

Legal Services Board Call for Evidence: Ongoing Competence

About us

STEP is the worldwide professional association for those advising families across generations. We help people understand the issues families face in this area and promote best practice, professional integrity and education to our members.

Today we have over 20,000 members across 95 countries, with over 7,000 members in the UK. Our membership is drawn from a range of professions, including lawyers, accountants and other specialists. Our members help families plan for their futures: from drafting a will or advising family businesses, to helping international families and protecting vulnerable family members.

We take a leading role in explaining our members' views and expertise to governments, tax authorities, regulators and the public. We work with governments and regulatory authorities to examine the likely impact of any proposed changes, providing technical advice and support and responding to consultations.

STEP welcomes the opportunity to submit comments on this LSB Call for Evidence.

If you have any questions relating to our response please contact Sarah Manuel, Professional Standards Manager at standards@step.org or call +44 (0) 3752 3762.

Introduction

1. STEP's primary role is to provide confidence to our members, their clients and employers through the standards which we set, the training and education provided to our members and through upholding those standards.
2. Our members are also required to keep up to date with the latest legal, technical and regulatory developments and you can recognise a Full Member of STEP by the letters 'TEP' (Trusts and Estates Practitioner) after their name.
3. STEP members will generally be experienced practitioners in their primary field, whether having trained and qualified as a Solicitor, Barrister, Accountant, or Financial Adviser. Our members are already highly qualified and experienced when they become a TEP.
4. We offer a number of qualifications, from entry-level programmes to advanced certificates, diplomas and a postgraduate diploma. These qualifications are supplemented by resources that provide continuing professional development and opportunity for sharing knowledge.
5. All of our members are subject to a Code of Professional Conduct, requiring them at all times to act with integrity and in a manner that inspires the confidence, respect and trust of their clients and of the wider community. In addition, we have specific additional requirements set out in supplementary guidance and we are also a signatory to Professional Conduct in Relation to Taxation.

Defining Competence and Competence Assurance

6. A competence framework should encompass the core competence requirements to undertake a particular task. The competency framework would identify the required range of technical knowledge and understanding which is required at various stages of a professional's career, for example the expectations of a newly qualified practitioner will differ from an individual with twenty years of experience who has remained up to date by undertaking appropriate continuing professional development.
7. Core Competences would focus on the baseline knowledge and understanding all professionals in a particular field are required to have and this would be supplemented by additional defined competences for those in a specialist field. Alongside the required technical knowledge should be an understanding of the necessary 'soft skills' which may be required for particular roles.
8. A competency framework would benefit from inclusion of the required standards within a profession. Often overlooked is the necessity to provide practitioners with an awareness of the standards which are set out within a Code of Conduct with overreliance on an expectation that reading the guidance is the same as discussing the ethical requirements in a learning environment.
9. In terms of models of competence assurance, STEP operates various delivery models from initial qualification and through its CPD offering. We offer different routes to qualification through taught modules and examinations, self-study followed by assessments of essays on chosen topics and peer review of experience gained in the workplace.

10. We have set high entry standards. Our entry level members, known as Affiliates are required to hold a recognised qualification at a minimum of Level 4, plus have a minimum of one year's relevant practical experience in order to enrol on the STEP Diploma as a route to Full Membership under our Exam Route, or to have a recognised qualification at Level 6, plus a minimum of five years relevant practical experience to study our Essay route to achieve Full Membership. The practical experience is signed off by a referee.

11. Our CPD offerings provide members with the opportunity to partake in further assessed courses, seminars/webinars, and a range of networking opportunities. Our commitment to developing the ongoing competence of our members is further enhanced through our Employer Partnership Programme, where we have set quality standards to help employers support the professional development of their staff who are STEP members.

12. STEP requires its members to record their CPD and undertake regular reflection. We operate a random audit annually to review a sample of records and Members can be removed from Membership for failing to undertake relevant CPD. Full details of our CPD policy and resources to support the professional development of our Members can be viewed on our website, <https://www.step.org/members/cpd>

Consumer expectations of competence

13. In our experience of speaking with clients of our members, many will have based their decision to use an individual practitioner because they hold a specialist qualification with a professional body. They take reassurance that individuals who hold the 'TEP' designation have a proven qualification, which also signifies a commitment to continual professional development and the upholding of standards.

14. A publicly accessible register which holds details of our members practice area, and qualifications provides additional reassurance as does the ability to check their disciplinary record to know whether there are any concerns.

15. We are also aware that testimonials and feedback, both positive and negative, found on websites can influence a consumers decision to choose a practitioner. Many of our members operate through reputation they have gained enabling them to build a network of trusted professional advisors, as such we believe that word of mouth remains important within the profession and consumers along with recommendations from either their Family Solicitor/Accountant or from family and friends.

