

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.

The [Legal Education and Training Review](#) in 2013 indicated that the affective domain (emotions and feelings) was a key component of a legal competency framework (para. 4.83). However, the subsequent competency frameworks which have developed within the legal profession have largely ignored this component (Jones, 2018).

There is a large body of international evidence demonstrating that legal professionals experience lower levels of psychological and emotional wellbeing than that of the general population. It is also clear that this is linked to a range of structural and cultural and other issues within the profession itself. Within the UK, this has been demonstrated by the research conducted by the [Wellbeing at the Bar](#) initiative, the calls and messages received by the charity [LawCare](#), the annual surveys of the [Junior Lawyer Division](#) and [wider qualitative work](#) (see also Jones et al, 2020).

To begin to tackle some of the myriad issues around psychological and emotional wellbeing within the legal profession, it is necessary for the role of the affective domain within legal work to be fully acknowledged and incorporated into competency frameworks. We are aware that the [Chartered Institute of Legal Executives consulted on including 'emotional competency' within its Education Standards](#) and, as a result, is proposing to incorporate it in their revised version.. The term 'emotional competence' is an established way of referring to the affective domain. When explicitly incorporated into competency frameworks in an evidence-based and appropriate manner, this has the potential to upskill legal professionals in a way which is beneficial to both their wellbeing and their standards of work.

We note that what constitutes emotional competence will look different for different parts of the profession, e.g., the self-employed nature of the large majority of barristers means they experience different issues with wellbeing and have different demands placed upon them. However, overall, we would argue that the affective domain, via the use of emotional

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competence, requires an explicit acknowledgment across all aspects of legal practice.

Such an explicit acknowledgment is particularly important at a time when COVID-19, and resulting economic insecurities, are significantly impacting both ways of working and people's wellbeing. This is also a period where there is a heightened awareness of, and will to tackle, wider structural inequalities in society. For the legal profession this means there is a need to address institutional inequalities, particularly around the expectations in legal practice around 'emotional competence'. Relevant questions to ask include: Are women being given emotional roles, jobs and clients because they are perceived as 'feminine' work (see, e.g., [Francis, 2006](#)). Are people who have a different cultural background performing different emotional competencies than white British legal professionals which implicitly affects the work, jobs and the clients they will be given or get? How can someone who did not grow up in Britain be expected to perform the correct emotional competencies without clarity around what these are? The current competency statements impliedly expect legal professionals to display emotional competence. However, by not formalising emotional competence and also not outlining what it is and which aspects are relevant, it is being interpreted according to the perceptions of employers and individuals, rather than through a shared understanding. It is unlikely that this is fair and consistent across the sector. Now is a time to explain what is expected from every legal professional regardless of their cultural background and gender. Creating a systematic and consistent approach in this way could help deal with some of the structural inequalities already identified within the law (see, e.g., [Sommerlad et al, 2010](#)).

In relation to the notion of on-going competence, we would argue that what constitutes 'competence' may evolve over time for individual practitioners. This is particularly the case as they become more senior and are expected to undertake managerial or leadership responsibilities, e.g., managing teams and supervising trainees. Our own qualitative research has indicated legal practitioners may be ill-equipped to handle the additional demands and competencies required by such roles (Jones et al, 2020). This not only impacts negatively on their own wellbeing, but can also create wider issues, e.g. a poor team leader may foster an increasingly toxic working environment. We would therefore argue that, across the legal profession, there needs to be a recognition of the evolving competencies required and the provision of appropriate support and training to ensure that individuals are equipped to deal with increased managerial and leadership responsibilities.

Papers referenced (copies available on request)

Jones, E., Graffin, N., Samra, R. and Lucassen, M. 2020. *Mental Health and Wellbeing in the Legal Profession*. Shorts Series. Bristol. Bristol University Press (in press).

Jones, E. 2018. Affective or defective? The LETR's characterisation of affect and its implementation into practice. *The Law Teacher*, 52(4), 478-489.

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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.

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.

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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.

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.

We note that competency frameworks focus on the skills and abilities of individual legal professionals. We recognise the importance of this in terms of quality assurance and consumer confidence. However, the quantitative and qualitative research referred to in our first response (above) all demonstrate that there are broader structural and cultural issues within the legal profession which impact upon the psychological and emotional wellbeing of individual legal professionals. Such impaired wellbeing can, in turn, lead to individuals struggling with the levels and content of their work and their ethical judgement. In other words, poor wellbeing can lead to legal practitioners becoming less competent. This is well illustrated by the case of *SRA v Sovani James*, *SRA v Esteddar MacGregor*, *SRA v Peter Naylor* [2018] EWHC 3058 (Admin) (an appeal from decisions of the Solicitors Disciplinary

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Tribunal where toxic working environments had significantly influenced the actions of the legal professionals involved).

We have already emphasised the need to explicitly recognise the affective domain in competency frameworks (via the concept of emotional competence). However, it is also necessary to ensure that issues with the affective domain and wellbeing are not simply individualised and that there is an acknowledgment of the wider cultural and structural issues involved, e.g., chargeable hours and billing practices for solicitors and legal executives. This cannot be addressed by competency frameworks aimed at individuals. Instead, the demands of legal work (as demonstrated by the competencies required) also need to be explicitly recognised and dealt with within the legal profession's wider regulatory frameworks, including those relating to quality assurance and ethics and conduct. We would argue that clear, evidence-based guidance needs to be provided to regulators on how this is done effectively. The regulators themselves could then provide specific guidance to employers and other key stakeholders based upon the regulatory changes made.

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

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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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