



LEGAL SERVICES
BOARD

CALL FOR EVIDENCE: ONGOING COMPETENCE

JANUARY 2020

INTRODUCTION

The Legal Services Board (LSB) is reviewing how legal regulators ensure that the legal professionals they regulate (e.g. solicitors, barristers and conveyancers) remain competent throughout their careers.

This is one of the five-year policy objectives that our Board committed to in our 2019/20 Business Plan. It is the key workstream for delivering our strategic objective *to promote the public interest through ensuring independent, effective and proportionate regulation*. The purpose of this paper is to:



WHY ARE WE DOING THIS WORK?

Ongoing competence goes to the heart of our vision of legal services that everyone can access and trust. Consumers should be able to trust that legal professionals have the necessary skills, knowledge and attributes to provide good quality legal services, and that they are kept up to date and relevant over time.

Research from the Legal Services Consumer Panel (Consumer Panel) tells us that while consumers may be able to observe and make their own assessment of service quality (e.g. promptness, courtesy and administrative efficiency), they are often not in a position to make fully informed judgements as to the standard of the legal advice provided. They have little choice but to rely on the checks and assessments made – usually by regulators, but also by others including employers – on entry to the profession and during the course of a legal professional's career.

Regulatory bodies in the legal services sector currently devote significant attention to education and training requirements that test competence before a legal professional is qualified and entitled to provide regulated legal services. They also have established and tested enforcement practices in place to address disciplinary matters that may arise during legal professionals' careers.

Unlike some other professional service sectors (such as healthcare and education) however, there is no regular, formal assessment of legal professionals' competence during their careers. Instead, all of the legal services regulators currently rely primarily on requirements for continuing professional development (CPD), which usually involves participation in unassessed training.

Given the importance of ongoing competence to consumers, coupled with the fact that many other professions have already embraced debates about ongoing competence and developed their approaches as a response, we think the time is right to lead an evidence-based discussion on ongoing competence in the legal services sector.

OUR APPROACH

We have an open mind about whether a different approach is needed. First, we want to understand and map what is out there in terms of current practices, both within and beyond the legal services sector. This will enable us to build an understanding around what works best, with a view to setting standards and expectations in the future.

We will seek to engage with as many stakeholders as we can. In fact, we have already benefited from engaging with a group of sector professionals representing a range of perspectives, as well as regulatory and representative bodies, in roundtable sessions.

We have also gathered some information already, in preparing for this call for evidence. This includes information we hold at the LSB from previous work on quality in legal services, some feedback from stakeholders and published evidence from regulatory bodies and approved regulators. It also includes information about the approaches adopted in other sectors and learnings from academia.

We refer to this information throughout the paper. All of the references for the resources we have considered in preparing the call for evidence are available on the [call for evidence](#) page on our website. We encourage you to visit this page if you would like to see the research we refer to in this paper and understand our findings so far. We will add to this over time as we consider the information shared with us. Please get in touch with us if you want to know more.

We are conscious that our findings so far do not tell the full story and that some of the information is from some years ago. This call for evidence is an important opportunity to ensure we capture all of the latest and most relevant information to understand if there are any gaps in our knowledge, or to identify areas where a policy response may be needed to address risks to consumers and the public interest.

Following this call for evidence, we may find that some important information is not available and we think it is needed to inform our actions - in that case we will consider commissioning primary research.

HOW CAN YOU BE INVOLVED?

We invite you to comment on one or more of the themes with any evidence you have to support or challenge our findings so far - evidence might include relevant published reports, datasets or research. It could also be reflections or examples based on your personal experiences or the experiences of others.

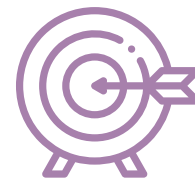
We hope to hear from legal regulatory bodies, legal representative bodies, legal professionals, consumer groups and representatives, other regulated professional sector bodies and academia. This is by no means an exhaustive list and the call for evidence is open to anyone with an interest in this work. We are grateful to receive any information and evidence you can share with us.

The call for evidence will be open for 16 weeks and closes on 15 May 2020.

You can respond by emailing us at ongoingcompetence@legalservicesboard.org.uk and there is a [template provided on our website](#) for responding if you would like to use it. We might follow up with you to clarify or get more information if necessary. If you would like to know how information you provide us will be handled, please see the [call for evidence page on our website](#).



1. DEFINING COMPETENCE AND COMPETENCE ASSURANCE



Our findings so far

- there is no single, shared definition of competence for legal professionals
- common themes focus on an individual having the necessary skills, knowledge and attributes for a particular legal role
- there are a range of approaches used to assure ongoing competence and some are more robust than others
- according to research, some methods can only infer an individual has skills and knowledge, while others assess and verify an individual's knowledge and ability to do something

What is competence?

