gather that information. Beyond the existing evidence gap, the LSB expect that regulators should be more cognisant of the risk that an authorised person's skills and knowledge may become out-of-date. This could be due to changes affecting the profession (e.g. to legislation, practice) and the wider world (e.g. changes in consumer behaviour or technology).

The LSB had recently published research into consumer vulnerability (and the findings show that how authorised persons deliver their services can aid those consumers who are vulnerable due to their particular circumstances). Participants in the research recommended that there should be greater consistency and standardisation in how legal services are delivered and that authorised persons should adopt an inclusive design approach, with services being designed with the most vulnerable in mind to benefit everyone.

The LSB state that regulators should improve and take a proactive approach in implementing interventions to ensure standards of competence are maintained. The LSB's chief expectation is that regulators put in place measures that are effective at maintaining standards of competence. Regulators should be able to provide assurance to their regulated community, the public and other stakeholders

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<sup>1</sup> *Statement of policy on ongoing competence – response to consultation*, Legal Services Board, 28 July 2022.

that they have identified such measures as necessary and appropriate to maintain those standards. Regulators must take steps to ensure that they have a good understanding of the levels of competence in their regulated community. In gathering information, the LSB consider that regulators should take a risk-based approach. This might, in certain circumstances, entail carrying out formal assessments of some authorised persons if appropriate, but it is not our intention that all regulators must carry out formal examinations of all authorised persons.

The LSB's programme which gives rise to its [Statement of policy on ongoing competence](#) (July 2022) (issued under section 49 of the Legal Services Act 2007) does not have post-qualification requirements as its focus. Nonetheless we consider that the Statement of policy is relevant in considering the question of whether the levels of supervision of conveyancing and probate is adequate in ensuring a competent delivery of legal work. Indeed, the Statement has as an outcome that a regulator must "a. Set the standards of competence that authorised persons should meet at the point of authorisation and throughout their careers. "

Further, a regulator should:

- b. Regularly determine the levels of competence within the profession(s) they regulate, and identify areas where competence may need to be improved.
- c. Make appropriate interventions to ensure standards of competence are maintained across the profession(s) they regulate.
- d. Take suitable remedial action when standards of competence are not met by individual authorised persons.

In pursuing the outcomes, regulators should be alert to risks to the public and consumers, including where:

- a. the consequences of competence issues would be severe;
- b. consumers are in vulnerable circumstances; or
- c. the likelihood of harm to the public from competence issues is high.

In pursuing the outcomes, regulators should identify and use opportunities to collaborate with each other in order to promote consistency in the interests of consumers.

Regulators must be able to demonstrate that evidence-based decisions have been taken to determine what measures are appropriate to implement for their authorised persons.

## Regulatory principles

The following regulatory principles from the Legal Services Act 2007 are relevant to the supervision of conveyancing and probate:

- a. Protecting and promoting the public interest;
- b. Supporting the constitutional principle of the rule of law;
- c. Protecting and promoting the interests of consumers;
- d. Encouraging an independent, strong, diverse and effective legal profession; and
- e. Promoting and maintaining adherence to the professional principles.

The relevant professional principles are:

- (a) that authorised persons should act with independence and integrity,
- (b) that authorised persons should maintain proper standards of work,
- (c) that authorised persons should act in the best interests of their clients,
- (d) that the affairs of clients should be kept confidential.

In carrying out this review, the Faculty Office should have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent, and targeted only at cases in which action is needed, see section 3(3)(a) of the Act.

## Proposals for discussion

The following are possible proposals which could be taken further to enhance supervision for new notaries who undertake conveyancing and/or probate:

1. Require the notary to be personally supervised for the period of post-qualification “probation”, ie for their day to day work to be supervised. This need not be by another notary. The supervisor could be a solicitor, legal executive or licenced conveyancer. To be financially sustainable for the supervisor, this would mean that only notaries who work in firms could comply thus potentially restricting access to these areas of reserved legal activity.
2. Apply the personal supervision in 1 above unless the notary has already passed through a supervision route in another branch of the legal profession that the Faculty Office recognises as suitably robust. This would allow newly qualified notaries who have been eg conveyancing solicitors to migrate into doing the work as a notary.



3. Maintain the current arrangements for supervision by an experienced notarial supervisor on a periodic basis but adjust the framework for supervision and make it more prescriptive. This would involve creating new checklists for the supervisor that are conveyancing and/or probate specific. The interim and final report by the supervisor would confirm satisfaction of this framework. This would doubtlessly make the job of the supervisor more onerous and we note at this stage that there is a shortage of willing supervisors. Most supervisors act as such for the good of the profession rather than for the remuneration, although the remuneration could be increased.
4. Require the notary to achieve a kite mark recognised by the conveyancing and/or probate industry, eg the Conveyancing Quality Scheme.<sup>2</sup> This would help ensure that the notary was conforming with what is considered industry best practice. However, such kite marks and organisations are independent from regulators and the Faculty Office would be relying upon a third-party commercial organisation to determine what was an appropriate level of competency and what framework should apply. It would also restrict permission to practice in these areas to those who conformed to the kite mark requirements, thus effectively making authorisation subject to being a member of a separate fee-paying organisation.
5. Rather than require a notary to achieve a kite mark as described in 4 above, encourage it either by way of advocating the benefits of it, or by creating additional regulatory burdens for those who don't join. Again, this still comes across the problem of relying upon a third-party private organisation to moderate standards.
6. Institute a Faculty Office own-brand kite system but for a profession of notaries that amount to more than several dozen who practice in these areas, such a project would be disproportionately expensive.
7. Subject all notaries who have just completed their "probation" in conveyancing and/or probate to an automatic inspection.
8. Generally to increase the number of inspections. At the moment the Faculty Office is reliant on one notary inspector who has expertise in probate and conveyancing and failed to recruit another notary inspector with specialism in these areas at the last recruitment round. In order to fish in a bigger pool the requirement that inspectors need to be notaries could be disappplied

