

## FACULTY OFFICE

### APPLICATION TO LEGAL SERVICES BOARD FOR APPROVAL OF PRACTISING FEES 2014/15

#### Introduction

On behalf of the Master of the Faculties ('the Master') we are making the above application under section 51 of the Legal Services Act 2007 ('LSA 2007') and the Practising Fee Rules 2009 made by the Legal Services Board ('LSB') under that Act.

#### Background

Notaries are required to apply for a certificate to practise from 1st November to 31st October in the following year. Following approval by the LSB, the Master has made new rules governing the issue of a practising certificate to a notary (Notaries (Practising Certificates) Rules 2012) which came into force on 1<sup>st</sup> October 2013. The Rules set out a clear timetable for applying to renew a practising certificate and make it clear that it is both an offence under S.14 of the LSA 2007 and Notarial Misconduct under the Notaries (Conduct and Discipline) Rules 2011 to practise otherwise than in possession of a current valid practising certificate. A fee is required to be paid for the practising certificate, and a contribution must be paid to the Faculty Office Contingency Fund at the same time. The level of the fee and contribution is determined from time to time by the Master. If a notary applies for a practising certificate part-way through a practising year he/she must pay the full amount which was due on 1st November of that period.

#### Proposals

- In the practising year 1st November 2013 - 31st October 2014 notaries paid the following fee and contribution:-

Practising certificate - £450  
Contribution to Contingency Fund - £40

- In the practising year 1st November 2014 - 31st October 2015 the Master intends to set the following fee and contribution:-

Practising certificate - £450 (no increase)  
Contribution to Contingency Fund - £80 (an increase of £40)

#### Permitted purposes

Rule 5 of the Practising Fee Rules requires that monies raised through practising fees must not be applied for any purpose other than one or more of the permitted purposes. The Faculty Office has never had any representative functions. The profession is instead served by two representative societies, the Society of Scrivener Notaries and The Notaries Society. The distinction between these functions is clarified in the statement of compliance with the LSB Internal Governance Rules 2009 made by the Master. As such, all Faculty Office revenue from notarial practising fees is expended on the permitted purposes, and almost entirely on the regulation and accreditation of notaries. The Faculty Office expenditure for the financial years 2012 and 2013 are

attached and itemise the purposes to which Faculty Office revenue has been applied (annex 2).

The items included in the 2013 expenditure reflect the nature of the expenditure which is likely to be made in 2014 save as outlined below.

#### Reasons for proposed fee and contribution

The Faculty Office operates a calendar year accounting period. The 2014 budget is also attached (annex 1). As the practising year does not coincide with either the LSB/OLC financial levy year or the Faculty Office accounting year the budget reflects that fees will be collected from both practising years. The budget relies on the assumption that the number of notaries reapplying for a notarial practising certificate will be slightly up on last year. This information is derived from the numbers of individuals known to have passed the Notarial Practice course this summer and entitled to apply for admission as notaries, and from appointments and retirements in 2013.

The Master was pleased to note that the charges levied by the LSB and the Office for Legal Complaints (“OLC”) have reduced slightly over the last couple of years in real terms and hopes that this trend will continue.

In accordance with the commitments set out in the Developing Regulatory Standards return and taking account of criticisms levelled at a perceived “reactive” approach to regulation, the Master is committed to two significant initiatives to address our approach, namely the introduction of a regime of inspections of notarial practices and a complete revision and upgrade of the Faculty Office website. It is anticipated that the inspection regime will add an additional £20,000 annually to the Faculty Office expenditure. The upgrade of the website resulted in a one-off expense in last year’s budget of approximately £9,000.

However, given the anticipated slight increase in practising notaries we are pleased that we have been able to maintain the practising fee at last year’s level of £450.00.

The 2013 accounts for the Faculty Office Contingency Fund are attached (annex 3). For several years claims on the Contingency Fund have been low. A significant claim was made in 2011 in relation to a disciplinary case which was properly brought but in respect of which the notary was not found to have committed Notarial Misconduct and the costs of which were borne by the Contingency Fund. A further small claim was made in 2012 to cover the costs of two investigations into allegations of Notarial Misconduct which did not give rise to proceedings in the Court of Faculties. However, this year has seen a particularly complex and expensive case which has resulted in a claim of £73,059.65 on the Contingency Fund notwithstanding that the complaint was, in large part, proven and the Notary ordered to pay a substantial proportion of the costs. [As at the date of this application, however, these remain outstanding.] This is the first time we have had a case with costs of anything approaching this magnitude and it is our hope that such cases will be extremely rare.

