



THE FACULTY OFFICE OF THE ARCHBISHOP OF CANTERBURY

NOTARIES

Assurance Policy 2023

(Risk Assessment and Supervision)

The Purpose

The purpose of this Assurance Policy is to identify the risks applicable to the regulation of the notarial profession and to set out the risk management tools which are in place to address those risks.

The Context

The number of Notaries entitled to practise in England and Wales as of 1 April 2023 was 738. (2022:722 and 2021:728).

Each year (on average) 30 individuals are admitted as Notaries. There has been a small but steady increase in the number of new entrants to the profession over recent years.

Notaries may undertake reserved legal services comprising:

- notarial activities
- reserved instrument activities (conveyancing)
- probate activities
- administration of oaths.

However, at present, only a small number undertake reserved instrument and probate activities under the authorisation of the Faculty Office (as opposed to doing this work in their capacity as a Solicitor, where dual qualified).

Notaries have been regulated by the Master of Faculties since 1533 with additional statutory powers conferred on the Master under section 57 the Courts and Legal Services Act 1990 (as amended). Under the Legal Services Act 2007, only notaries are legally entitled to undertake notarial activities in England and Wales. "Notary" or "notary public" is a protected title and only those qualified and registered can call themselves notaries. "Scrivener notaries" are notaries public with additional

qualifications and who have expertise in at least two foreign languages.

Notarial Activities are legal services which are almost exclusively provided to consumers who are engaged in transactions in jurisdictions outside of England and Wales. It might be said that Notaries are primarily concerned with the authentication and certification of signatures, authority and capacity relating to documents for use abroad such as powers of attorney. However, Notaries must be satisfied that their clients understand the nature and effect of the document which may not necessarily be written in English.

Traditionally a “rules based” regulatory regime, the Faculty Office has been moving towards an outcome focussed framework, but the Faculty Office has always regulated from a position of confidence in the professional and the ethical values which are embedded in the profession.

The Regulatory Objectives

The Legal Services Act 2007 sets out the regulatory objectives of every legal regulator:

- **Protecting and promoting the public interest**
- **Supporting the constitutional principles of the rule of law**
- **Improving access to justice**
- **Protecting and promoting the interests of consumers**
- **Promoting competition**
- **Encouraging an independent strong diverse and effective legal profession**
- **Increasing the public’s understanding of the citizens legal rights and duties**
- **Promoting and maintaining adherence to the professional principles**
- **(Promoting the prevention and detection of economic crime)**

The “better regulation principles” inform the approach:

- **Proportionality**
- **Accountability**
- **Consistency**
- **Targeted**
- **Transparency**

The Overall Approach

Notaries engage with the Faculty Office in two capacities:

- as individuals through the training and admission process and in meeting continuing professional development requirements.
- as practitioners (in a number of different practice models from sole practitioner to partnerships) through initial supervision and then the annual monitoring and inspection

programmes.

Each of these is subject to the oversight of the Faculty Office.

A small agile team at the Faculty Office is responsible for the regulation of notaries.

Regulatory functions are not carried out in separate departments and each member of the Executive will be part of the admission, regular engagement and (ultimately) disciplinary processes.

The Risk Model

The Faculty Office identifies the following primary risks:

- **Services undertaken for vulnerable (that is “novice”) clients. Notarial services are often “one off” purchases by individuals undertaking transactions overseas and particular trust is placed in the Notary.**
- **The risk associated with the holding of client money.**
- **The risk of enabling criminal activity.**

There are other risks caused by:

- **Internal factors** associated with governance and management.
- **Economic and external conditions and influences** which affect the way that the notary profession functions, particularly due to its cross-border role.

It is, of course, up to each individual notary and firm to identify and control the risks arising from their activities and to assure the regulator, through reporting and other mechanisms, that they have in place all appropriate safeguards and controls.

