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Mr Chris Kenny
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LEGAL SERVICES

BOARD

5 December 2013

Dear Chris

Increasing flexibility in legal education and training

Thank you for your letter of 18th September and the Board's consultation document. We are grateful for the opportunity to comment on this important exercise and the views of the Faculty Office, endorsed by the Master, Charles George, are set out in what follows.

It is clear that in the consultation the proposals are set out in terms of general principles and it is likely that areas of controversy are more likely to be found in the small print when detail statutory guidance is issued at sometime in the future. The initial feeling of the Faculty Office from reading the document is that with respect to the profession of notary public the principles set out in the consultation paper to be the subject of guidance are already largely satisfied and that any guidance issued as a result of the consultation will largely confirm our present practice with respect to education and training rather than impose any radical changes.

We are aware, however, that regulators are charged to consider carefully the introduction of any new education and training regulations and are expected routinely to assess the effectiveness of the regulations that are in place (para. 50). We believe that this is already the case with respect to the education and training of notaries.

The keynote of these proposals is 'flexibility' to give effect to the LETR report and the framework of the statutory guidance is very much 'outcome' oriented. In other words, the proposed guidance is designed to furnish flexible pathways of education and training to secure the goal of a legal profession, or legal professions, that is competent in carrying out the activities of the profession to a sufficiently high standard and that there should be a sufficient number of persons able to deliver such services. In this respect, therefore, the guidance is very much consumer orientated.

The guidance sets out five outcomes:

- i. Education and training requirements that focus on the required knowledge of the individual;
- ii. That providers of the education and training should have the flexibility to determine how those outcomes are to be delivered;
- iii. The balance between what is required at entry to the profession and what might be achieved by ongoing training;
- iv. How education and training is to be balanced between the individual and entities;
- v. That there should be no direct or indirect restrictions on the numbers entering the profession.

Regulators are urged as a first step to ensure that regulation is targeted only where there is a need and a risk and where possible to simplify the existing framework of regulation if there is unnecessary duplication (para. 48). It is the opinion of the Faculty Office that the regulation of the profession of notary public does already satisfy this requirement. The current regulations deal with education and training (both initial and post-qualification), admission, and practice. These are contained in Rules issued by the Master from time to time and these may be changed were any additional regulation are thought to be necessary. The regulation of the profession is assigned to the Master who acts through the Faculty Office of the Archbishop of Canterbury, and it is our opinion that in the interests of simplicity and accessibility this should remain as the sole form of regulation of the profession of notary public, with one properly regulated and supervised route to qualification.

With respect to the proposed outcomes, the Paper asks the following questions:

1. Do you agree that these outcomes are the right ones?

In general we do believe that these are the right outcomes on which to concentrate. However, perhaps there should be some reflection in the outcomes of the need for education and training to equip a practitioner to move from a practice in which he or she is an employee or a partner to a practising which he or she is the sole practitioner.

2. Do you think that all of the outcomes should have equal priority?

We suggest that outcome (i) is of foremost importance followed by outcome (iii) in securing the proper standards of professional competence.

We comment on the individual outcomes are set out in the Paper, as below.

Education and training requirements focus on what an individual must know, understand and be able to do at the point of authorisation

It would seem that this outcome is designed to focus on the actual activities carried out by the individual in carrying out his or her professional duties rather than on some abstract role. Paragraph 55 acknowledges that notaries are regulated on the basis of the activities they

provide, including the requirements for education and training. What the authors may have in mind here is a sort of situation to which they refer in this paragraph where barristers may provide public access services subject to completing a training programme to this end, but such training would not be required where the practice of a barrister did not extend to such activities. In any event, it would appear that our education and training and regulations do satisfy this outcome.

Whilst we accept that there are certain universal requirements within the legal profession as a whole such as professional principles and ethics, and which should form part of the training of the notary. Nevertheless, the proposed guidance rightly indicates that the regulations of a profession with respect to education and training must reflect the particular needs of a profession with respect to the professional activities in which it is engaged. The activities of a notary are in many respects substantially different from those of a general English lawyer and this must be reflected in any training programme.

