

Response to the Legal Services Board's Call for Evidence: Ongoing Competence

June 2020

Background

1. We welcome the opportunity to respond to the Legal Services Board's (LSB) call for evidence to help inform its review of ongoing competence in the legal services sector. We agree with the LSB's view that the ongoing competence of legal professionals is central to a consumer-focused legal services market.
2. Taking a proportionate and risk-based approach to ensuring those we regulate are competent to provide legal services underpins our work to protect members of the public and support the rule of law and the administration of justice.
3. Beginning in 2011, and acting on many of the recommendations of the 2013 [Legal and Education Training Review \(LETR\)](#)¹, we have been reviewing and reforming our approach to the education, training and continuing competence of the solicitors and firms we authorise and regulate.
4. We introduced our [Statement of Solicitor Competence](#) (the competence statement), our [Statement of Legal Knowledge](#) and [Threshold Standard](#) in 2015 and reformed of our long-standing approach to continued professional development (CPD) in 2016. Our reforms will culminate in the introduction of the [Solicitors Qualifying Examination \(SQE\), in 2021](#)².

¹ The report of the Legal Education and Training Review, jointly commissioned by the SRA, Bar Standards Board and CILEx Regulation, was published in 2013. It confirmed the need for a more robust and evidence-based approach to the setting of competence standards, a greater emphasis on quality assurance and assessment and more flexibility in the regulatory system to remove any unnecessary barriers to qualification. *Setting Standards: The future of legal services education and training regulation in England and Wales*, LETR, June 2013, <http://www.lettr.org.uk/the-report/index.html>

² We plan to implement the SQE on 1 September 2021. Implementation by this date is subject to the LSB's approval of changes to our regulatory arrangements to allow for the introduction of the SQE.

Key points

5. **Our competence statement defines competence and the standards for practice as a solicitor.** We developed the statement following extensive research with consumers, the legal profession and educators. The statement meets the outcomes specified by the LSB in its 2014 [Statutory Guidance on Education and Training](#). We enforce our competence standards through our [Standards and Regulations](#). Solicitors and firms can choose to go beyond the expectations we set, but this is for firms and individual solicitors to decide, not for us to prescribe.

6. **Unnecessarily high entry standards and continuing competence requirements risk having a negative impact on access to justice, diversity and competition.** Our role as regulator is not to require excellence, but to set and enforce against appropriately challenging threshold standards. This maintains professional standards and trust and confidence in the profession. Our approach to continuing competence, therefore, reflects the risks of the market that we regulate, the regulatory objectives and better regulation principles, specifically:
 - **consumer protection** – the key driver for our approach to continuing competence is to protect people who use legal services and uphold public confidence in the rule of law. We must be proportionate in our approach to ensure that our expectations appropriately reflect the risks of the sector.
 - **an open and diverse marketplace, with regulatory activity targeted at risks** we identify and areas of specific need. For example, in high risk areas such as the youth courts and immigration services.
 - **access to justice** – we must balance the need to ensure standards with making sure we avoid restricting access to competent legal services. We do not wish to discourage organisations and individuals from delivering legal services by imposing standards for all which go beyond the threshold required for effective practice. This would risk excluding competent practitioners and driving up costs for consumers.
 - **proportionality** – this underpins our approach. We must make sure that our regulatory interventions are based on clear evidence of a problem and address the risk without imposing unnecessary burdens and driving up costs for the users of legal services.

7. **As an evidence-based regulator, we have developed our approach to continuing competence to reflect our evidence and research.** We will continue to do this and will act where the evidence shows we need to. For example, where risks to public protection and public interest issues mean that more detailed or specific competence requirements may be needed to meet our

standards. We will also continue to ensure that we have the right tools and resources in place to support all solicitors and firms to maintain their competence and to help them identify and develop in areas most appropriate to their practice and client base.

8. **During 2020/21, we plan to undertake a strategic review of our approach to continuing competence** to ensure that it is continuing to protect the public by ensuring those we regulate are competent, and that our approach remains proportionate and targeted. We will engage closely with the LSB so that in our review, and any resulting follow-up work, we consider the outputs of the LSB's work in this area.
9. **Any benchmarking of approaches to continuing competence should be with regulated sectors and jurisdictions that pose similar risks to those of the legal sector of England and Wales.** In particular, we will consider the landscape within which legal services operate, and the variety of business models and areas of practice within it, when looking at other sectors and the levels of risk they pose to consumers as part of our own strategic review.