How the Faculty Office weighs these factors in its risk assessment is a matter of judgment of:

- **The potential harm to the client or the wider public.**
- **The ability of the notary to manage the risk posed.**

The risk assessment will be informed by:

- **The self-reporting processes which form part of annual practising certificate renewal and continuing professional education certification.**
- **The annual financial reporting requirements.**

- **The annual reports of the Inspectors which cover individual practices but also identify common themes.**
- **Information received from Government agencies.**

And Also

- First tier complaints reports from the notarial societies and complaints reports issued by the Legal Ombudsman.
- Contact with clients and the public.
- Disciplinary Cases.
- Information shared by and joint research and other projects undertaken with other legal regulators.
- Surveys and questionnaires of the whole of the profession, which provide up to date information on work being undertaken, profiles of firms and attitudes to regulation. Typically, responses to date have been c90%.
- Thematic reviews implemented by the Faculty Office as required by the Master of the Faculty and/or recommended by the Advisory Board.
- The Faculty Office's 2022 consumer survey which will be repeated in 2024.

Assurance in Practice

Notary (admission and development)

To qualify each notary must:

- pass or be exempted from academic examinations in a wide range legal subjects:
 - Public & Constitutional Law and (separately) EU law
 - Contract Law
 - Property Law and (separately) Conveyancing
 - Equity and Trust law and (separately) Wills, Probate and Administration
 - Law and Practice of Companies and Partnerships
- pass a professional practice examined course delivered by University College London over 2 years covering:
 - Roman Law as an Introduction to Modern Civil Law Systems: Year 1 – September to January
 - Private International Law: Year 1 – February to May
 - Notarial Practice: Year 2 – September to May

The applicant must also satisfy the Master of the Faculties that they are a fit and proper person to be admitted through the provision of:

- a Certificate of Fitness from a notary.
- a Certificate of Good Character from a professional person who has known the applicant for at least 5 years.

Additionally, as an excepted profession the Faculty Office is permitted to ask for and consider criminal convictions and cautions that are spent, but not filtered, as well as those which are unspent.

We have an online system for applying, considering and approving new admissions to the profession. This allows for a streamlining in the admissions process and improved accuracy and efficiency.

Newly admitted notaries must attend bespoke courses every year during the period of **supervised practice** (see below) including Notarial Practice and Professional Conduct. Other notaries may be directed to be subject to additional supervision following disciplinary proceedings.

Following completion of the period of supervised practice each individual notary is required to undertake continuing professional education (CPE) of a minimum of 6 hours in relation to notarial activities and (if they undertake these activities) an additional six hours for each of conveyancing and probate and to certify compliance annually to the Faculty Office. Evidence of having completed this CPE is required to be submitted as part of the renewal of Practising Certificate process. In the absence of this evidence a Practising Certificate will not be granted.

Notary (as practitioner)

The following assurance mechanisms are at the heart of client protection.

Supervision

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 2 years
- notaries undertaking conveyancing must be supervised for 3 years
- notaries undertaking probate activities must be supervised for 3 years

Visits by the Supervisor to the office of the newly admitted notary are to take place:

- within a month of admission
- for a second time within 12 months of the first visit
- (and if the notary is undertaking conveyancing or probate) within 12 months of the second visit.

On each occasion, the Supervisor will inspect the records and accounts of the newly admitted notary to ensure compliance with expected professional standards. Additionally, the supervised notary will visit the offices of the Supervisor at 6 monthly intervals.

A report of each visit is provided and kept on the register of each notary (and includes a record of advice and guidance given).

Inspection

The Faculty Office has powers of inspection of the premises, practices and records of notaries.

In addition to this general power, the Faculty Office has a programme of annual inspections. Each year the premises, records and practices of around 20 notaries are inspected by a senior notary. Where appropriate, individuals may be re-inspected to ensure compliance with the recommendations made.

In addition to the individual reports, the Inspectors issue an annual summary highlighting key themes identified during the inspections which is published on the Faculty Office's website.

Financial Reporting

The Notaries Accounts Rules require every notary who, in their capacity as a notary, holds or receives client money paid into client account to obtain an Accountant's Report, prepared by a qualified and practising accountant, relating to client's money so held or received and to submit the Accountant's Report with practising certificate renewal applications.

Enforcement

Where the complaint is about service provided by a notary then early resolution is usually sought through an informal process. The Faculty Office has published guidance on the complaints process. In general complaints against notaries requiring enforcement action fall into two main categories:

- Conduct complaints which are the more serious (and rarer) concerns that the notary may have acted in breach of the rules, illegally, or without a valid practising certificate.
- Concerns about service which become conduct complaints if, for example, the poor service is persistently bad or falls seriously below the standard to be expected of a notary.