With respect to the regulation of students there is a recognition that where a student is under the supervision of a qualified person with respect to training further regulation may not be appropriate. However, unlike solicitors there is no training contract and student notaries are generally not involved in any practice involving the public. The exception to this may be in the training of scriveners within a scriveners' firm, and it is entirely appropriate that the firm itself rather than the regulator should exercise the necessary control and supervision of the student trainee. This would appear to be consistent with the proposed guidance.

We do not believe that there is very much that we can do as a regulator to facilitate easy movement between the professions as the profession of notary public is such a specialised one and involves skills and knowledge that is very different from those required of the normal English legal practitioner, hence the need for a separate qualification.

We are content that we do review our education and training requirements regularly so that they are in accord with modern practice. We are in a particularly strong position here as much of the practical training is carried out by practitioners in the field.

3. Do you agree with our guidance that a risk-based approach to education and training should focus more on what an individual must know, understand and be able to do at the point of authorisation?

It is agreed that the outcome of education and training should be that an individual is fully competent to carry out the activities of a notary at the point of authorisation. It may be suggested, however, that the knowledge and skill resulting from the education and training should be sufficiently comprehensive at the point of authorisation. This is particularly important in the case of notaries, since a newly admitted notary may practise as a notary even as a sole practitioner, though, of course, this will be subject to post qualification supervision. Such supervision, however, may be at some distance and could not I think be described as 'hands on'.

4. What are these specific obstacles need to be removed to facilitate movement across different branches of the profession?

We do not accept that movement from one branch of the profession to the profession of notary is possible without further training because of the specialist nature of the activities of a notary. These involve a linguistic ability and a knowledge of the laws of

different jurisdictions, particularly the civil law of Europe, as well as the particular functions of a notary with respect to the authentication of documents, etc. It should be pointed out, however, that in the event of a solicitor wishing to become a notary, recognition is given to recent academic and practitioner knowledge and skills in this capacity where these are relevant to the practice of a notary.

5. *Do you agree that regulator should move away from 'time served' models?*

The requirement for formal education and training of a notary is comparatively recent, and when introduced the opportunity was taken to adopt an outcome based form of training appropriate to the profession of notary.

6. *Do you agree that the regulation of students in particular needs to be reviewed in light of best practice in other sectors?*

While it is always helpful to be aware of best practice in the regulation of students in other sectors, there is not really any requirement for regulation of students training to become notaries save with respect to their education and training since they are not involved in any practice until after admission.

Providers of education and training have the flexibility to determine how best to deliver the outcomes required

University College London is the sole provider of the education and training of notaries in the form of the notarial practice course. The Faculty Office has taken the view that the provider is responsible for the appropriate course material and the professional expertise of UCL is relied upon. Nevertheless, when setting up the notarial practice course, the professional outcomes were made very clear to UCL by the Faculty Office in consultation with the Societies and these have been incorporated into the programme of study, e.g. the Roman/Civil Law module is orientated towards the modern practice of notaries in a civil jurisdiction. Consultation also took place with the Societies in setting up the notarial practice programme, who were able to advise and inform UCL of the desired outcomes as far as the profession is concerned. There continues to be a dialogue between the Faculty Office, the Societies and UCL as to what the outcomes should be and how far these are being achieved. The notarial practice module is actually taught by practising notaries who are therefore well aware of the needs of the profession and the outcomes required from the training module. While UCL as the course provider is therefore permitted considerable flexibility on how to provide the education and training, this is kept under constant review with respect to the effectiveness of the training to furnish the necessary outcomes for practice as a notary. As far as the Faculty Office is concerned, the way in which UCL provides its education and training is a matter for UCL itself and the Faculty Office would not see any duplication with the quality assurance processes carried out by the Quality Assurance Agency within the University.

This is the sole route for qualification as a notary. It must be borne in mind that there are just not enough applicants wishing to train for the profession to justify more than one course provider at the present time. Any attempt to introduce any other training route with another provider would render any training course financially and educationally unviable.

7. Do you agree that regulator should allow more flexibility in the way that education and training requirements are delivered by no longer prescribing particular routes?

The educational expertise of the providing institution should be recognised by the regulator insofar as it is permitted flexibility in the way that it delivers its programme of study. Nevertheless, it is important that this flexibility is seen within an envelope of delivering the outcomes that are necessary for the particular profession to which the programme is directed and it is our view that the regulator is under a duty to ensure this. There must also be a continuing process of dialogue and consultation so that the proper outcomes can be achieved.