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<sup>2</sup> In October 2010 the Law Society launched this accreditation scheme for solicitors undertaking conveyancing. The aim of the Conveyancing Quality Scheme (CQS) is to provide assurance to consumers and clients that members meet CQS standards and increase quality standards. Entry is currently restricted to lawyers which are authorised and regulated by the Solicitors Regulation Authority (SRA). For estate administration, the best known equivalent is the Society of Trust and Estate Practitioners (STEP), founded in 1991 as the international professional body for advisers who specialise in inheritance and succession planning. It offers various levels of qualifications and accreditation and is open to notaries.

through a change in our rules so that for conveyancing and probate the Faculty Office could recruit from those who have expertise in those areas and not necessarily a notary.

9. Prolong the period of inspection beyond the two years (and three years for conveyancing and probate practitioners) but for that additional period the supervisor has a diminished supervisory role, generally to be there to provide support and advice to a more junior notary. At the English and Welsh Bar, many barristers have a career long professional relationship with their pupil master.

## Recommendations

Our recommendations are that:

1. In the absence of an evidence base that there is or is not a problem in the level of competence of notaries who are qualifying to do conveyancing and/or probate, consideration be given to what evidence could be collected (eg a survey of supervisory reports or inspection reports).
2. Launch a “call for evidence” requesting views from the profession, public and stakeholders about whether supervision of new notaries in conveyancing and probate is at the right level and is conducted in the best way.
3. We note that this review concerns the early years of a notary’s practice but that the themes and issues are also relevant for their entire practice and that regard should be had to the LSB’s Statement of policy on ongoing competence.
4. Consideration should be given to how other regulators are approaching the ongoing competence challenge and whether we might work together with or learn from them.

Ian Blaney

Deputy Registrar

June 2023

## Annex – literature review

Rosaline Sullivan, *Quality in legal services: a literature review*, November 2011, Legal Services Board.

Reviews the literature on quality in legal services. Quality in legal services has many aspects. The three most common dimensions of quality are:

- (a) technical competence
- (b) service competence
- (c) utility of advice – a service of quality “often overlooked” - do lawyers provide good, well-serviced legal advice that is useful to the consumer? (Mayson, 2010).

The review focuses on these types of quality, discussing the extent to which they can be quantified and the current level of quality of each. However, it notes that there was no identified or accepted benchmark for quality, in terms of what a high quality legal services product should look like. The LSB explored the treatment of dissatisfied clients of legal services in an online consumer survey in 2011. The research surveyed 1,275 people who had expressed dissatisfaction with the legal service they had received in the previous three years. While the most common cause of dissatisfaction was delays (43%), 15% attributed a perception of poor advice as the cause of their dissatisfaction (LSB, 2011). Mistakes made by the lawyer were cited by 38% of the sample, with the qualitative data providing examples such as a misspelt name on a will (LSB, 2011). Similar results were found in a previous survey of consumers who had used legal services in the last three years, where mistakes made were found to be the second highest cause of complaints (MoJ, 2010).

There is a review of quality mark schemes, including the Quality Assurance Scheme for Advocates, which was then in its infancy. The importance of quality marks has been questioned with research identifying that consumers often do not know what quality marks signify (European Commission Directorate-General for Health and Consumer Protection, 2005, DCA, 2005). A recent survey conducted by the Legal Services Consumer Panel of 1,277 general public respondents on the attitudes towards various professions and knowledge of the legal profession found that respondents were least likely to use quality marks to help them choose lawyers (5%). The general public were most likely to use quality marks for goods, such as toys and electrical equipment (26% and 31% respectively) (Consumer Panel, 2011). Consumers have been found, instead to look to see if solicitors had letters after their name to ensure lawyers possess the necessary qualifications (SRA, 2010).

The review concluded that consumers are commonly unable to judge the technical quality of advice, often judging advice as competent when it is in fact not. Consumers are more able to judge service quality, attributing good service to personable factors such as empathy, rather than technical ability to

undertake the work. While quality assurance principles are designed to ensure technical quality for consumers, consumers are often unaware of their existence.

*Legal Services Board: Conveyancing Review - Thematic review and recommendations relating to the regulation of conveyancing in England and Wales, December 2012*

This was a review of the regulation of conveyancing services in England and Wales, particularly around mortgage fraud. This found that although there are clear risks in conveyancing, there is evidence that the regulators and others are taking steps to reduce the risks for consumers. The review made a number of recommendations designed to help the regulators (and future regulators) shape their regulatory approach. Those were:

- The costs and benefits of holding client money need to be carefully assessed. The costs should include the costs of compensation arrangements (including contributions to a fund, the cost of maintaining and administering a fund and the opportunity cost of having a fund) and compliance with regulatory arrangements
- Alternatives to legal services providers holding client money should be explored
- Regulators should consider whether their client money rules are proportionate
- Regulators should develop a better understanding of the conveyancing services market(s) using the Oxera framework developed for the LSB and target their regulation accordingly
- Consideration should be given to the current training requirements, particularly ongoing professional development. Regulators should consider whether each provider has an appropriately trained and skilled workforce rather than if particular individuals have done a certain number of hours of training a year
- As new insurance products become available, regulators should keep under review whether the design of their professional indemnity insurance (PII) arrangements is optimal and
- Regulators should track and respond to new trends in the market and monitor changing risks for consumers and wider systemic risks.

It recounted that the SRA had identified five particular risks which it says arise from conveyancing. Those are:

- a. Conflicts of interest
- b. Referral arrangements
- c. Cost information
- d. Financial stability

e. Property related fraud and money laundering