Since 2017 the Faculty Office has taken enforcement action against a small number of notaries listed [here](#) of which two or three fall into the first category.

The constructive engagement of notaries with the Inspection Programme enables any matters of concern to be addressed pro-actively and effectively.

Similarly, the Faculty Office will seek to secure appropriate regulatory undertakings to resolve matters of concern but will take enforcement action if:

- **There is serious misconduct**
- **A risk to the public is identified which cannot be mitigated promptly and appropriately by working with the notary**
- **The notary in question does not engage constructively with the Faculty Office so that the matter cannot be addressed, and supervision and formal enforcement is required**

To support this process the Faculty Office has published [enforcement guidance](#).

Working with the Other Legal Regulators

In developing its assurance and supervision policy the Faculty Office has drawn considerably on the approach of other regulators.

The Master of the Faculties is a signatory to a Memorandum of Understanding to provide a framework for information sharing and a cohesive approach to assurance and supervision.

Transparency

The principle of transparency is at the heart of good regulation. Transparency enables accountability. Without transparency, the other better regulation principles of proportionality, consistency and a targeted approach cannot be measured.

For this reason, information on the website includes:

- A register of authorised notaries with details of any conditions imposed on their practice
- Complaints' data – disciplinary decisions of the Court of Faculties
- Guides for use of the profession and for consumers
- Some key performance indicators
- Papers and minutes for those involved in governance in the Faculty Office
- Guidelines on how the Faculty Office exercises its discretion in managing risk and enforcement action
- News bulletins which information relevant to the practice and governance of notaries
- Other relevant information

PART 2 Money Laundering and Terrorist Financing Risk Assessment

The threat of notaries carrying out money laundering or terrorist financing is assessed and combated as part of the Faculty Office's general risk assessment and assurance policy. Nonetheless due to the separate regulatory role of the Faculty Office as the Professional Body Anti Money Laundering ("AML") Supervisor, a discrete risk assessment for AML threats is maintained. The Faculty Office is subject to the OPBAS Regulations¹ and supervision by the Office for Professional Body Anti-Money Laundering Supervision ("OPBAS"). The statutory regulatory regime for AML is largely to be found within the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017. The Money Laundering Regulations 2017 were amended by the:

[Money Laundering and Terrorist Financing \(Amendment\) Regulations 2019](#)

[Money Laundering and Terrorist Financing \(Amendment\) \(EU Exit\) Regulations 2020](#)

[Money Laundering and Terrorist Financing \(Amendment\) Regulations 2022](#)

Our Single Point of Contact for AML queries is:

Neil Turpin (Chief Clerk) or
Mili Bhanji (Deputy Chief Clerk)
Email: faculty.office@1thesanctuary.com,
Tel: 020 7222 5381 or 0207 960 7126

According to the National Risk Assessment² notarial work is assessed as low risk for money laundering and terrorist financing. It is also our assessment that notarial work is low risk as the core work of a notary such as the taking of affidavits and declarations, protests, translating, certifying the execution of documents and authentication work in general does not involve or amount to a regulated activity within money laundering and terrorist financing terms and will not require the handling of client monies. This is backed up by the very small number of reports made to the National Crime Agency³.

That said, certain notarial work such as preparing a power of attorney over foreign property could form part of an attempt to conceal the proceeds of crime or engage in some other money laundering activity. We, therefore, expect notaries to consider the risk profile of their work on a case-by-case basis.

¹ The Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017

² *National risk assessment of money laundering and terrorist financing 2020*, Home Office and HM Treasury

³ It is also worth identifying that due to the nature of a notary's work – normally verifying documents – a notary intending to commit a crime is more likely to be creating an instrument of fraud rather than a handling of proceeds of crime - and in which case a referral would be made to the anti-fraud authorities. Again, however, we are not aware of incidences of fraud, aside those which have been perpetrated by non-notaries seeking to pass off their forgeries as genuine notarial acts.

