

FACULTY OFFICE  
OF THE  
ARCHBISHOP OF CANTERBURY

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## MASTER OF THE FACULTIES APPLICATION TO LEGAL SERVICES BOARD FOR APPROVAL OF PRACTISING FEES 2017/18

### Introduction

1. 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 2016 made by the Legal Services Board ('LSB') under that Act.

### Background

2. 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 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

3. In the practising year 1st November 2016 - 31st October 2017 notaries paid the following fee and contribution:-

Practising certificate - £490  
Contribution to Contingency Fund - £20

4. In the practising year 1st November 2017 - 31st October 2018 the Master intends to set the following fee and contribution:-

Practising certificate - £520 (an increase of £30)  
Contribution to Contingency Fund - £30 (an increase of £10)

#### Permitted purposes

5. 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 2015 and 2016<sup>1</sup> are attached and itemise the purposes to which Faculty Office revenue has been applied (annex 1).

#### Reasons for proposed fee and contribution

6. The Faculty Office has historically operated a calendar year accounting period. However, the accounting year commencing 1 January 2016 was lengthened to a 15 month period to facilitate a change of year end to 31<sup>st</sup> March. From now onwards, the Faculty Office accounting period will run from 1<sup>st</sup> April to 31<sup>st</sup> March. The Faculty Office accounts have previously been prepared on a cash basis rather than an accruals basis and the change in accounting practice has highlighted that the regulatory arm of the Faculty Office has operated using 'borrowed' funding from its other sphere of operations pending receipt of the practising certificate income towards the end of the financial year. The current 'borrowing' requirement is around £208,000 and the Master is keen that this figure be reduced year-on-year in order that we can reach the point where the regulatory arm operates without any borrowing requirement.
7. The budgets for the years ending 31 March 2018, 2019 and 2020 are also attached (annex 2) which provide for a projected surplus for each of these three years. If the budgets hold up, the projected accumulated deficit as at 31st March 2020 will be £125,356. It will be appreciated that a lot of assumptions have been made in preparing these budgets, particularly around projected numbers of notaries and potential expenditure but we have tried to be as accurate as possible and also to err on the side of caution but only time will tell if our projections are correct.
8. 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.

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<sup>1</sup> The accounting year 2016 covered a 15 month period to 31 March 2017 to facilitate a change of accounting year end

9. However, there continues to be significant pressure on the budget including the likely significant extra spend on the Legal Choices Website in order that it is enabled to fulfil the role which the Competition and Markets Authority ("CMA") Market Study recommendations are seeking. Additional expenses will also be incurred if a single 'legal professionals' database is to be established across the regulators as envisaged by the CMA recommendations. The final substantial additional external expenditure (although this has not been calculated (or at least not disclosed)) relates to the creation of Office for Professional Body Anti-Money Laundering Supervision as part of the Financial Conduct Authority to fulfil the Government's obligations under the new Money Laundering directive. This is to be funded by a levy on the Money Laundering Supervisors, of which the Faculty Office is the one covering the notarial profession.
10. In addition to the external costs which are largely out of our control, we are also budgeting for an additional temporary consultant to bring the Master's entity regulation proposals to fruition. This is likely to be a nine-month project with the bulk of the expenses being met from the current year's budget. The extent to which the Faculty Office income stream might ultimately be affected by entity regulation is, at present, wholly uncertain but should become clearer as the project develops
11. In order to cover these substantial additional costs, the Master intends to increase the practising fee by £30.00 to £520.00. You will note that, at this level, the budgeted surplus for the current year is a little under £21,800.00 for the year. The budgets for the following two years do not, currently, envisage a need to further increase the practising certificate fee whilst continuing to make a year-on-year surplus with a view to reducing the accrued deficit.
12. The 2016 accounts for the Faculty Office Contingency Fund are attached (annex 3). The Contingency Fund year end has also been amended so that the 2016 accounts also cover a 15 month period to 31 March 2017. This fund exists to provide cover for costs arising from disciplinary cases which are otherwise not recoverable from the notaries concerned. For several years claims on the Contingency Fund were low. However, over the last three years there have been a small number of relatively low claims on the Fund and one very significant one. We now have new disciplinary rules in place and their related Costs Order which are intended to avoid a repeat of the very significant costs expenditure in the event that another major disciplinary case comes to the Court of Faculties.
13. Unfortunately, the contribution ordered to be paid by a notary as a result of a disciplinary hearing has been left largely unsettled and it seems unlikely that this sum will not be recovered without potentially costly debt recovery litigation. The debt is approximately £13,500 but the notary concerned is no longer working as such and given what was disclosed concerning his finances during the proceedings the likelihood of recovering the sum is low. The Master has therefore reluctantly decided that a £10.00 increase to £30.00 is necessary this year to recoup the loss and to refresh the fund to our aim of

