



LEGAL SERVICES
BOARD

ONGOING COMPETENCE: CALL FOR EVIDENCE THEMES AND SUMMARY OF EVIDENCE

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Contents

1. Project overview.....	3
2. Key themes.....	4
3. Emerging conclusions	7
4. Next steps.....	8
5. Summary of evidence	9
Annex A: Submissions	31
Annex B: Meetings.....	32

1. Project overview

The Legal Services Board (LSB) is currently reviewing how legal regulators ensure that the legal professionals they regulate remain competent throughout their careers.

Our ongoing competence project goes to the heart of the LSB ambition to reshape the legal services sector to better meet society's needs and to provide consumers with fairer outcomes, stronger confidence and better services. Consumers should be able to trust that legal professionals have the necessary and up to date skills, knowledge and attributes to provide good quality legal services.

The project is intended to promote the regulatory objectives to protect and promote the public interest and the interest of consumers; encourage an independent, strong, diverse and effective legal profession; and promote and maintain adherence to the professional principles.

We completed a call for evidence in the first six months of 2020 to inform our work on ongoing competence. This report sets out who engaged with the call for evidence, key themes from our analysis, our emerging findings and a summary of all of the evidence shared with us.

Call for evidence

The aim of the call for evidence was to gather as much information as we could across the following areas:

- defining competence and competence assurance
- consumer expectations of competence
- competence in the legal services sector
- competence in other sectors.

We engaged with a wide range of stakeholders, including:

- the regulatory bodies and approved regulators within the legal sector
- regulators in other sectors e.g. Financial Reporting Council (FRC), Civil Aviation Authority (CAA), General Medical Council (GMC), Engineering Council
- government agencies e.g. Her Majesty's Courts and Tribunals Service (HMCTS), Her Majesty's Land Registry (HM Land Registry)
- consumer representatives e.g. Legal Services Consumer Panel (LSCP) Citizens Advice, Law Centres Network (LCN)
- complaints bodies and tribunals e.g. Legal Ombudsman (LeO), Solicitors Disciplinary Tribunal (SDT)
- judicial circuits
- representative bodies e.g. specialist bar associations
- accreditation providers e.g. STEP.

Our call for evidence resulted in:

- 30+ formal responses to the call for evidence (see Annex A)
- 50 targeted stakeholder meetings (see Annex B)
- 50+ additional datasets, research and other relevant information shared with us or sourced through LSB desk research.

2. Key themes

We have grouped and summarised key points from our analysis of the evidence into four themes:

1. Consumers' experience of legal services
2. Areas of increased risk for consumers
3. Existing competence assurance tools used in the sector
4. Potential new approaches to ongoing competence.

Under each of the themes below, we reflect stakeholders' views.

Consumers' experience of legal services

Stakeholders said that consumers do not have enough information about the quality of legal services, such as guidance about what to expect from a legal professional in terms of competence. Providing this type of information is common in many other sectors, such as healthcare. Research shows that consumers assume legal professionals are and remain competent (LSCP [2010](#), [2020](#)) and that there are robust checks in place to ensure this.

There is general agreement that the ongoing competence of legal professionals is vital to ensuring consumers' continued trust and confidence in the sector. The public's trust and confidence was cited most often as a key benefit of ongoing competence assurance, in addition to avoiding harm from poor quality legal services.

We were told that further checks could give the public confidence that legal professionals remain competent. There is some support for sector-wide competence checks, which could provide meaningful assurance to consumers that legal professionals are meeting existing standards and expectations of competence. There is also support for targeted competence checks because there is evidence of an increased risk of harm to consumers in some areas.

A number of stakeholders suggested that there could be value in developing a shared core competency framework for all legal professionals, which could be provided to consumers so that they can better judge the quality of legal services. Some regulators have already developed competency frameworks for their respective professions, such as the Solicitors Regulation Authority (SRA) for solicitors and the Bar Standards Board (BSB) for barristers.

Typically, consumer feedback is not routinely sought in the legal services sector. A large number of stakeholders referenced the potential of gathering customer feedback as it could be valuable for identifying areas where legal professionals might need to improve their skills and knowledge. Some large firms or chambers already gather some feedback from clients.

