

Ongoing competence: Call for evidence

Response template



This template can be used to respond to the [call for evidence](#) for the ongoing competence project. Please send completed forms to the [project team](#).

Defining competence and competence assurance

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 or 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.

Please fill in the text box below using the prompts above, providing links to any evidence referenced. Alternatively, supporting documents (e.g. reports, datasets) can be provided separately.

CILEx Regulation has been working for some time on revising the education standards for Chartered Legal Executives and CILEx Practitioners and has identified core competencies for each of the specialist reserved/regulated areas of practice in addition to more general competencies that we consider all CILEx Authorised Persons should hold. These have been consulted upon and are therefore considered to be evidence-based.

In summary, CILEx Regulation considers that all CILEx Authorised Persons should at the point of entry hold the following general knowledge, skills and attributes:

Knowledge:

A general background in:

- Law and legal practice
- Dispute resolution
- Conveyancing
- Criminal Practice
- Wills & Probate
- Public law
- Human Rights law
- Legal Technology
- Accounts, and
- Conduct, Ethics and Professionalism

Significant knowledge of their own area of practice

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Skills and attributes:

- Application of law and legal practice (e.g. legal research, drafting etc)
- Communication skills (e.g. written, negotiation skills etc)
- Client Relationships (e.g. taking instructions, provision of advice, customer service etc)
- Effective working practices (e.g. good file management)
- Business Awareness (e.g. networking, marketing etc)
- Self-Development – including emotional competence
- Conduct, ethics and professionalism
- Use of legal technology

CILEx Regulation considers that these should form part of the competence framework for any legal professional. As specialist lawyers, there are different emphases on these dependent on the area of practice in which the lawyer works and the type of client that the lawyer serves.

CILEx Regulation amended its CPD scheme in 2013 to become outcomes-focused to enable the individual to better tailor their CPD requirements to the area in which they work. This enables Chartered Legal Executives to focus on ongoing development of competence to areas of greatest need for them. We also recognise that some areas of practice pose a higher risk to the public and therefore require more specific requirements. To that end, our advocates are required to undertake at least 2 outcomes each year in the development of their advocacy skills. CILEx Regulation undertakes an annual sample of CPD records submitted to ensure that the approach taken by regulated individuals is appropriate to their work.

The 2018/9 CPD year sample was undertaken with a call for records from 229 individuals selected at random. Members are generally good at responding and providing us with the evidence to support completing the CPD cycle (reflect-plan-act-evaluate). They are generally able to provide records in support of completing their CPD, although most maintain their own record, some rely only on employer records and if they move job roles this may present a problem. The other query that we get on a regular basis is what type of CPD will meet the requirement for professionalism (a compulsory outcome of the 9 required) for compliance. However, this is compliance focused rather than competence focused.

We recognise that this was a first step in better ensuring the ongoing competence of the regulated community and to that end, CILEx Regulation has been developing a risk matrix to be applied to all CILEx members, which will apply an algorithm to each member and determine their risk rating based on a series of factors – for example whether they conduct advocacy, see vulnerable clients, are supervised in their practice etc.

The approach has been piloted using historic data and was able to correctly identify individuals at higher risk of enforcement. These individuals would be in greater need of proactive supervision and CILEx Regulation would recommend that the adoption of a 'one size fits all' approach to ongoing competence may not be the most appropriate solution to ensuring the competence of the profession as a whole, on the basis that lawyers work in a range of settings, some of which will require greater oversight.

Once the risk matrices are live within our new CRM we will be able to review the data and determine the risk rating of each individual that we regulate. Once we have this data, it is

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our intention to consider what further steps we could take to better assure the ongoing competence of all those we regulate in a targeted and proportionate way.

We are aware of the approaches to ongoing competence outlined in the LSB's call for evidence including observation and revalidation. We are open to these options once we have the additional data mentioned above.

We have some concerns about how the operation of observation could work in practice, as many of the individuals that we regulate work in firms regulated by other regulators and we would need to be able to work collaboratively across the sector and beyond to enable this to work in practice.

Revalidation is in force at CILEx Regulation for our employed advocates, who must, every three years renew their advocacy certificate, based on CPD and an employee statement. We would be willing to consider extending this approach to practitioners subject to the proportionality of the outcome.

Another consideration, particularly for advocates and those lawyers that come into contact with others who may be reluctant to report underperformance owing to the potential outcome for the reported individual, would be the approach taken in the airline industry. Pilots who make a mistake are able to report themselves without fear of adverse action, if they do so within 10 days. This enables a learning culture to emerge as the information is then communicated to all pilots in the industry. The 10 day window may encourage more reporting of instances of underperformance, if the reporting individual does not feel that to do so may end a career.

Finally, we would recommend an approach where 3rd party feedback can be incorporated into revalidation or other assessment of ongoing competence – for example client feedback for those lawyers who work in client-facing settings and peer review for those working in a different environment.