around £100,000. In point of fact, this level of contribution was authorised by the LSB last year but only £20.00 per notary was ultimately collected.

#### Form of consultation with the profession

14. 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 Registrar attended a meeting of the Notaries Society Council in July to which he 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 budgets (annex 2) and an indication of how the level of the fees has been determined. We also provided the Core Metrics document (annex 4) in accordance with the costs transparency principles.

15. Additionally this year, these documents were emailed (annex 5) to the entire profession providing the opportunity to respond to the proposals via a SurveyMonkey questionnaire. The survey closed on 14<sup>th</sup> August and a summary of the responses is also included (annex 6). Whilst there are, of course, a small number of concerns expressed, the responses are overwhelmingly supportive of the proposals. In addition, we have had two 'offline' responses:

- *"these figures are extremely modest and I commend and admire the careful and economic administration which the Master exercises. Well done and keep it up!" – Notary, Sussex*
- *"I personally consider the increase to be reasonable and given the ICAEW intention to be a regulator in competition, all notaries need to put the Faculty Office in a more robust financial position if we are to remain independently regulated with a regulator who understands notarial practice." – Notary, Surrey*

16. Although the annual cost of authorisation to practise for the forthcoming practising certificate year has had to increase by £40.00 in total, it will be seen from the draft budgets that we hope to be able to maintain this for the ensuing two years provided that there are no extraordinary or unexpected increases in expenditure or significant change in the number of authorised persons.

#### Reasons for maintaining a fixed fee

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

In addition, given the small size of the profession, any apportioned fee system would result in a significantly more uncertain budgetary income calculation which would be likely to mean budgeting for a much larger surplus to ensure financial security; this would mean increased fees to the profession and, ultimately, to the consumer.

#### Diversity impact

18. 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 Registrar, 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, Senior Clerk)

A handwritten signature in black ink that reads "Howard Della". The signature is written in a cursive style with a large, prominent 'H' and 'D'.

H J DELLAR  
REGISTRAR

16 August 2017

## ANNEX 1

### FACULTY OFFICE NOTARIAL FEES AND EXPENSES FOR THE 15 MONTH PERIOD 1 JANUARY 2016 - 31 MARCH 2017

	15 Month Period 1 Jan 2016 to 31 Mar 2017		Restated 2015	
	£	£	£	£
Notarial and Practising Certificates Fees		452,671		354,450
Notarial Admission Fees :				
England & Wales admissions	14,663		15,237	
Overseas admissions	5,000		8,125	
Overseas Exam fees	4,200		-	
Notarial Packs	2,980		2,270	
Certificates of Exemption	9,000		8,000	
		<u>35,843</u>		<u>33,632</u>
		488,514		388,082
Expenditure – Indirect				
Registrar's Fees	26,548		18,364	
Rent and rates	46,535		37,359	
Light and heat	2,777		1,912	
Repairs and maintenance	13,279		12,951	
Insurance (Premises & Contents)	3,118		3,471	
Cleaning	4,325		3,347	
Stationery & Copying	5,462		4,471	
Postage	2,244		2,034	
Telephone	3,252		3,259	
Catering	1,631		1,117	
Sundries	7,719		6,669	
Irrecoverable VAT	23,379		18,991	
	<u>140,269</u>		<u>113,945</u>	
Expenditure - Direct				
Salaries & N.I. (jointly employed staff)	226,374		202,485	
Recovery of Staff Costs on complaints	-		(13,922)	
Regulatory Expenses	3,425		2,122	
Contribution to EJustice Portal from the Notaries' Society & The Scriveners	(4,490)		-	
Code of Practice expenses	10,356		3,513	
Inspections/Entity Regulation	11,454		11,002	
Qualifying & Advisory Board members' expenses	2,566		2,933	
Legal Services Board Levy	24,340		23,538	
Counsel's Opinion (Scottish Notaries)	-		600	
Crown Office fees	210		560	
Audit & Accountancy	4,051		2,344	
Insurance (Legal & Professional Fees indemnity)	8,565		9,095	
Entertaining	8,986		4,403	
Governance costs	909		-	
Travel & Accommodation	2,126		1,191	
Printing and stationery	6,898		6,159	
Website	729		218	
Sundries	415		-	
	<u>306,914</u>		<u>256,241</u>	
		<u>(447,183)</u>		<u>(370,186)</u>
Retainer due to the Master of Faculties		41,331 (14,948)		17,896 (11,676)
Surplus		<u>£26,383</u>		<u>£6,220</u>