Areas of increased risk for consumers

Despite identifying qualitative evidence, there are few objective sources of quantitative data on the quality of legal services. We believe this is because this type of data is either not collected or published routinely, or collected in a consistent and comparable way. Complaints, professional indemnity insurance (PII) claims, research, thematic reviews and datasets provide some proxies for quality. From these, as well as anecdotal feedback, concerns have been identified about the quality of some legal services that may warrant targeted intervention.

Well-informed consumers, citizens in vulnerable circumstances and those lacking legal confidence¹ all have different abilities to make informed decisions about the quality of the advice and service that they receive, according to stakeholders. It was noted that this places some consumers at an increased risk of poor legal service and potentially in greater need of protection from harm.

Immigration and asylum was the most frequently cited practice where the consequences of poor legal services can have a grave impact on those who are in situations of extreme vulnerability. Concerns about the quality of some criminal advocacy were also frequently cited and referenced in independent research, with the risks to consumers, including potential miscarriages of justice, highlighted. Stakeholders also recognised the inherent vulnerability of those in youth courts (including children who may have complex needs and vulnerabilities) and coroner's courts (including witnesses who are vulnerable due to the nature of inquiries).

Conveyancing is another area where there is evidence of harm to consumers. This is an example where consumers may be less at risk of significant harm, but from consumer complaints, indemnity claims and HM Land Registry data it is clear that some consumers may be receiving poor quality legal services.

Existing competence assurance tools used in the sector

There is evidence that legal regulators have robust measures in place to ensure that legal professionals are competent when entering the profession, through testing and entry requirements. There are fewer measures for checking legal professionals' competence post-qualification, which is unusual compared with other sectors.

All legal regulators currently have rules in place to require continuing professional development (CPD). Limitations with CPD models were cited, including the lack of independent verification of the relevance or quality of CPD activities; and the reliance on individuals to identify their own learning and development needs. In other sectors, such as financial services, oversight visits are used to check the quality or relevance of CPD activities to professionals' practice.

There is a wide range of tools being used across the sector with some success, including accreditation schemes, advocacy assessments, peer reviews, informal feedback mechanisms and specialist training programmes. Unfortunately, these tools are not always targeted to risks, although we note there are some good examples of regulators taking targeted action, such as to address concerns about the quality of some youth advocacy. The tools are also not used consistently and tend to have only limited coverage.

For example, regulators do not proactively or routinely gather and record intelligence about the competence of individuals and firms. When they do have concerns about competence, there is limited recourse available to provide remedial support, such as training or supervision. Typically, the available recourse is the disciplinary and enforcement process, which may not be appropriate in response to every competence concern.

Existing accreditation schemes, peer reviews, and feedback models tend to be applied to only a small part of the profession.

¹ Confidence of individuals in achieving an outcome that they consider is fair and they are happy with when faced with a legal issue. See P. 6. Pascoe Pleasence, Nigel Balmer. 2018. "Legal Confidence and Attitudes to Law: Developing Standardised Measures of legal Capability". Available at: <https://research.thelegaleducationfoundation.org/wp-content/uploads/2019/02/Legal-Confidence-and-Attitudes-to-Law-Developing-Standardised-Measures-of-Legal-Capability-web-version-1.pdf>.

Potential new approaches to ongoing competence

Different ways of assuring ongoing competence were identified for potential use in the legal services sector. This includes a range of options used in other sectors, such as financial services, aviation, healthcare, engineering and teaching. Stakeholders identified that some of these methods could be used for all legal professionals, or targeted to areas where there is a particular risk. The range of options identified includes:

- developing a shared core competency framework that sets out the skills and knowledge all legal professionals should have;
- gathering feedback from multiple sources (such as clients, supervisors and peers) and using this to inform legal professionals' learning needs²;
- undertaking spot checks or file reviews to test a legal professional's practice;
- using feedback and other intelligence, such as reports from judges or spot checks, to identify specific competence concerns and addressing these through remediation (for example, training or supervision) as well as to inform assessments about the prevalence of competence concerns in different areas;
- making improvements to existing CPD models, including better auditing and use of reflective practice;
- requiring further training in some practice areas, such as those where there has been an identified risk to consumers; and
- introducing periodic reaccréditation/revalidation requirements.

Willingness to explore potential new approaches to ongoing competence was often predicated on the need for a careful balance of costs and benefits. Concerns about the additional burden on professionals were cited, particularly for those in not-for-profit, pro bono and legal aid areas. Benefits include increased public trust and reduced harm of poor-quality legal services.