Consumer expectations of competence

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.

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CILEx Regulation recently commissioned research in consumer perceptions and this is in the process of being collated. The report was initially expected at the end of April. However, this has been delayed owing to the coronavirus outbreak. We will share the outcomes of the research with the LSB for the purposes of this work when it becomes available as it may be relevant to this section of the call for evidence.

As mentioned in the previous section, we would support the introduction of some form of consumer review of the lawyer as part of the determination of ongoing competence, where the individual is client facing.

Other evidence which CILEx Regulation is able to contribute to this section comes from the research undertaken at our most recent entity event in February, which sought the views of practitioners in relation to quality indicators. Key themes emerging from the discussion included:

- There is a preference for quality indicators to be positive rather than negative (i.e. based on positive feedback and evidence rather than number of complaints)
- There cannot be a one size fits all approach to quality indicators, B2B and B2C firms would provide different evidence based on their own client needs
- Similarly, different client types would seek different information to judge the quality of firms
- Clients often have ongoing relationships with firms and their needs for quality indicators evolve over the time of the relationship

Competence assurance in the legal services sector

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 competency 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.

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As part of our research into the risk-based approach to supervision that is currently being developed by CILEx Regulation, we have devised and piloted a risk-based approach which identifies higher risk areas/types of practice and this has been tested through our enforcement data. This indicates that the highest risk areas of practice are:

- Criminal – advocacy/loss of liberty/vulnerable consumer
- Immigration – advocacy/loss of safety/vulnerable consumer
- Housing – loss of home/vulnerable consumer
- Probate – loss of funds/vulnerable consumer
- Family – advocacy/risk to children/vulnerable consumer
- Conveyancing – loss of funds

In terms of current heightened supervision, CILEx Regulation requires employed advocates to undertake additional advocacy skills CPD and renew their advocacy certificate every 3 years, using employer declaration. As a Money Laundering supervisor, CILEx Regulation also undertakes additional supervision for those individuals/firms which are caught by the Money Laundering Regulations, including requiring specific training.

Once the risk matrices are in operation, CILEx Regulation will be able to better segment its regulated community and determine the most appropriate supervision based on the risk profile of each individual.

A key barrier is access to records where individuals are employed in firms regulated by other legal regulators or work in unregulated environments. In these cases, CILEx Regulation relies entirely on the production of records from the individual.

Competence assurance in other sectors

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.

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We maintain a watching brief on the approach of other sectors to CPD and have noted that the usual determinant for enhanced supervision of individuals is related to the risk posed by the professional to their clients. So, for example, in healthcare, the risk is death and therefore the most stringent ongoing competence requirements are imposed – i.e. revalidation. Revalidation has been in operation within the medical profession for a number of years and it would be helpful to understand how far this has improved the performance of medical professionals, through for example the number of upheld complaints or a reduction in medical mistakes. Although not the only operating cause for medical mistakes, if revalidation of medical professionals is designed to improve competence, we would expect to see a reduction in these outcomes for patients.

In relation to trust, it would be interesting to understand how far patients are aware and take comfort from the new approach to ongoing competence, i.e. to what extent are patients aware that medics are required to revalidate periodically and whether since the introduction of revalidation, public trust in medics has improved.

The recent Hackett Review in the Engineering sector, undertaken in the wake of the Grenfell Tower disaster has provided recommendations which may also be of interest.

In summary its findings were as follows:

1. Reform of CPD system could be used to overcome issues with current approach.
2. There should be a focus on holistic development of CPD so that different professions do not undermine safety standards by through lack of awareness of the roles of others.

Key issues identified:

- Fragmentation: Having multiple frameworks for interlinking disciplines which do not reference each other or their interactions
- Lack of coherent approach to evidencing differing competence/experience levels.
- International systems require more experience for more complex projects, rather than a single standard for competency.

Recommendations from the review:

- Work holistically with other relevant sectors/industries to implement good practice in the sector, from accreditation to regulation.
- A single body (Joint Competent Authority, JCA) should monitor the entire oversight process, bringing together each section of the industry under a holistic framework.
- Levels of competence required should be maintained and subject to continuing development, continuing education, or meaningful continuing professional development (CPD), and delivered by each professional body.
- Competence levels should be reassessed and reaccredited on a defined periodic basis.
- Accrediting bodies themselves should be subject to accreditation by a publicly recognised system.

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- Implement a clear, transparent and easily recognisable method of demonstrating that the necessary level of competence has been reached, for example a card or passport.
- Progress should be monitored by government, with the professional and accreditation bodies providing government with quarterly progress reports.

Vicky Purtil

Director of Authorisation &
Supervision

Victoria.purtill@cilexregulation.org.uk

Mobile: 07887 613398