ANNEX 2

FACULTY OFFICE  
NOTARIAL BUDGET  
YEAR ENDED 31 MARCH 2018

NOTARIES	£	£
<b>Income:</b>		
<b>Practising Certificates</b>		
6 certificates @ £490 (balance 2016/17)	2,940	
<b>2017/18 practising year:</b>		
Accrued income April-October 2017	222,664	
780 certificates @ £520	<u>169,000</u>	394,604
<b>Admission fees</b>		<u>34,225</u>
<b>Total Income</b>		<b>428,829</b>
<b>Less Expenditure:</b>		
Management Charge	286,111	
Direct Expenditure	101,200	
LSB/OLC levy fee	<u>19,731</u>	
<b>Total Expenditure</b>		<b><u>407,042</u></b>
<b>Projected Notaries Surplus 2017/18</b>		<b>£21,787</b>

FACULTY OFFICE  
NOTARIAL BUDGET  
YEAR ENDED 31 MARCH 2019

NOTARIES	£	£
<b>Income:</b>		
<b>Practising Certificates</b>		
Accrued income April-October 2018	236,600	
780 certificates @ £520	<u>169,000</u>	
		405,600
<b>Admission fees</b>		<u>44,100</u>
<b>Total Income</b>		<b>449,700</b>
<b>Less Expenditure:</b>		
Management Charge	283,800	
Direct Expenditure	113,500	
LSB/OLC levy fee	<u>20,000</u>	
<b>Total Expenditure</b>		<b><u>417,300</u></b>
<b>Projected Notaries Surplus 2017/18</b>		<b><u>£32,400</u></b>



FACULTY OFFICE  
NOTARIAL BUDGET  
YEAR ENDED 31 MARCH 2020

NOTARIES	£	£
<b>Income:</b>		
<b>Practising Certificates</b>		
Accrued income April-October 2019	236,600	
780 certificates @ £520	<u>169,000</u>	
		405,600
<b>Admission fees</b>		<u>44,100</u>
<b>Total Income</b>		<b>449,700</b>
<b>Less Expenditure:</b>		
Management Charge	286,500	
Direct Expenditure	114,000	
LSB/OLC levy fee	<u>20,000</u>	
<b>Total Expenditure</b>		<b><u>420,500</u></b>
<b>Projected Notaries Surplus 2017/18</b>		<b><u>£29,200</u></b>