16. Regulators can further provide assistance to consumers through increased education on what a 'good advisor looks like'. Regulators can be a valuable source for raising awareness and supporting consumers to make appropriate choices when seeking legal advice. They already have good connections and can work with existing consumer bodies of information such as Trading Standards, Citizens Advice Bureaus, local councils, Community Hubs and public libraries.

Competence Assurance in the Legal Services Sector

17. STEP's membership is multidisciplinary in nature, largely comprising Lawyers, accountants and financial advisers, who have then specialised within inheritance and

succession planning. As specialists in inheritance and succession planning, STEP members will draft wills and trusts, administer estates, act as trustees and advise families on how best

to structure their finances to ensure tax compliance and preserve their assets for future generations. Some examples of what STEP members may advise on are:

- providing for someone following their partner's death, while protecting the interests of their children
- ensuring elderly or vulnerable relatives are cared for and supported
- helping families with interests spread across the world to be compliant with the laws and tax rules of different countries
- ensuring that a family business will pass safely from one generation to another
- helping clients to support charitable causes in an effective way.

These are often complex matters requiring specialised expertise.

18. STEP responded to Professor Mayson's Independent Review of Legal Services on our concerns regarding the impact of the lack of regulation which exists within this field. The examples we repeat here demonstrate the importance of STEP membership in providing a way to identify and recognise specialist expertise within the field.

19. These two recent cases that our members have dealt with illustrate the risks involved in the drafting of wills. The first case focuses on a will drafted by an unregulated will writer and the difficulties that arose, and our second case involves a will drafted by an IFA and the difficulties that have arisen.

Case Study One: This involved an unregulated will writer making the gift of the nil rate band to a separate pilot trust. There was no need to place the assets in a pilot trust as the terms of the trust could have easily been set out in the will. One view for the will being drafted this way was to make the matter look more complicated than it was. This enabled the will writer to charge more for the will and the separate trust, as the clients were seeing two documents when one would have done.

Case Study Two: An IFA advised a client to place two properties in trust as an asset protection measure, as the husband had recently been diagnosed with cancer. However, the IFA believed the tax rules were as they were prior to the Finance Act 2006 changes and that the gift into a settlor interested trust would be a non-event. This is not the case and a chargeable transfer has been made that the clients were not expecting, and the value of the properties are potentially over the husband and wife's nil rate band.

20. As can be seen from these two case studies, the absence of training, qualifications and oversight in the requisite area has been a contributing factor. This can be overcome by the requirement of specialist training for those legal service providers who wish to work in this field.

21. STEP has also been concerned in recent years with the sale of cheap wills, which are usually sold online. On the face of it, these wills seem suitable for those whose estate is relatively simple, for example, cash assets that total no more than £10k to a single beneficiary. However, we have seen examples where the firm's business terms and conditions have not been explained to the settlor and, buried deep within these terms and conditions, are unfavourable terms that force the settlor to appoint the firm as executors. This, in turn, gives the executors the permission to appoint others for the administration of the estate. In this situation, the administration of the estate should be relatively simple.

However, as unnecessary third parties have become involved, the fees charged for the administration service, including unidentified disbursements, is largely unnecessary and will inevitably eat into the assets of the estate, thereby significantly and unnecessarily reducing

the amount distributed to the beneficiary. This behaviour, in our opinion, has the potential to undermine confidence across the will-writing profession, causing unnecessary upset to individuals at a time when they are vulnerable.

22. In addition to the art of will writing, the provision of tax advice is also highly specialist and nuanced. Changes in legislation and Tax compliance requirements occur rapidly and frequently. The need to remain up to date on all the changes which affect estate planning can be extremely challenging, particularly in jurisdictions with a complex tax system. It is therefore vital that competence is assured at a specialist level, not generic.

23. To assist with assessing ongoing competence of those they regulate, the regulatory bodies should not seek to reinvent the wheel, but work with those whom already have extensive experience within a specialist area. By operating an accreditation system, they can recognise the qualifications and quality assurance mechanisms already in place within specialist membership organisations. This would also ease any significant additional regulatory costs which would be associated with developing and implementing their own additional internal schemes. For example, a number of STEP's qualifications are quality assured by University of Manchester Business School.

Competence Assurance in other sectors

24. STEP operates globally and as already identified, STEP members operate across a number of business sectors. For example, many members in Canada, have qualified as a Chartered Professional Accountant (CPA) and CPD is mandatory. The CPA CPD scheme encompasses both verifiable and non-verifiable learning and retains an hour's based requirement of 120 hours for a rolling three-year period, of which the member needs to complete a minimum of 40 CPD hours plus four verifiable hours of professional ethics, all of which is audited.