² The LSB is currently undertaking work on quality indicators and is considering initiatives to encourage consumers to provide feedback on legal services, in order to inform other consumers' choice of provider. See: <https://www.legalservicesboard.org.uk/our-work/ongoing-work/increasing-market-transparency-for-consumers>.

3. Emerging conclusions

We have reflected on the key themes and concluded that there is a strong rationale to take our work forward in this area.

At present, there are rigorous checks on entry to the profession, but after that, there are few checks on an individual's competence throughout their careers. With the primary focus being on testing competence at the point of qualification, legal regulators typically do not have the tools or processes available to respond to concerns about competence. This is out of step with other sectors, which routinely adopt other tools to ensure ongoing competence and to respond to identified competence concerns, to promote public trust and confidence and protect consumers from harm.

We were pleased to find that some regulators, firms, chambers, circuits and individuals in the legal services sector have adopted methods for testing competence, but unfortunately, these are not used routinely, tend to have limited coverage and may not be targeted to risks to consumers. There is also a clear misalignment between the current provision in the sector and what the public expects in terms of checks on competence for legal professionals over time.

We would like to see a renewed focus from the legal regulators on ensuring ongoing competence. We also consider additional targeted intervention by regulators may be warranted where there are concerns about consumers who are at an increased risk of harm.

As oversight regulator for the sector, we intend to set clear and consistent expectations for all legal regulators to ensure the ongoing competence of legal professionals, which the regulators will be required to take into account in setting requirements for their own regulated communities.

We will develop and consult on our expectations in the coming months (see next steps section below). In general, we intend to set high level expectations that all legal regulators should:

- set out the standards of competence that legal professionals should meet at the point of entry and throughout their careers; and
- have mechanisms in place to:
 - identify legal professionals who are failing to meet those standards;
 - identify areas of increased risk to consumers;
 - respond when legal professionals fall short of the standards of competence; and
 - provide appropriate protection when there is an increased risk of harm to consumers.

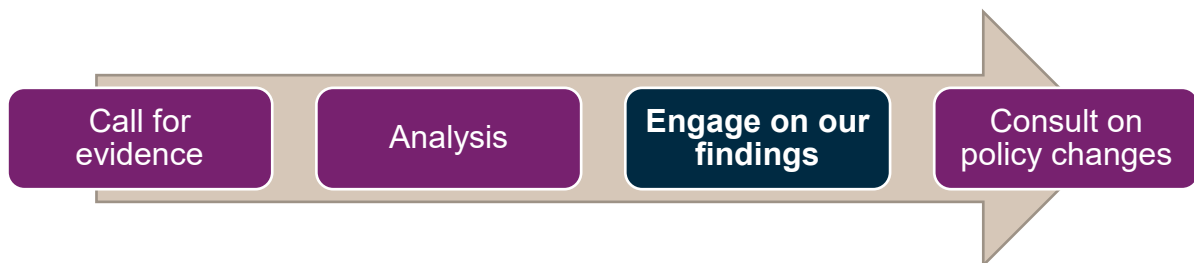
In further engagement, we plan to explore the merits of the options for ensuring ongoing competence identified by stakeholders in the call for evidence, including (but not limited to) the potential for a shared core competency framework, mechanisms for collecting feedback, encouraging better use of reflective practice, remediation and specialist training. Our aim will be to support regulators to identify the options that will be most appropriate for use in their regulated communities and in line with our high-level expectations.

4. Next steps

We will engage with stakeholders on our emerging conclusions to shape our thinking as we develop our expectations as policy proposals. We intend to hold pre-consultation workshops in mid-2021 and to formally consult in the second half of 2021.

We are also using the LSB Public Panel to inform our work, testing our key themes and emerging conclusions. The Public Panel is a standing group of members of the public who we engage with to inform policy development so that we can better understand their needs and priorities.

Further, in the call for evidence, a gap in our knowledge was identified about the approaches taken to assure ongoing competence in legal services sectors in other jurisdictions. We have commissioned independent research on this topic, which was awarded to Hook Tangaza following a competitive tender process. The outputs from this research and our work with the Public Panel will be published in the first half of 2021.