### ANNEX 3

#### FACULTY OFFICE - CONTINGENCY FUND INCOME ACCOUNT FOR THE PERIOD ENDED 31 MARCH 2017

	2017	2015
	£	£
<b>CONTRIBUTION FROM NOTARIAL PRACTISING CERTS</b>	59,409	62,547
Bank deposit interest	17	23
Less:		
Expenses for Disciplinary Hearings	9,000	28,363
	<u>(9,000)</u>	<u>(28,363)</u>
Surplus for the period ended 31 March 2017	<u>£50,426</u>	<u>£34,207</u>
	<u><u>          </u></u>	<u><u>          </u></u>
<b>BALANCE SHEET AS AT 31 MARCH 2017</b>		
	2017	2015
	£	£
<b>ASSETS</b>		
Deposit and current accounts	37,900	36,463
Sundry Debtors	71,730	70,969
	<u>          </u>	<u>          </u>
	109,630	107,432
<b>LESS LIABILITIES</b>		
Sundry Creditors	9,000	
Accrued Income	9,345	52,734
	<u>          </u>	<u>          </u>
	(18,345)	(52,734)
<b>NET CURRENT ASSETS</b>	<u>£91,285</u>	<u>£54,698</u>
	<u><u>          </u></u>	<u><u>          </u></u>
<b>REPRESENTED BY:</b>		
Contingency Fund Capital Account		
Balance as at 1 January 2016	54,698	20,491
Surplus for year	36,587	34,207
	<u>          </u>	<u>          </u>
Balance as at 31 March 2017	<u>£91,285</u>	<u>£54,698</u>
	<u><u>          </u></u>	<u><u>          </u></u>

## ANNEX 4

### FACULTY OFFICE OF THE ARCHBISHOP OF CANTERBURY NOTARIES

#### Core Metrics for the 15 month period ended 31st March 2017

##### Notaries:

The number of Notaries on the Roll as at 1 April 2017 was 775 (2016: 784).

##### Entities:

There are currently no entities regulated by the Faculty Office

##### Change of Year End

The accounting year end has been changed from 31 December to 31 March. This coincides with the Legal Services Board year end. The latest set of accounts cover the 15 month period ended 31 March 2017.

##### Total Income

15 Month Period ended 31 March 2017: £488,514 (12 months ended 31/12/2015: £388,082)

The Faculty Office collects practising certificate fees directly from the Notaries.

The practising certificate fees are the main source of income (2017: £452,671 2015: £354,450). The balance of the income is derived from Notarial Admission Fees.

This income does not include the contributions to the Contingency Fund amounting to £59,409 for the 15 month period to 31 March 2017 (2015: £62,547). This income is included in the Contingency Fund accounts and is used to build a reserve to cover the cost of any complaints.

Practising certificate fees are retained by the Faculty Office in their entirety. Membership fees are collected by the representative bodies separately.

##### Total Expenditure

15 month period ended 31 March 2017: £462,131 (12 months ended 31/12/2015: £381,862)

##### Staff Count

As at 31 March 2017: 3.5 full time equivalent (2015: 3.5)

##### Staff costs

15 month period ended 31 March 2017: £252,922 (12 months ended 31/12/2015: £206,927)

##### Remuneration

No member of any Faculty Office Board is remunerated although expenses are reimbursed.

The Master of Faculties receives an annual honorarium of £22,000 (of which the Notaries bear 50%).

##### Reserves

As at 31 March 2017, there was a deficit of £208,743 (31/12/15: £235,126). The deficit has arisen from a change to accounting policy as described below.

## Accounting Policy

Income in the accounts for the 15 months ended 31 March 2017 has been recognised on the accruals basis. In prior years, the accounts have been drawn up on a cash basis with the result that practically the entire income arising from the practising certificates for any practising year was included in the accounting year e.g. the income for the practising year 2015/16 was included in the 2015 accounts.

The retained surplus for the Notaries in the 2015 accounts was £56,249 (of which £24k was earmarked for Inspections). As a result of the change to the accounting policy, practising certificate income for the period January - October 2015 previously included in the 2014 accounts has been deferred to the 2015 accounts and likewise the income for the period January-October 2016 previously included in the 2015 accounts has been deferred to the 15 month period ended 31/3/17. A prior year adjustment has been made which has resulted in a deficit as at 31/12/2015 of £235,126, as detailed in the following table:

<b>Prior Year Adjustment:</b>		
<b>Balance Sheet</b>	<b>2014</b>	<b>2015</b>
Retained surplus c/f as previously stated	£48,529	£56,249
Deferred Income Adjustment	(£289,875)	(£291,375)
<b>Restated deficit carried forward</b>	<b>(£241,346)</b>	<b>(£235,126)</b>

Registrar  
14th July 2017

## ANNEX 5

### (Text of emailed consultation with the profession 31 July 2017)

Dear Notary,

I am writing on behalf of the Registrar with information concerning the proposed fee for renewing your practising certificate with effect from 1<sup>st</sup> November 2017. In order to provide you with the fullest possible picture of the costs of regulation, I attach:

- a copy of the Faculty Office account for the 15 month period from 1<sup>st</sup> January 2016 to 31<sup>st</sup> March 2017 with accompanying note;
- a copy of the Contingency Fund account for the same period; and
- a copy of the Core Metrics document which has been prepared to help explain some of the key elements of the financial profile of the Faculty Office.