8. Do you think such a change will impact positively on equality and diversity?

The Faculty Office is very aware of the costs involved in any training to become a notary and is mindful to keep these to a minimum. The training programme delivered by UCL is predominantly by means of distance learning in order to facilitate entry into the profession by those who may be engaged in full-time employment. We therefore suggest that the equality and diversity requirements are already satisfied.

9. Do you agree that regulators should review their approach to quality assurance in light of developments and sector specific regulation of education providers?

As suggested above, we do not believe that the regulator should be directly involved in the quality assurance of the education and training provider. This is a matter for the institution's own regulator such as the QAA. However, the regulator does become involved if the outcome targets are not met and any regulator is entitled to set standards of quality that fully meet the outcome requirements of the profession.

Balancing entry and ongoing requirements

What this guidance is getting at is how far an individual needs to be fully competent on admission as a notary and to what extent is it permissible for further knowledge to be obtained through additional training. In particular the suggestion appears to be that the training should be aimed at achieving competence at a threshold level at the time of entry to the profession and that further competences above the minimum should be required only where these are justified by the additional risks undertaken by engaging in such activities. The examples given are of barristers who may later wish to conduct litigation in their own right or criminal advocates with a QASA accreditation. The Paper suggests (para. 66) that where these additional activities may give rise to significant additional risks then there should be a process of accreditation.

With respect to notaries, this raises the issue of the required competence in both Conveyancing and Probate, Wills and Administration for all entrants to the profession even though many will not actually engage in such activities. To take the argument of the Paper to a logical conclusion, it might be suggested that Conveyancing and Probate, Wills and Administration should not form a part of the essential education and training of a notary but additional accreditation after further training should be given to those members of the profession who wish to engage in those activities. If such a suggestion should be adopted to comply with any new regulations then it would follow that there will be a basic qualification of notary with an additional qualification, perhaps after further training and examination, that will be endorsed on the individual's practising certificate to show that they were competent to practise in those

areas. We believe that such an approach is not popular with the profession itself that is reluctant to see a two-tier qualification where a person who has been admitted to the office of notary cannot hold him or herself out as competent to practice in areas of law that have hitherto formed a part of the work of a notary and which are provided for in the Legal Services Act.

There appears to be little discussion in the text about the role of CPD (or CPE). A newly admitted notary, like any newly qualified lawyer, may lack experience of practice and will still have much to learn in order to develop his or her practice. Any proposed guidance must make provision for ongoing compulsory training and supervision by means of CPD. This is not only valuable for the newly admitted notary but also I believe essential for long established practitioners who may easily find themselves to be out of touch with modern developments and practice. The risks of a practitioner's knowledge becoming out of date are clearly identifiable.

Unlike other legal professions such as solicitors, the supervision of new entrants to the profession comes after admission rather than by a process of a pre-qualification training contract etc. Post-admission supervision of a newly admitted notary is therefore essential, and this is particularly the case where the new notary is a sole practitioner. It is for this reason that such a sole practitioner is required to be subject to a longer period of supervision. In addition, notaries are in a particularly favourable position in so far as they are able to enjoy the continued support and assistance of the Notaries Society and the Scriveners Company.

Any proposed guidance with respect to ongoing education and training should therefore take account of the somewhat special situation of newly admitted notaries.

10. Do you agree that entry requirements set by regulators should focus on competence?

We assume that the question refers to competence at the point of first admission. There is indeed much to be said for an education and training programme that brings a new entrant to the profession of notary up to the minimum standard of competence required to practise. Nevertheless, it may be difficult to anticipate just with what matters a newly admitted notary will have to deal and if the consumer is to be fully protected, and therefore the education and training at the point of entry must be sufficient for a notary to be able to deal with any matter that would normally be regarded as falling within the competence of a properly qualified notary. It must also be borne in mind that where the notary is a sole practitioner (and this includes a solicitor notary who is the only notary in his firm) there is no one else to whom he or she can go to obtain advice and the education and training must therefore be sufficiently comprehensive.

11. Do you agree with our proposal there may be areas where broad-based knowledge is not essential for authorisation? Can you provide any further examples of where this happens already?