There are a number of definitions available for what competence means in a legal services sector context. This includes high-level definitions offered by the [Consumer Panel](#), Professor Stephen Mayson and the 2013 Legal Education and Training Review.

We think the definition provided by the Consumer Panel – *combining up-to-date legal knowledge and skills with good client care, to deliver advice in a way that is useful* – is particularly helpful for our work. The Consumer Panel, which is an independent arm of the LSB, plays an important role in ensuring we take on board the views and interests of consumers in our work.

The definitions also reference competence being dynamic and needing to be maintained over time. This is so that legal professionals' skills and knowledge are kept relevant and up to date with changes to the law, technology and consumers' expectations. It also reflects that a legal professional's competence will change due to their own career development and progression.

Some of the regulatory bodies have developed more detailed statements of competence. For example, the Solicitors Regulation Authority (SRA) and Bar Standards Board (BSB) have statements that set out the skills, knowledge and attributes required to be a competent [solicitor](#) or [barrister](#).

We are interested in understanding what common areas there may be for demonstrating competence across all legal professionals, as well as specific skills, knowledge or attributes that may be required in particular areas or for particular legal professions.

How do you assure ongoing competence?

There are a range of approaches to assuring competence over time - these approaches include CPD as is used across many professional sectors including legal services, as well as more formal assessment practices such as observation or periodic revalidation, which are used in the education and healthcare sectors respectively and discussed later in the paper.

Research into the effectiveness of different competence assurance methods has been completed over time, leading some sectors to change their approach to competence assurance. For example, in healthcare, regular reassessment has been adopted for doctors, nurses and midwives in order to confirm that they remain competent and are fit to practise throughout their careers.



Call for evidence

Understanding what it means to be a competent legal professional and how competence can be maintained and assured over time is a core objective of this work. We would welcome your views on what you think is needed to demonstrate competence, whether competence needs to be tested throughout the career of a legal professional and how it could be assessed. This may cover areas such as:

- the characteristics or skills that should be part of a competency framework
- the types of competence particular to different types of work or legal disciplines (e.g. barristers, legal executives)
- different models for competence assurance that you use or are aware of

We would welcome qualitative and quantitative evidence in particular on: determining the components of professional competence; approaches to competence assurance; the effectiveness of CPD and other methods of assurance.



2. CONSUMER EXPECTATIONS OF COMPETENCE



Our findings so far

- consumers may use lawyers at times when they are most vulnerable
- poor quality legal services could have negative financial and personal impacts on consumers and third parties e.g. their children, beneficiaries
- consumers find it difficult to assess the quality of legal services, particularly in terms of technical quality
- consumers assume legal professionals are competent and that there are checks in place to assure this
- consumers have mixed confidence in legal professionals compared with other professions
- consumer experiences of legal services vary according to a number of factors

Why does ongoing competence matter to consumers?

The Consumer Panel says competence and quality issues go to the very purpose of why legal services are regulated in the public interest, noting consumers often use lawyers at critical life moments when there is the potential for serious consequences.

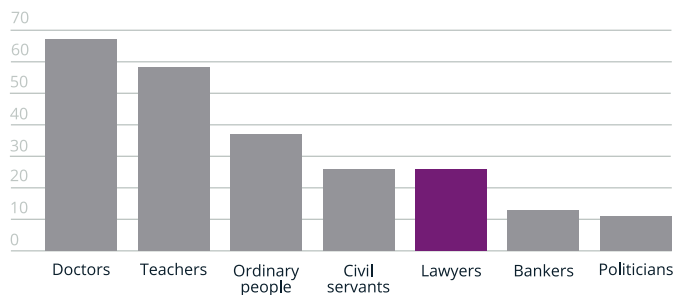
This sentiment was echoed by the Competition and Markets Authority in its 2016 review of the legal services sector examining competition and consumer protection issues. It said consumers needed better information about the quality of legal services so that they can make the best choice for their circumstances.

Consumer Panel research has found that consumers find it difficult to assess competence and know whether they are receiving good quality legal services. Consumers generally assume that legal professionals are competent and rely on there being regular, robust checks in place to assure this.

This is consistent with consumers' expectations of competence assurance for professionals in other sectors. We note that following the Competition and Markets Authority's review, the Consumer Panel has been exploring the development of quality indicators, including drawing on the experience of other sectors, to provide better information about the quality of legal services to consumers.