The areas of a notary's work considered higher risk includes:

In conveyancing (when acting as a notary)

The 2020 National Risk Assessment states that "we continue to consider conveyancing services related to both residential and commercial properties at high risk of abuse for money laundering due to the high value and large volume of transactions. The risk is significantly higher when LSPs fail to comply with their obligations under the MLRs or do not fully understand and mitigate the risks associated with the service"

Where the notary holds client monies

The 2020 National Risk Assessment states that "The NRA 2017 found that client accounts are at risk of being exploited by criminals to move illicit funds to third parties. We consider this continues to be a risk as the use of client accounts is attractive because it breaks the audit trail, facilitating the laundering of funds. "

In company formation and trust services

The 2020 National Risk Assessment states that "The creation of trusts and companies on behalf of clients is assessed to be place the legal service at greatest risk of exploitation. Investigations by law enforcement often feature trusts and companies being used to facilitate high-end money laundering by hiding beneficial ownership, undermining due diligence checks, and frustrating law enforcement investigations. This is often used in conjunction with other services (in particular the purchase of Property...) to facilitate money laundering."

In providing tax advice

The 2020 National Risk Assessment addresses tax advice directly: "The provision of tax advice and acting as an agent with HMRC on behalf of clients provides several means to launder money and poses a high risk".

In providing probate and estate administration

Notaries conducting probate are also likely to do estate administration and hold client accounts and therefore have been included as a higher risk indicator. At the other end of the scale, the 2020 NRA confirms that the Legal Sector Affinity Group Guidance (LSAG), which is approved by Treasury, confirms that the Money Laundering Regulations do not apply to work undertaken by a notary acting solely as a public certifying officer where they have no substantive role in the underlying transaction.

Client Risk

There are a number of different factors that increase the risk of money laundering presented by clients. Warning signs include clients that want anonymity, clients acting outside their usual pattern of transactions, clients whose identity is difficult to verify or who are evasive about providing proof of identity. Clients who are evasive about proving their identity or who produce non-standard documentation might be considered higher risk, if there is no good explanation for this. The risk posed by the client also extends to the risk posed by the beneficial owner, if applicable. In particular,

the Money Laundering Regulations recognise the category of politically exposed persons and their close families, and their associates as requiring identification and enhanced due diligence. The nature of the client's business might increase risk if it is cash intensive and therefore presents a greater risk of disguising illegal funds within legitimate payments. The client's sector or area of work is also a significant risk factor, in particular if they are associated with those with a higher risk of corruption or being used for money laundering, for example those from the arms trade or casinos. The Faculty Office has identified the following types of clients that pose a higher risk of notaries being used for the purpose of anonymity and money laundering:

- Those that are high net worth individuals
- Politically exposed persons (PEPS) or linked to PEPS
- Corporate clients with complex structures
- Those trading in dual use goods
- Linked to high-risk or sanctioned jurisdictions
- Having a cash intensive business
- On the sanctions list or involved in a sanctioned trade

Conversely, non-trading, local clients with no links to politically exposed individuals or high- risk jurisdictions are unlikely to be using criminal funds or exploiting notaries to launder dirty money and are therefore considered lower risk.

Complaints, compliance, and intelligence

The Faculty Office will consider the nature of complaints and compliance records and feed relevant information into its risk assessment. For example, if the notary has been sanctioned for AML breaches by another Professional Body Supervisor or there is evidence of an ongoing criminal investigation then there is high likelihood of the illicit transactions being completed through the notary's own practice increases. Where there are a number of minor issues, but remedial action is unnecessarily protracted and the notaries attitude to compliance is poor then the risk increases due to the limited assurances received.

Geographical

According to the Financial Action Task Force (FATF) "Criminals can circumvent weak AML/CFT controls to successfully launder money or to move assets to finance terrorism through the financial system". Therefore, the likelihood of the source of funds originating from criminal activity increases where the client or transaction is linked to a high-risk jurisdiction as specified in Schedule 3ZA of the Money Laundering Regulations or countries which have not implemented FATF recommendations. The list compiled by Transparency International of countries prone to corruption is also relevant as is the list compiled by the Office of Financial Sanctions of countries subject to financial sanctions. Notarial acts destined for or made in connection with countries with a low level of regulation in anti-money laundering, anti- bribery or which are subject to sanctions or are prone to terrorism or corruption are likely to be higher risk.