Some broad-based knowledge is always required by any lawyer. Part of his or her training should be designed to give him or her a legal 'common sense'. However, it is agreed that the training should not be so broad a basis so as to include areas of study that are not directly applicable to the activities of a notary. For example, the Qualifications Board does not require any knowledge or experience in criminal law or torts as a prerequisite to admission to the notarial practice course.

12. Do you agree that reaccreditation requirement should be introduced in areas where the risks are highest?

We refer again to the practice areas of Conveyancing and Probate carried out by only a very limited number of notaries, but where the risks are significantly higher. It may be that some additional training and accreditation should be required of notaries who seek to practise in these areas.

Balance between entities and individuals

The approach of the Faculty Office, on behalf of the Master, to the regulation of entities is under active consideration by the Advisory Board. With respect to the ordinary notary, this may not be such an issue at the moment. Where a solicitor notary is a member of a solicitors firm, then the firm as well as the individual solicitors may be subject to the regulation of the SRA. Nevertheless, it is always been our assertion that the practice of a notary within a firm of solicitors is distinct from the work of the firm as a whole. It is inappropriate for the regulator of notaries to attempt any form of regulation of the solicitors' firm as an entity and the regulation will continue to be of the individual notary.

The position, however, may be different with respect to scrivener notaries. Here there are entities that comprise individual notaries as a part of a firm or practice. The major scrivener firms do already undertake considerable responsibilities of the development and training of their trainees and it is right that they should be allowed to do so. Such firms should be allowed the flexibility to engage in training activities within the firm, but I believe it is important that the regulator should have sufficient authority to establish that the entity concerned has both the skill and facilities to engage in such training. We also believe that the Faculty Office should be in a position to monitor the training outcomes of these entities and to intervene in the event that these are unsatisfactory. We do not consider that 'in house training' by such entities should be considered as an alternative to the existing programme of education and training based on the UCL programme. We understand that the 'in-house training' of the scrivener firms is largely aimed at the particular individuals who wish to practise as scriveners where the practice may be much more language based rather than general notaries.

13. Do you agree that in most circumstances an entity is better placed than the regulator to take responsibility for education and training?

An entity such as a firm of scriveners may be better placed than the regulator to take responsibility for the additional specialist education and training that is appropriate to scriveners, but not for the more broadly-based education and training necessary to practise as a notary. With respect to a general notary, however, it may be comparatively rare for an individual to be within an entity that is capable of giving support and training with respect to the specific activities of a notary.

It is important that any entity that undertakes some forms of training should be aware of the outcomes as formulated by the Faculty Office in consultation with the notarial profession, and must be able to demonstrate outcomes that are appropriate to the professional practice of a notary.

14. Can you think of any circumstances in which this may not be possible?

In many cases there is no suitable entity capable of such education and training.

Restrictions on numbers

There is no policy to restrict numbers of entrants to the profession of notary. Indeed, on the contrary, applications are encouraged from individuals who wish to become notaries so that in the interests of the public there can be a proper distribution of notarial services throughout the country. There is no restriction placed on numbers entering the notarial practice course and the education and the education and training provided by UCL is sufficiently flexible to meet any growth in the number of applications received.

15. Do you agree that it is not the role of the regulator to place restrictions on the number of people entering the profession?

Yes.

16. Can you provide any examples for review whether current arrangements impose such restrictions and may be unnecessary?

No restrictions on numbers are imposed either directly or indirectly by the current arrangements.

Conclusion

It must be borne in mind that such proposed guidance is designed to cover a whole range of somewhat disparate legal professions, each of which may have its own particular needs and competency requirements.

On the whole we are confident that there is nothing in this proposed guidance that should give great cause for concern to the Master or the Faculty Office as it is our opinion that the education and training of notaries already largely complies with the sort of guidance that is envisaged by the Paper. As you know, the LSB has recently approved revised rules for the education and training of notaries – the Notaries (Qualification) Rules 2013.

Yours sincerely



P F B BEESLEY
Joint Registrar

This office closes at 1pm on Tuesday 24th December and reopens as normal on Monday 30th December, then closes again at 1pm on Tuesday 31st December. Normal office hours will resume on Thursday 2nd January 2014.