However, the consequence of this case is that the balance of £93,698.00 shown in the accounts at 31 December 2013 has been reduced, with other expenses, to a little over £11,000.00 now. The Master does not think the fund can be viable without an input at least to replace the money spent which an £80.00 contribution would assist with, although he is of the opinion that a similar amount may have to be requested again in

2015/16. This will provide for extraordinary expenditure on discipline related matters from time to time and it would be our hope to be able to reduce this contribution in the following years. Both Societies are fully aware of the financial situation of the contingency fund.

We are also exploring ways of ensuring that costs in future disciplinary cases are kept to more realistic levels whilst maintaining a process that is fair and accountable both to complainants and the profession.

#### Form of consultation with the profession

The Faculty Office has consulted with the profession by formally writing to the secretaries of the two representative societies, the Society of Scrivener Notaries and the Notaries Society which together represent nearly 97% of the practising members of the profession. The Joint Registrars attended a meeting of the Notaries Society Council in April to which they submitted a report including the practising certificate fee proposal for the coming year. In turn the secretaries are able to consult their members and report back to the Faculty Office. The representative societies are provided with the accounts for the previous financial year, the attached budget (annex 1) and a note of how the level of the fees has been determined.

Whilst the Master would have preferred to have maintained both the practising certificate fee and the contingency fund contribution at last year's level, for the reasons outlined above this has not been possible as regard the contingency fund. The profession understands the need for a robust and proportionate disciplinary process and the stated aim of reaching and maintaining an appropriate level of Contingency Fund is not disputed.

#### Reasons for maintaining a fixed fee

As in previous years, we have opted to retain a fixed practising certificate fee.

As we indicated last year, we sought additional data from the profession as part of last year's renewal exercise which included a question relating to gross fee-income across the profession; this confirmed that there is a significant degree of diversity of income between those whose principal or sole income is derived from their notarial practice and those for whom it is very much a "bolt-on" to their solicitor's practice. The notary's geographical location also feeds into this diversity with those in the larger commercial centres generally having a higher income than those serving rural communities.

Notwithstanding this diversity, we are not yet persuaded that there is any practical alternative system which could be introduced which would be both fair and acceptable to the profession whilst at the same time not being a disproportionately burdensome exercise to try to calibrate notarial fees on some form of 'means-tested' basis. Options in this regard will continue to be explored in consultation with the profession but we are not bringing forward formal proposals at this stage.

#### Diversity impact

Although increases in the fees charged will inevitably be unwelcome, we do not consider that the level of the fees will have an adverse impact on the diversity of the profession or those seeking to enter the profession. Additionally, without a variable

fee (which remains discounted for the reasons above) it would not be possible at this time to effect a system which is any fairer than requiring a single fee for each notary.

Contact information

Further information relating to this application is available from:-

The Joint Registrars, The Faculty Office, 1 The Sanctuary, Westminster, London, SW1P 3JT

email. [faculty.office@1thesanctuary.com](mailto:faculty.office@1thesanctuary.com)

telephone. 020 7222 5381 (please ask to speak to Neil Turpin, Clerk)

The image shows two handwritten signatures in black ink. The signature on the left is 'P.F.B. Beesley' and the signature on the right is 'H.J. Dellar'. Both are written in a cursive, flowing style.

P.F.B.BEESLEY  
JOINT REGISTRAR

H.J.DELLAR  
JOINT REGISTRAR

6 August 2014

## ANNEX 1

### FACULTY OFFICE NOTARIAL BUDGET YEAR ENDED 31 DECEMBER 2014

NOTARIES	£	£
<b>Income:</b>		
8 certificates @ £450 (balance 2013/14)	3,600	
800 certificates @ £450	360,000	
Appointments (40 @ £575)	23,000	
Overseas Appointments (10 @ £625)	6,250	
Jersey Exam Fees	1,500	
Notarial qualification information packs	2,600	
Certificates of Exemption (75 @ £100)	7,500	404,450
<b>Less Expenditure:</b>		
Management Charge	301,800	
Direct Expenditure	75,200	
Legal Services Board fee 2013/14	25,811	402,811
<b>Projected Notaries Surplus</b>		<b>£1,639</b>

#### SUMMARY OF NOTARIAL SURPLUS/SHORTFALLS 2009-2013

b/f from 2009	2010	2011	2012	2013	Retained Surplus/Shortfall in 2013 Accounts
-£20,054	£2,412	£28,260	-£3,534	£20,119*	<b>£27,203*</b>

\*Although the accumulated surplus at 31/12/2013 stands at £27,203, £15,000 of that is a fund to pay for the inspections, so that the accumulated surplus of unrestricted funds stands at £12,203.