5. Summary of evidence

We are grateful for the formal submissions we received referenced at Annex A, in addition to views shared in targeted stakeholder meetings, listed at Annex B. We appreciate the provision of information from public sector stakeholders including HM Land Registry, Office of the Public Guardian (OPG), Office of the Immigration Services Commissioner (OISC), Legal Aid Agency (LAA), Civil Aviation Authority (CAA), the Engineering Council, Office of Qualifications and Examinations Regulation and the Foreign, Commonwealth & Development Office (FCDO).

Our approach to analysis

We analysed the written submissions and meeting notes systematically using dedicated qualitative data analysis software (ATLAS.ti). We used an open coding framework to identify themes and sub-themes. The use of the software provides an auditable trail where it is possible to see which text has been labelled with, or assigned to, codes from an open coding framework. To minimise the risk of subjective bias we internally peer reviewed sections of coding. We have produced this summary from that process. If you have any questions about our analysis or methodology, please email us ongoingcompetence@legalservicesboard.org.uk.

Structure

We have summarised the information we received into the same themes that we used to set out our key findings, although we have identified additional sub-themes to ensure we accurately captured stakeholders' views.

1. Consumers' experience of legal services
 - a) Why this work matters
 - b) Consumers' ability to assess quality
 - c) Different types of consumers
 - d) More information for consumers
 - e) Relevant competencies
2. Areas of increased risk for consumers
 - a) Immigration/asylum
 - b) Advocacy
 - c) Conveyancing
 - d) Risks from certain professionals
 - e) Low risk practice areas
3. Existing competence assurance tools used in the sector
 - a) CPD
 - b) The role of employers
 - c) Observation
 - d) Regulatory supervision
 - e) Feedback
 - f) Accreditation
4. Potential new approaches to ongoing competence
 - a) Support for change
 - b) Feedback
 - i. Consumer feedback
 - ii. Judges' feedback
 - iii. Peers and colleague feedback
 - c) Remediation
 - d) Specialist training
 - e) Assurance visits
 - f) Revalidation

1. Consumers' experience of legal services

a) Why this work matters

Stakeholders agreed that ongoing competence was crucial for consumers' continued trust and confidence in the legal services sector. The SRA agreed with the LSB view that the ongoing competence of legal professionals is central to a consumer-focused legal services market.

Chartered Institute of Legal Executives (CILEx) said it was important to safeguard minimum standards of skills and knowledge for protection of the public and consumer interest. CILEx also said it was important that consumers can trust and rely on legal services providers.

Association of Consumer Support Organisations (ACSO) commented on the pace of change in the sector,

'it [is] essential that legal professionals acquire and maintain the necessary knowledge and skills to deliver legal services competently, effectively and ethically, in line with the pace of change within the sector.'

In our meetings, several stakeholders commented that as this was important work for the sector, the LSB has a useful role to play, bringing together different stakeholders to find common ground and refocus attitudes to competence. This included several public agencies that have a mutual interest in ensuring legal professionals provide high-quality legal services to consumers.

b) Consumers' ability to assess quality

Consumer representative groups including Citizens Advice, LCN and LSCP were able to provide us with useful insights into consumers' experience with and expectations of legal professionals. They said that consumers tended to have trust in professionalism and regulation to ensure legal professionals' competence and did not want to be baffled by legal jargon and technical information.

LSCP said that consumers tend to rely on proxies such as years of practice, which may or may not be a helpful indicator. LCN said:

'there is a concern that there is a section of society who needs legal advice but does not have the consumer experience (or is in too distressed a state to utilise their consumer experience) and as a result receives substandard advice. This is not to place the blame on clients in these situations, or to describe these clients as lacking in agency – the difficulty in judging competence during a crisis or when there appear to be no other options is clearly enormous.'

Several stakeholders agreed that consumers face challenges in judging competence (LeO, SRA, The Law Society (TLS)). TLS provided us with the consumer perception research it commissioned from London Economics and YouGov in 2017. This found that consumer behavioural biases in the legal services sector are particularly pervasive because of factors such as information asymmetry, personal circumstances (including unique needs) and the complexity of legal regulation.

ACSO said that it is difficult for consumers to judge quality, particularly when satisfaction (with the outcome of a legal query) does not necessarily equal the quality of advice given.

c) Different types of consumers

Many stakeholders made the distinction between different types of consumers, noting that some legal professionals typically (and in some cases exclusively) deal with well-informed consumers such as other legal professionals or business clients that are regular legal purchasers (Bar Council, Commercial Bar Association (COMBAR), Council of the Inns of Court (COIC), Chartered Institute of Patent Attorneys (CIPA)).