Interestingly, 2019 Ipsos Mori research tells us that British consumers have less trust in lawyers (26%) compared with doctors (67%) and teachers (58%). However, lawyers are trusted more than bankers (13%) and politicians (11%). We would like to explore any links between ongoing competence and trust in professionals during our evidence gathering.

Ipsos Mori: *Trust: the Truth (2019) - Great Britain*



We recognise that consumer experiences of the legal services sector will vary depending on a number of factors. The importance of differentiating between consumers' legal needs was highlighted in the LSB market segmentation work, initially undertaken in 2011. This breaks down types of consumers, consumer problems and legal activities. Segmentation will be relevant to our work supporting ongoing competence if different market segments face quality issues more or less frequently, which is explored further in the next section of the paper.

Call for evidence

Understanding consumers' perspectives on, and expectations of, competence in the legal services sector is crucial to our work in this area. We would welcome your views on what ways consumers can have greater confidence that they have a competent advisor. This may cover areas such as:



- the ways consumers can make judgements on the quality of the advice or service that they have received
- what role consumer feedback could or should play in helping legal professionals to build their competence and helping to foster trust
- the frequency of competence checks that would reassure consumers
- different types of consumers, consumer problems or legal activities that are more likely to experience quality issues, or be vulnerable to greater harm from quality issues

We would welcome qualitative and quantitative evidence in particular on: meaningful ways to demonstrate competence to consumers; how professions can provide information to consumers on the quality they should expect; the relative risk and impact of poor quality advice on consumers.

3. COMPETENCE ASSURANCE IN THE LEGAL SERVICES SECTOR



Our findings so far

- legal professionals are expected to be competent and to act within their competence
- regulators tend to focus on assuring competence on entry to the profession with less attention paid to post-qualification competence, except for CPD
- competence may be tested in limited circumstances throughout a legal professional's career
- some providers have developed their own quality assurance frameworks
- there is some evidence of legal professionals not maintaining competence or acting beyond it

What is the current approach to competence and competence assurance in the sector?

Regulatory bodies generally only formally assess competence when legal professionals join the profession. Each regulatory body has a framework for CPD, but this is usually unassessed. This leaves education and training needs to be identified and pursued by individuals, who are also expected to recognise the limits of their own competence.



CASE STUDY – CILEx Regulation: CPD

- the following CILEx Regulation members are required to complete CPD:
 - associate members complete hours based CPD
 - graduate members, fellows/practitioners/legal accounts executives and associate prosecutors complete outcomes based CPD
- CILEx Regulation randomly samples CPD records for quality assurance



There are some exceptions to this, for example, one-off assessments for solicitors to receive a higher rights of audience certification, which allows them to represent individuals in senior civil and criminal courts.

We also know some competence assurance methods have been adopted within the profession. This includes large providers such as the Crown Prosecution Service establishing its own process for courtroom observation and assessment of advocates, the Legal Aid Agency's audits and legal firms developing appraisal models for legal professionals that incorporate client feedback. In addition, there are a number of quality marks in operation.

The LSB has previously been involved in work on the development of competence assurance frameworks. This includes work between 2011-2014 to develop the Quality Assurance Scheme for Advocates to introduce competence assessments, which for a combination of reasons, was never implemented.

Recent research, including work commissioned by the SRA and BSB and independent government reports, has found that concerns about advocacy quality remain, for example, instances of advocates acting beyond their competence.



CASE STUDY – SRA and BSB: Judicial Perceptions of Advocacy (2018)

- the most commonly cited barrier to high quality advocacy was advocates taking on cases beyond their level of experience
- while advocates were generally viewed to be competent, standards were seen to be declining in some areas e.g. core courtroom skills such as case preparation
- Judges were uncertain when and how to report poor quality advocacy to regulators
- advocates’ skills in dealing with young and vulnerable witnesses were seen to be largely improving



We have identified other examples which may indicate practice areas with greater quality risks or consumer segments that are more vulnerable to quality issues. In particular, we are reviewing practice areas with the highest volumes of consumer complaints using Legal Ombudsman data or where there is evidence already available on quality issues.



CASE STUDY – SRA: Residential conveyancing thematic report (2019)

- 90% of firms received requisitions from the Land Registry that were avoidable – the majority of firms said this was exacerbated by inconsistent decision-making from the Land Registry
- some firms failed to include all of the services/fees a matter could reasonably be expected to attract in their initial quotes

CASE STUDY – Consumer Panel: Regulating will-writing (2011)

- many wills, including those written by regulated legal professionals, failed to reflect clients’ intentions or contained basic errors
- one in four wills reviewed failed on quality



We are considering whether there are competency gaps in particular human and business skills such as those suggested in the 2019 Lexis Nexis Bellwether series. We have also had stakeholders identify particular types of work or stages in a career that they perceive are likely to carry increased risks of competency issues arising. We are interested in exploring these points further.