Our response to the LSB's questions

Defining competence and competence assurance³

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

10. The LSB's call for evidence notes that there is no single shared definition of competence for legal professionals and that there are several different definitions for what competence means in the legal sector.
11. Given the range of professions, business models and areas of practice within the legal services sector, it would be challenging to develop a sector-wide definition of competence sufficiently granular to underpin the competence requirements of each separate profession. But, at a high level, competency statements across the legal services sector can be consistent and we welcome the LSB's interest in this area.
12. Our now well-established [competence statement](#) meets the outcomes specified by the LSB in its 2014 [Statutory Guidance on Education and Training](#) and forms a fundamental part of the suite of materials we reference at paragraph 4.
13. The competence statement is targeted at the key activities required for effective performance as a solicitor – knowledge, skills, ethical behaviours and professionalism. This proportionate approach allows flexibility, so that individual solicitors can take responsibility for their competence and firms can take ownership of developing their staff.
14. The competence statement also sets out the broad definition of competence that we use for the solicitors and firms that we regulate as, 'the ability to perform the roles and tasks required by one's job to the expected standard'⁴.
15. This definition is taken from a review of the medical profession. When we developed our competence statement, we tested the definition extensively in research with consumers, solicitors, and education experts⁵. We also ensured that our definition aligned with the approach the Bar Standards Board has taken with the Bar Professional Statement.

³ We have combined our answers to the questions LSB posed in Section 1: Defining Competence and Competence Assurance and Section 3: Competence assurance in the legal services sector.

⁴ Definition from "Developing the Attributes of Medical Professional Judgement and Competence" a review funded by the Postregistration Medical and Dental Education Research Initiative of the Dept. of Health's Policy Research Programme, by Professor Michael Eraut and Benedict du Boulay, University of Sussex. The full paper is available at: <http://users.sussex.ac.uk/~bend/doh/reporthtmlnode1.html>

⁵ BMG Research, Development of a competence statement for solicitors, August 2014. Available at: <https://www.sra.org.uk/globalassets/documents/sra/research/development-competence-statement.pdf?version=4a1ac1>

16. This definition also recognises that:

- competence requirements change depending on job role and context
- competence develops
- an individual may work 'competently' at many different levels, either at different stages of their career, or indeed from one day to the next, depending on the nature of their work
- a solicitor's career will change over its course, in terms of role, function and types of practice, with each stage potentially requiring new or different skills and knowledge.

LSB question: How do we assure ongoing competence?

17. Our approach to assuring competency has changed significantly in recent years. It is underpinned by the principles set out on paragraph 6:

- consumer protection
- an open and diverse marketplace, with regulatory activity targeted at risks we identify and areas of specific need.
- access to justice
- proportionality.

18. Between 1985 and 2015, all solicitors had to undertake a minimum of 16 hours of CPD activity each year. In our formal response to the LETR, [Training for Tomorrow](#), we announced our intention to move away from a 'one-size-fits-all' approach and replace the mandatory CPD scheme.

19. We saw our role in ongoing competence then, as we do now, as being focused on the need to set out a regulatory requirement which provides assurance to consumers that those we regulate remain competent. At the same time, our approach must be proportionate and allow for standards to be met without inhibiting the individual's need to tailor their learning and development to their own role and responsibilities.

20. Our approach is, therefore, focused on ongoing reflection and development and encourages individuals to take responsibility for ensuring they are up to date and safe to practise.

21. This approach reflects the principles at paragraph 17 and was approved by the LSB which 'welcomed the move from a prescriptive regulatory arrangement for

CPD' to a 'framework that places responsibility on firms and solicitors to manage their continuing competence'⁶.

How assuring ongoing competence works in practice

22. Solicitors can use the competence statement to reflect on their competence within the context of their own role and practice on an ongoing basis. It helps them to identify any gaps in their competence and to determine where their future development needs might lie. To support them in this, we provide [a toolkit of resources on our website](#).
23. The competence statement also helps firms to identify individual and organisational development needs and to plan relevant training and development activities in a way that is appropriate for that firm, reflecting diversity in the profession and in legal practice. Many firms and in-house legal departments have in place sophisticated competence frameworks. These build on our generic competence statement to set out the competences required of solicitors at various stages and in various roles within their own firm.
24. The competence statement, Statement of Legal Knowledge and the Threshold Statement also support us, as a regulator, to set the standard for those we regulate, help educators train aspiring solicitors and help consumers understand what they can expect from their solicitor.

