

Westminster Legal Policy Forum keynote seminar event: Next steps for legal education and training in England and Wales

**The state of play for legal education and training and key priorities
for ongoing competence in the profession.**

Talk by Chris Nichols, Director of Policy and Regulation at the Legal
Services Board

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Good morning.

There has been significant debate in recent years about the education and training frameworks that we have for controlling *entry* into the legal professions. Indeed in November last year, I spoke at another Westminster Forum event to explain why the LSB had approved the SRA's SQE framework.

But today I want to move beyond considering entry to the profession to pose a related question.

- *Should our regulators be interested in issues of competence after qualification and should this be informing their approach to regulation?*

But before I get too carried away, I will take a step back to introduce myself and set the context.

I'm Chris Nichols and I am Director of Policy at the LSB. The LSB is the oversight regulator for legal services – we regulate the SRA, BSB and seven other frontline regulators of legal services.

We set standards of regulation and hold the regulators to account for their performance. We also have to approve any changes to their regulatory arrangements.

Last year we started a longer term piece of work to look at the approach taken by regulators, both within and beyond legal services, to assuring the ongoing competence of those that they regulate.

We started by conducting a large scale call for evidence on this subject. We got more than 30 formal responses, had 50 targeted meetings and reviewed over 50 sources of data and research.

From this call for evidence, we found - that consumers assume that legal professionals are competent and that there are robust checks in place to ensure this

However, in practice our regulators tend to rely almost exclusively on self-assessed CPD for ensuring ongoing competence

- We did find a wide range of other assurance methods being used in small pockets across the market – such as advocacy assessments, peer reviews and client feedback mechanisms – but these examples generally lacked formality and were all limited in scope.

So overall, there is a *real* mismatch between the public's expectations and the reality. Which brings me back to the question I started with:

- Should our regulators be interested in competence after qualification and should this be informing their approach?

For starters, what do I think?

Well, through our call for evidence, we did encounter *some* concerns about competence, mainly in the field of immigration, criminal advocacy and conveyancing.

But we found no reliable evidence to give an overall picture of competence across the sector.

Some may point to a lack of evidence as an indication that there *is* no problem. But unfortunately, as a regulator, I see a lack of evidence as a lack of assurance - and therefore a reason for concern.

I have *little* doubt that the majority of legal professionals are acting within their competence and delivering high quality services. But it does concern me that we can't say with any certainty *just* how rare it is, that someone does act beyond their competence. And it concerns me greatly that regulators' approaches are not geared towards understanding, preventing and responding to competence issues. To me, this must *surely* be within their role as a regulator.

And it is also worth remembering that our approach contrasts quite starkly with a number of other professions. For example, Doctors, pilots and teachers are all expected to proactively demonstrate their competence throughout their careers. So why not lawyers too?

But, that is just my view. What does the public think?

As I said earlier, we know that the public assumes that legal professionals are competent and that there are checks in place to ensure this.

But we wanted to understand what members of the public would think when immersed in the detail of this debate.

So we undertook some research with our Public Panel. This is a large group of members of the public, who we draw on through a research company, to conduct research and inform policy development.

We will be publishing our research report in two weeks but I can share some of the key findings for you today.

Before I do that, a few words on the methodology.

This research had a qualitative and quantitative component.

- The qualitative bit saw 23 members of the public provided with information, over four weeks, on the current approach to ongoing competence in the legal sector and in other sectors. This included hearing from representatives from the SRA, Bar Council, a national solicitors firm, the LSCP and the General Medical Council.
- They then had to decide, as a deliberative panel, if the current arrangements gave sufficient confidence, and if not, what mix of measures would.
- The quantitative bit saw over a thousand members of the public surveyed on similar themes.

Both groups were invited to consider the trade offs involved, and particularly that any additional regulatory measures could ultimately result in more expensive services for consumers.

So, three headline findings now from the qualitative panel:

- Firstly, Panel members unanimously agreed that there should be *more* specific rules for checking competence throughout a legal professionals' career
- Secondly, they were *concerned* that the current arrangements leave room for a lack of competence to go undetected and unchallenged.
- And thirdly, they felt there were *too* many gaps in the existing system - and that regulators should have more evidence to be assured that those they regulate remain competent.

And these views were echoed in the online survey. Again, I have three main findings to share:

- 79% of the public thought that there should be more specific rules for checking legal professionals' competence throughout their careers

- 95% said that legal professionals should have to *demonstrate* that they remain competent throughout their careers.
- 87% agreed that regulators should do more to reduce the risk of lack of competence undermining public trust in the legal system.

So with these findings in mind, let me conclude by answering the question I posed at the start:

Yes, legal services regulators should be interested in issues of competence after qualification and this should be informing their regulatory responses.

I think there are three primary reasons:

- 1) Firstly, there are strong principled justifications in terms of regulatory theory
- 2) Secondly, the public expects this
- 3) And thirdly, for other professionals, such as nurses, doctors and pilots, regulation is already focussed on understanding, preventing and responding to competence issues. We can learn from this.

So, what next?

In my view, the status quo is not best serving the public interest, or the interests of consumers. Regulators need to do *more* to understand levels of competence and to demonstrate that their approach to regulation is informed by this understanding.

Over the coming months we will be leading further public debate on this issue and testing some proposals for the high level principles that regulators' approaches should cover.

We have an audience today filled with legal professionals, learning and development leads, academics and regulators, who will all have a lot to contribute on this issue. We *really* want to know what you think, so *please* do look out for opportunities to join the debate.

And that starts today of course, as I look forward to hearing what you think and responding to any questions that you have, after we have heard from Julie.

Thank you for listening.