The Faculty Office has therefore identified the following geographical risk indicators:

- Notarial acts destined for or linked to sanctioned or high-risk jurisdiction
- High risk services linked to high-risk jurisdiction
- Preparation of Power of Attorney for use outside the UK
- Dealing with transfer of property overseas
- Preparation of documents for overseas company

Delivery channel

The way in which services provided by notaries are delivered can increase or reduce risk. Transparency tends to reduce risk and complexity tends to increase it. Notarial work involves meeting clients in person and verifying identity. Not meeting a client increases the risk of identity fraud and may help facilitate anonymity. Although this is less likely to be an issue in pure notarial work, it is a risk in other work. Additionally, having a good understanding of the client may not fully help take away risk where there is a beneficial owner whose identity has not been established. As such, services provided non face to face or through an intermediary increases the likelihood of concealing the true identity of the beneficial owner and risk is considered higher under these circumstances.

Other considerations include the use of virtual assets and the growth in cryptocurrency which presents additional risks. In its Countering Ransomware Report, FATF states that:

“The global scale of financial flows related to ransomware attacks has grown dramatically in recent years. Industry estimates report up to a fourfold increase in ransomware payments in 2020 and 2021, compared to 2019. New techniques have increased the profitability of attacks and the likelihood of success. These include the targeting of large, high-value entities as well as ransomware as a service, where ransomware criminals sell user-friendly software kits to affiliates. The consequences from ransomware attacks can be dire and pose national security threats, including damaging and disrupting critical infrastructure and services.”

Accordingly, weak storage and back up methods may present additional money laundering risks where criminals target legal professionals with ransomware.

Size and type of practice

Where a notary is assessed as providing riskier services, the size of the practice and the controls in place are likely to impact the extent or severity of the harm should money laundering take place. For example, where a notary offers services that favour anonymity, the risk of that notary being exploited is linked to the actual number of clients in this category and the number of employees and controls in place to mitigate risk associated with the service provided.

Substantive role in the underlying transaction

Where a notary is acting solely as a public certifying officer and has no substantive role in the underlying transaction, the impact of harm is low even if there are a large number of trading clients located abroad. However, notaries that have a substantive involvement in the underlying transaction may stray into high-risk activities without applying the necessary controls. Accordingly, notaries that frequently have substantive involvement in the underlying transaction are considered higher risk.

Assurance

In addition to the generic forms of supervision and regulation set out in Part 1 the Faculty Office as the Professional Body Supervisor has established the following checks and activities:

- **Disclosure and Barring Checks**
all notaries are required to produce a clean Basic Certificate from the Disclosure and Barring Service to demonstrate that they have a clean criminal record and must renew this at least every five years
- **Supervision of beneficial owners and managers**
In accordance with Regulation 26 of The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, all Beneficial Owners, Officers or Managers of a notarial firm, or a sole practitioner notary, are required to be approved by the Faculty Office
- **Training**
AML Risk assessment is part of the training provided on the vocational training required prior to being admitted as a notary at the course provided by University College London. It is both a discrete and a pervasive topic. It is also a component of mandatory continuing professional education.
- **Awareness**
All notaries are required by our professional rules to have regard to the AML guidance in force, principally the HM Treasury approved legal sector side [Guidance](#) and to confirm their awareness of it. This is buttressed by the Code of Practice.
- **Information gathering**
Notaries are asked relevant fit and proper and AML practice questions in their practising certificate application.
- **Inspection**
Inspection of AML now forms a discrete part of the checklist that Inspectors use when carrying out inspections on notaries. In 2019 we aligned the inspectorial regime (for fully fledged notaries) with the post-supervision regime (which is for notaries who have just qualified).
- **Whistleblowing policy**
This is in [place](#) and signposted on our website to encourage those not in management but aware of AML abuses to make a report.

In addition, the method used for assessing risk is intended to be fluid and reactive to new information and is continually being developed using a variety of information sources, including:

- UK National Risk Assessment
- Financial Action Task Force reports
- National Crime Agency reports
- Inspectors annual report containing a summary of their observations
- Risk assessments carried out by notaries for their own practices
- Accountant's reports
- Government agencies and other supervisory authorities
- Horizon scanning activities
- Feedback and queries from Notaries

The Faculty Office keeps under review the risks of money-laundering and terrorist financing within the notarial profession and will adjust its assurance policies accordingly.

Last updated: 20 December 2023