Ongoing monitoring and enforcement of competency

25. To assure competence on an ongoing basis, we:
 - **Require individual solicitors to make an annual declaration to us** that they have identified and taken appropriate steps to address their learning and development needs during the year. We monitor annual declarations to identify individual solicitors who consistently fail to make the declaration. In 2019, we wrote to 35 individual solicitors to ask them for an explanation of why they had not complied with our competency requirements. Where appropriate, we take further regulatory action in matters of non-compliance.
 - **Analyse and review reports made to us about the competence of individual solicitors.** Where appropriate, we inspect training records where a concern has been reported to us, and engage with individual solicitors to understand the steps they have taken to stay competent and up to date. If there has been wilful non-compliance with our requirements, we can take regulatory action.
 - **Review how solicitors maintain their competence as part of our relevant thematic work** (see, for example, our recent review of criminal

⁶ Letter from Richard Moriarty to Paul Philip, 9 February 2015, available at: https://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/2015/20150209_PP_Decision_Notice_CPD_QLTS.PDF

advocacy) This may include a review of case files, training arrangements and individual training records to see whether proper arrangements are in place for maintaining competence or whether additional before-the-event training or assessment requirements are necessary.

26. We also have a full suite of regulatory tools that we use to ensure that the ongoing competence of solicitors is at the core of how we regulate. These include:
- Additional safeguards we have put in place, where we have evidence to suggest that there is a need for more detailed or specific competence requirements in response to the risks (for example our arrangements for the youth court – see paragraphs 40 to 41).
 - The obligations we place on solicitors and firms in our Standards and Regulations around competence.
 - Our routine horizon scanning work to identify risks in the delivery of legal services, for example, through our [Risk Outlook](#) and our internal reports.
 - Our thematic reviews of high-risk areas, which can include reviews of the training arrangements in place at the firms we visit, as above.
 - The monitoring of incoming complaints for themes or issues.
 - Targeted visits to firms where we have identified a specific risk, for example in our anti-money laundering work.
 - Taking regulatory action when we identify a lack of competence – our Topic Guide on [Competence and Standard of Service](#), part of our [enforcement strategy](#), sets out our tolerance for competence and poor service. For example, while matters of poor service are generally investigated by the Legal Ombudsman (LeO), we will investigate competence or service issues where these are particularly serious or suggest multiple failures of repeated or persistent poor conduct.
27. We work closely with other regulators and others in the sector, such as LeO, the Legal Aid Agency, the Law Society and other representative groups, the Crown Prosecution Service and the judiciary, who all play a role in assuring the competence of the solicitors we regulate. They undertake a range of both formal and informal activities to encourage the delivery of quality legal services. We draw on and take assurance from those activities, rather than duplicate them, and ensure that we only introduce any additional requirements when there is a clear regulatory need.
28. There has also been joint work across the legal sector to assure competency and encourage reporting of concerns when standards fall short. For example, we

receive around 30 reports a year from judges. We are continuing to consider how we can make it easier for problems to be reported to us⁷.

Reviewing our approach to continuing competence

29. We have already evaluated the new requirement on solicitors to maintain their competence⁸. Solicitors and law firms told us that they are embracing the new approach and moving away from simply accumulating hours of training. The vast majority of firms have maintained or increased their support for learning.
30. Our monitoring and review work in this area will be ongoing. However, feedback from an early review was that:
 - Most firms and solicitors implemented the scheme without significant problems.
 - The vast majority of firms have maintained or increased their support for learning and development, with 52% of solicitors doing about the same amount of learning and development; 40% doing more; and only 9% doing less.
 - Solicitors tell us that our approach has helped them to better identify their needs, as learning and development appears to be more relevant and targeted.
 - Most firms reported a reduction in the cost of learning and development by focusing activity on specific roles and teams, working with other firms to develop and deliver training.
 - Solicitors feel that the removal of the 16 hours requirement has not led to a decline in the quality of their work. Nearly 40% felt that the changes had improved the competence of solicitors.
31. We are continuing to review our resources to support solicitors in their ongoing competence, for example, case studies to support those working in-house, and we will add to these during 2020.
32. In addition, five years after the introduction of our competence statement and four years after we introduced a new approach to continuing competence that encourages ongoing reflection and development, and in light of the LSB's interest in this area, we think that it is timely to undertake a strategic review of our approach to continuing competence during 2020/21.
33. Our planned review will consider whether our current approach gives us sufficient assurance that solicitors are safe to practise. We do not intend to change our competence statement, or our requirements for ongoing reflection

⁷ See our recent consultation on advocacy standards available at:

<https://www.sra.org.uk/sra/consultations/consultation-listing/advocacy/>

⁸ <https://www.sra.org.uk/sra/how-we-work/reports/continuing-competence/>

and development. However, we will consider the evidence and data we have about continuing competence and use that to inform whether there is anything further we can and should do to enhance our approach.