## ANNEX 2

### FACULTY OFFICE

#### NOTARIAL FEES AND EXPENSES

YEAR ENDED 31 DECEMBER 2013

	2013		2012	
	£	£	£	£
Notarial and Practising				
Certificates Fees		395,295		367,555
Notarial Admission Fees		14,200		6,150
		<u>409,495</u>		<u>373,705</u>
LESS:				
Expenditure – Indirect				
Registrar's Fees	12,736		11,413	
Rent and rates	32,899		33,219	
Light and heat	2,025		2,661	
Stationery & Copying	5,187		5,548	
Postage	2,325		2,324	
Telephone	2,365		2,611	
Repairs and maintenance	33,871		11,877	
Insurance	3,006		3,063	
Sundries	6,724		9,468	
Cleaning	3,191		3,153	
Catering	793		1,498	
Irrecoverable VAT	21,025		17,367	
	<u>126,147</u>		<u>104,202</u>	
Expenditure - Direct				
Salaries & N.I. (jointly employed staff)	194,570		188,663	
Entertaining	3,707		3,402	
Travel	174		416	
Crown Office fees	340		540	
Accountancy	2,688		2,186	
Printing and stationery	6,366		9,149	
Counsel's Opinion	0		9,300	
Judicial Review Insurance Costs	0		1,000	
Website	4,846		0	
Sundries	39		0	
Recruitment Faculty Office Clerk	2,663		0	
Admission Expenses	2,449		2,124	
Legal Services Board Levy	25,976		38,699	
Insurance	8,058		7,187	
	<u>251,876</u>		<u>262,666</u>	
		<u>(378,023)</u>		<u>(366,868)</u>
		31,472		6,837
Retainer due to the Master of Faculties		<u>(11,353)</u>		<u>(10,371)</u>
Surplus/(Shortfall)		<u>£20,119</u>		<u>(£3,534)</u>

Although the accumulated surplus at 31/12/2013 stands at £27,203, £15,000 of that is a fund to pay for the inspections, so that the accumulated surplus of unrestricted funds stands at £12,203.

## ANNEX 3

### FACULTY OFFICE - CONTINGENCY FUND

#### INCOME ACCOUNT

YEAR ENDED 31 DECEMBER 2013

	£	2013	£	£	2012	£
<b>CONTRIBUTION FROM NOTARIAL PRACTISING CERTS</b>			40,560			27,380
Bank deposit interest			12			23
Less:						
Expenses for Disciplinary Hearings	960			15,495		
Provision for income tax	2			5		
Fees re Income tax payment	300			300		
			(1,263)			(15,800)
Retained surplus for the year			<u>£39,310</u>			<u>£11,603</u>

#### BALANCE SHEET

AS AT 31 DECEMBER 2013

	£	2013	£	£	2012	£
<b>ASSETS</b>						
Deposit and current accounts	22,345			27,787		
Sundry Debtors	71,655			26,906		
<b>LESS LIABILITIES</b>			94,000			54,693
Sundry creditors	300			300		
Income tax payable	2			5		
<b>NET CURRENT ASSETS</b>			(302)			(305)
			<u>£93,698</u>			<u>£54,388</u>
<b>REPRESENTED BY:</b>						
Contingency Fund Capital Account:						
Balance as at 1 January	54,388			42,785		
Retained surplus for year	39,310			11,603		
Balance at 31 December			<u>£93,698</u>			<u>£54,388</u>

#### ACCOUNTANTS' REPORT

We have prepared, without carrying out an audit, the above balance sheet and accounts from the Registrar's records and from information and explanations supplied to us.



haysmacintyre  
Chartered Accountants  
26 Red Lion Square  
London WC1R 4AG

Date: 5/8/14