The Faculty Office has historically operated a calendar year accounting period. However, the accounting year commencing 1 January 2016 was lengthened to a 15 month period to facilitate a change of year end to 31<sup>st</sup> March. From now onwards, the Faculty Office accounting period will run from 1<sup>st</sup> April to 31<sup>st</sup> March. The Faculty Office accounts have previously been prepared on a cash basis rather than an accruals basis and the change in accounting practice has highlighted the extent to which the regulatory arm of the Faculty Office has effectively operated using 'borrowed' funding from our other spheres of operation pending receipt of the practising certificate income towards the end of the financial year. The current 'borrowing' requirement is around £208,000 and the Master is keen that this figure be reduced year-on-year in order that we can reach the point where the regulatory arm operates without any borrowing requirement and, indeed, has its own reserves.

There are a number of factors which have made it necessary to propose and increase in the practising certificate fee for the forthcoming practising year. Principal among them are:

- the likely significant extra spend on the Legal Choices Website in order that it is enabled to fulfil the role which the Competition and Markets Authority ("CMA") Market Study recommendations are seeking. [ <http://www.legalchoices.org.uk/> ]. See also the Faculty Office Action Plan in response to the recommendations [ <http://www.facultyoffice.org.uk/wp-content/uploads/2017/06/Master-of-the-Faculties-CMA-Action-Plan-1.pdf> ]
- additional expenses will also be incurred to facilitate a single 'legal professionals' database across all the regulators as envisaged by the CMA recommendations. This might involve a similar level of expenditure as was required to link to the European E-Justice portal. [ [https://e-justice.europa.eu/content\\_find\\_a\\_notary-335-en.do](https://e-justice.europa.eu/content_find_a_notary-335-en.do) ]
- The final substantial additional expenditure (although this has not been calculated relates to the creation of the new Office for Professional Body Anti-Money Laundering Supervision (OPBAS) as part of the FCA to fulfil the Government's obligations under the new Money Laundering directive. This is to be funded by a levy on the Anti Money Laundering Supervisors, of which the Faculty Office is the one covering the notarial profession.

In order to cover these potentially substantial additional costs, the Master is proposing to increase the practising fee by £30.00 to £520.00. At this level, the budgeted surplus for the year to reduce the 'borrowing' requirement is a little under £21,800.00. Draft budgets have been prepared for the succeeding two financial years which do not, currently, envisage a need to further increase the practising certificate fee whilst continuing to make a year-on-year surplus with a view to reducing the borrowing.

As you will know, the Contingency Fund exists to provide cover for costs arising from disciplinary cases which are otherwise not recoverable from the notaries concerned. For several years claims on the Contingency Fund were low. However, over the last three years there have been a small number of relatively low claims on the Fund and one very significant one. We now have new disciplinary rules in place and their related Costs Order which are intended to avoid a repeat of the very significant costs expenditure in the event that another major disciplinary case comes to the Court of Faculties.

Unfortunately, the contribution ordered to be paid by a notary as a result of a disciplinary hearing has been left largely unsettled and it seems unlikely that this sum will be recovered without potentially costly debt recovery litigation. The Master has therefore reluctantly decided that a £10.00 increase to £30.00 is necessary this year to recoup the loss and to refresh the fund to our aim of around £100,000.

If you have any comment on the proposals, please do not respond to this email but rather complete the survey which can be found here:

<https://www.surveymonkey.co.uk/r/PractisingCertificateFeeConsultation>

With kind regards

**Neil Turpin**

Senior Clerk to the Registrar

Office of the Court of Faculties

## ANNEX 6 – Survey Responses