Call for evidence

Understanding the current competence assurance frameworks adopted by regulators and the profession is important, as is confirming, qualifying and quantifying any examples of poor-quality services or suggested risk areas. We would welcome your views on this, and it may cover areas such as:

- practice areas which do or could impose greater competency risks
- legal professionals that may be more at risk of competency challenges
- existing competence assurance methods used in the sector and their effectiveness
- the respective roles of regulators, providers and individuals to assure ongoing competence
- any potential barriers to assuring the competence of legal professionals

We would welcome qualitative and quantitative evidence in particular on: competence or quality issues for particular types of work; service and non-service-related issues experienced by consumers; the effectiveness of current competence assurance practices. We would also welcome identification of potential evidence sources that are not readily available but that we could seek access to.

We would also welcome any evidence of competence assurance practices used in legal services sectors in other jurisdictions.



4. COMPETENCE ASSURANCE IN OTHER SECTORS



Our findings so far

- regulators in other sectors use a range of different approaches to assure ongoing competence
- in some cases, this includes regular, formal assessments such as revalidation and observation
- usually, these approaches have been introduced to protect consumers and the public interest, as well as to raise the quality of professional standards and practice over time
- there is evidence that these measures have been effective in achieving these outcomes

What can we learn from other sector approaches to assuring ongoing competence?

There is a wide spectrum of competence assurance methods adopted in different professions. This includes methods such as observation, revalidation, simulation, sampling and auditing work and collecting feedback from third parties e.g. clients or colleagues for reflective practice. Many of these approaches are undertaken in conjunction with completing CPD requirements.

In healthcare, regular revalidation is required for doctors, nurses and midwives. This involves collecting information that supports an individual to confirm they remain fit to practise, such as a record of practising hours, CPD completion, written and verbal reflective accounts, and feedback from peers and patients.



CASE STUDY – General Medical Council: Revalidation requirements

Doctors are required to revalidate their skills every five years, including providing the following supporting information:

- CPD
- quality improvement activity
- significant events
- feedback from patients
- feedback from colleagues
- compliments and complaints

In education, schools and their staff are subject to regular observation from Ofsted. This involves classroom inspections, where the quality of education is observed, and grades are provided based on the assessment of performance. It also includes an opportunity for Ofsted to meet with learners, and an online survey that can be completed by their caregivers. Ofsted reports determine the frequency and extent to which a school will be re-inspected in the future.



CASE STUDY – Ofsted inspection framework

Graded judgements are made by independent inspectors on:

- quality of education (including teaching)
- behaviour and attitudes
- personal development
- leadership and management (including ensuring the practice and subject knowledge of staff is built up and improved over time)



Independent reports suggest revalidation has been beneficial for medical professions and consumers' trust and confidence. This includes the 2019 Ipsos Mori report prepared for the Nursing & Midwifery Council that found revalidation was key to generating change, including cultural change, over time. Similarly, observation reports are said to be valuable sources of information about education providers for teachers, caregivers and their children.

As well as healthcare and education, we have begun researching approaches to competence assurance in other sectors such as aviation, financial services, armed forces and engineering. We are seeking to engage widely with other sectors in addition to those referenced in this paper to better understand the different approaches, why they have been introduced and what their impact has been.

Call for evidence



Understanding what other sectors do to assure ongoing competence is useful because it helps us to learn what has worked well in other professional services sectors and identify any opportunities to adapt the approach in legal services. We would welcome your views on what ways the legal services sector can learn from the competence assurance approaches adopted in other professional sectors. This may cover areas such as:

- methods to gain competence assurance that have been tailored to different professional environments
- the benefits to consumers and the profession of different competence assurance schemes e.g. revalidation, observation or simulation
- how assurance data is collected, recorded and made accessible to consumers

We would welcome qualitative and quantitative evidence in particular on: consumer views on the benefits of competence assurance schemes; the robustness of different methods for competence assurance; the competence assurance systems which produce the most reliable assessments.

We welcome evidence from the sectors provided as examples above as well as other sectors not specified in this paper.

NEXT STEPS

Any evidence we receive will be used to inform and guide our thinking on the need for any policy responses. We will publish conclusions from our analysis of the evidence during 2020-21 and any proposals for further action based on what the evidence tells us.

At any time during this process you are welcome to contact us.

Please email us at:

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