

Meeting: Legal Services Board

Date: 30 November 2021

Item: Paper (21) 60

Title: Ongoing competence policy proposals – sign off for consultation

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Status: Official

Introduction: Purpose of the paper

1. This paper presents a draft statement of policy on ongoing competence and seeks approval for publication for consultation.

Recommendations

2. The Board is invited to:
 - a) **Discuss** the draft statement of policy and accompanying draft consultation paper;
 - b) **Approve** the draft statement of policy and draft consultation paper as the basis for consultation, and **delegate** to the Chief Executive approval of final minor changes prior to publication.

Background

3. The LSB Board identified ongoing competence as one of its five-year priority policy objectives in September 2018. The project aims to understand if legal regulators have appropriate frameworks in place to ensure that the professionals they regulate remain competent throughout their careers.¹
4. This work is central to the regulatory objectives to protect and promote the public interest and the interests of consumers and the LSB's ambition to reshape legal services to better meet society's needs and provide consumers with fairer outcomes, stronger confidence and better services.
5. Following scoping work and research in 2019, we completed a call for evidence in the first half of 2020, which gathered information about current arrangements for ongoing competence in the legal services and other

¹ We define competence as having the necessary and up-to-date skills, knowledge, attributes and behaviours to provide good quality legal services.

professional sectors from over 50 stakeholders. The Board discussed the evidence in October 2020 and in February 2021, we published a report summarising the evidence, setting out key themes and our emerging conclusions.²

6. We also commissioned two pieces of research to further our evidence base, including research into approaches to ongoing competence adopted in other jurisdictions³ and consumer research testing the public's confidence in the current ongoing competence arrangements for legal professionals.⁴
7. From our evidence base, we know that while legal services regulators have comprehensive measures to ensure competence in place at the point of authorisation, there are few routine, formal measures to ensure ongoing competence, with the exception of the widespread adoption of continuing professional development (CPD). None of the regulators have any meaningful evidence on levels of competence after the point of initial qualification.
8. Our research shows that consumers expect that there are more robust checks in place and, when provided with information about the current arrangements, the majority of the public thinks legal services regulators should adopt more specific measures to ensure ongoing competence. Further, the approach in this sector is unusual compared with other professions, where there is greater focus on assessing and understanding levels of competence and resulting use of additional measures such as periodic reaccreditation, peer reviews, spot checks or feedback as well as CPD.
9. Through our work, we have concluded that the status quo is not best protecting and promoting the public interest and the interests of consumers. In July 2021, the Board agreed to proceed to engage on high-level principles that we intended to develop as new policy expectations of regulators to ensure ongoing competence, including:
 - setting standards of competence that legal professionals should meet at the point of entry and throughout their careers;
 - assessing profession-wide levels of competence, identifying any key areas of risk and using that information to design upstream interventions; and
 - where individual legal professionals who are failing to meet the standards of competence are identified, taking suitable remedial action in response.
10. We have tested our thinking with some stakeholders already, such as at an online discussion event in October with 70 participants from across the sector

² <http://legalservicesboard.org.uk/wp-content/uploads/2021/02/Findings-report-OC-Feb-2021-Final.pdf>.

³ <https://legalservicesboard.org.uk/research/international-approaches-to-ongoing-competence>.

⁴ <https://legalservicesboard.org.uk/research/ongoing-competence-in-legal-services-research-into-public-attitudes>.

and other professions.⁵ This, in addition to our previous engagement, including over 50 stakeholder meetings, has informed the development of a draft statement of policy (Annex A).

Draft statement of policy

11. The draft statement of policy is intended to ensure that regulators embed ongoing competence within their regulatory arrangements and have assurance of the ongoing competence of those they regulate. It should also ensure that the public and consumers can have confidence that legal professionals remain competent throughout their careers.
12. We consider that a statement of policy will provide an effective, proportionate and targeted regulatory tool to secure the necessary outcomes regarding the ongoing competence of legal professionals. The statement is designed to be outcome-focused and flexible, which will allow regulators to develop an approach that is fit for purpose for their profession(s), while ensuring a minimum standard of ongoing competence requirements across the sector. This is important given the diversity of the market and the need for regulators to develop targeted and proportionate approaches, that respond to evidence of risk.
13. We are proposing that regulators must pursue the following general outcomes:
 - Set the standards of competence that those they regulate should have at the point of authorisation and throughout their careers.
 - Regularly assess and understand the levels of competence within the profession(s) they regulate, and identify areas where competence may need to be improved.
 - Make appropriate interventions to ensure standards of competence are maintained across the profession(s) they regulate.
 - Take suitable remedial action when standards of competence are not met by individual authorised persons.
14. In addition to the outcomes, we are proposing to set more specific expectations of the regulators around what types of measures they should be considering in order to achieve the outcomes. These expectations reference the various approaches already adopted in some parts of the sector, by regulators in the other professions and jurisdictions, and those that were considered in the public research (e.g. feedback, reflective practice, competence assessments, spot checks, reaccreditation, remedial responses to competence issues).

⁵ <https://legalservicesboard.org.uk/our-work/ongoing-work/ongoing-competence0/ongoing-competence-13-october-2021-discussion-event>.

Impact assessments

15. We have considered the impact of the draft statement of policy on the sector as a whole, and on persons with protected characteristics specifically. These draft impact assessments are set out in the draft consultation paper (paragraphs 93-105).
16. We recognise that introducing new expectations may result in an increased burden for authorised persons and regulated entities. However, our view is that this would likely be outweighed by benefits to consumers and the profession as a whole, including increased consumer confidence in the competence of legal professionals. Regulators will be best placed to weigh these considerations up when designing their approach. We note that in the public research, when weighing up the trade-offs, consumers indicated their willingness to pay more if they could be more confident in the competence of their legal services provider. Further, the policy statement is drafted in reference to proportionate, targeted and evidence-based approaches.
17. We consider that there are no negative impacts specifically on groups with protected characteristics, although we will particularly welcome comments on this during consultation. We note the outcome-focused and flexible statement allows regulators to determine how best to adhere to our expectations and in doing so, ensure any negative impacts on such groups are avoided or mitigated.

Next steps

18. Subject to the Board's comments, we will consult on Annexes A and B in December for a period of 12 weeks, subject to final drafting changes approved by the Chief Executive.
19. The Board is separately being asked to consider the LSB Business Plan for 2022/23 and we note the relevant links to our ongoing competence work, including the proposal to review the LSB's existing education and training guidance. Proposed work on disciplinary and enforcement processes may also be relevant to our expectations for regulators regarding the adoption of remedial measures to address competence concerns.

Risks and mitigations	
Financial:	N/A
Legal:	There is an element of legal risk in a consultation of this nature. Colleagues have taken steps to minimise risks where possible.
Communications and engagement:	We expect there will be a range of views, both for and against proposals. We will engage with stakeholders during the consultation period to understand their position and seek to forge consensus.
Equality and diversity:	We have set out our equality impact assessment in Annex B (paragraphs 93-99).

Resource:	N/A
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Annexes

Annex A – Draft statement of policy on ongoing competence

Annex B – Draft consultation paper on the statement of policy

Freedom of Information Act 2000 (Fol)		
Para ref	Fol exemption and summary	Expires
Annexes A, B	S22 – future publication	N/A