34. Our review will therefore consider three key questions:
- Is there evidence of any issues around compliance with our continuing competence arrangements?
 - Is our current approach effective and targeted where it needs to be to assure continuing competence?
 - What can we learn from other sectors?
35. As an evidence-based regulator, our approach to continuing competence so far reflects our evidence. We will continue to take an evidence-based approach and consider how we best ensure that our regulation is effective and targeted where the evidence indicates it needs to be. Any further action in this area will therefore be informed by answers to the key questions covered by our review.

Consumer expectations of competence

LSB question: Why does ongoing competence matter to consumers?

36. The LSB's findings in this area, set out in its call for evidence, reflect our experience of the challenges that consumers face in judging the competence of the professional they are receiving advice from.
37. Our competence statement is underpinned by a major programme of [consumer research](#). This work helped us to ensure that the competence statement we developed reflected consumer expectations of competence. It also helped inform our ongoing regulatory approach to competence.
38. We have also implemented the Competition and Market Authority's (CMA) recommendations in its 2016 [market study of legal services](#). Our action plan to address the CMA recommendations, which the LSB agreed was sufficient, set out the actions we would take to support consumers in their decision making about legal advice.
39. Since publishing the action plan in 2017, we have:
- Introduced the [Solicitors Register](#) in 2019, to provide clear information for consumers – this helps consumers check that a solicitor has been admitted and meets our requirements. It also provides a solicitor's regulatory record.
 - Introduced a '[clickable logo](#)' for law firms in 2019, to help consumers identify law firms that we regulate and what they can expect of these firms, such as meeting our competence standards.

- Implemented the [SRA Transparency Rules](#) in 2018, requiring publication of information about complaints procedures, costs and services in key areas.
 - Produced [guidance](#) to help firms and solicitors engage with online reviews.
 - Updated and developed the [consumer information](#) on our website to help consumers understand what they should consider when choosing a lawyer and what they can expect from a regulated solicitor.
 - [Developed a leaflet](#) with LeO for frontline organisations and charities that explains when concerns should be raised with LeO and when with us. We will continue to promote this material.
 - Worked with the joint regulators to develop the [Legal Choices](#) website, which we host. In line with the CMA recommendation, we have improved the presentation of the website and delivered a range of new content and four new products to help consumers and their advisers.
40. Our work also recognises that there may be areas of legal services where we can provide additional support to help with interpretation of the competence statement. For example, we have converted the competence statement into a [leaflet for young people](#) in the youth courts system and developed [additional resources](#) for solicitors who work in this area.
41. The work in the youth courts has provided us with a framework for how we support vulnerable consumers in their understanding of competency, particularly in areas where ‘after-the-event’ redress may not be an option. We are considering sector-specific competence statements or targeted requirements around competency in other high-risk areas, for example, immigration and [advocacy](#).

Competence assurance in other sectors

42. Our strategic review of continuing competence will consider whether there are lessons to be learned from the approach taken by other largely commercial sectors with a wide range of firms and practice areas, a diverse client base and similar levels of risk.
43. We recognise the difficulties of comparison with other very different sectors, for example, the health sector also has well-developed competence arrangements but presents a much higher risk profile and structurally most practitioners work for, or are funded by, one provider – the NHS.
44. In the legal services sector, our approach must be proportionate and recognise that consumers have access to a range of options for redress ‘after the event’, for example, financial redress. This means that we are able target our additional requirements for competency at areas where after-the-event redress is likely to

be less relevant, for example, where liberty is at risk. This underpins our focus on advocacy, youth courts and immigration.

45. As an evidence-based regulator, our priority will be to consider whether there is evidence of a problem, whether any new measure might address that problem and that the difference any intervention can make is proportionate to the risks posed – that it justifies the regulatory burden and additional cost for the profession and consumers.