The reason this distinction may be important is that well-informed consumers are likely better positioned to judge the quality of legal services than other consumers who are infrequent purchasers or unfamiliar with the legal procedures. There is a further distinction to be made where citizens are in vulnerable circumstances, particularly when making distress purchases. These consumers may need to be afforded additional protection.

Council for Licenced Conveyancers (CLC) said,

'it is important to note that certain risks and issues arise not because of the type of work that is being delivered, but as a result of the vulnerability or other characteristics of the client.'

TLS said,

'there are some areas of practice which bring with them higher competency risks and where it is appropriate to have higher levels of assurance of competence for practice.'

Nottingham Trent University said that there are areas of law that can be identified as higher risk from LeO data, disciplinary data or first principles, including advocacy, immigration, insolvency and debt and welfare. Regulators said that a risk-based approach to regulation identifies areas of law that are higher risk.

CILEx Regulation said it has a risk-based matrix which has identified criminal, immigration, housing, probate, family and conveyancing as risk areas.

The BSB said it will take targeted action when a risk has been identified, for example, in working with children and young people, where it has introduced specific competencies; or in immigration, where it has introduced guidance. Similarly, the SRA said it targets regulatory activity in 'high risk areas such as the youth courts and immigration services' and it will begin randomly sampling the training records of solicitors practicing in youth courts in 2021. Both the SRA and BSB are currently working together to address concerns relating to advocacy in the coroner's courts.

More information about areas of increased risk to consumers, including specific evidence from some of the relevant practice areas, is included in the next section of the report (see 2. Areas of increased risk to consumers).

d) More information for consumers

Some stakeholders said that consumers should be provided with sufficient data to make informed decisions about the quality of legal services (ACSO, STEP).

The Professional Standards Authority (PSA) said that the level of assurance of competence should be transparent to the public so that they know to what extent professionals have been subject to checks.

OISC has [guidance on competence](#), which sets out that advisers must demonstrate a sufficient level of skills, knowledge and aptitudes to show they are able to provide good quality advice and services. COIC provided a draft of a consumer-friendly version of the Professional Statement for Barristers, which provides useful information to help consumers understand what they can expect from their barrister.

TLS said it supports the LSB's plans to look at quality indicators for consumers. The CLC also expressed interest in developing industry-wide quality indicators.

TLS suggested that the LSB could set and maintain a core set of principles that all legal professionals could base their competence schemes on. SRA noted and welcomed our interest in consistent competency statements across the sector. This was raised by other stakeholders in several meetings.

e) Relevant competencies

Some regulators have already developed statements of competence (SRA, BSB, CILEx Regulation, Intellectual Property Regulation Board (IPReg)) to set out the skills, knowledge and attributes legal professionals need to provide good quality legal services.

Example: Competence framework

The Professional Statement for Barristers, developed by the BSB, sets four key competencies: distinctive characteristics (such as advocacy or relevant legal knowledge), personal values and standards (including integrity and self-awareness), working with others (colleagues and clients) and practice management. The expectation is that barristers will have these competencies at the point of entry.

Some stakeholders said there is a need for legal professionals to have specialist skills in their area of practice (Association of Personal Injury Lawyers (APIL), STEP, Just for Kids Law, Transform Justice, LCN, COMBAR, COIC, CIPA).

Transform Justice said that those working in the criminal justice area should have skills such as being able to gain the trust of clients, explain the process and lay out options and provide advice that prioritises the needs and best interests of clients.

Just for Kids Law said legal professionals interacting with and representing children need to have specific competencies, including an understanding of the principle aims of the youth justice system and an understanding of the particular needs of children (including the range of social, learning and communication difficulties they may have).

STEP said that a core competency framework should cover the range of technical knowledge that is required at different stages of a professional's career, including additional defined competences for specialists.

Many stakeholders commented on competence as being dynamic (SRA, LSCP, University of Sheffield, Nottingham Trent University):

Example: Competence framework

The SRA competence framework (including Statement of Solicitor Competence) recognises competence is dynamic and develops over time. Requirements change depending on an individual's job role and context; they may work competently at different levels and over the course of their career may require new or different skills and knowledge.

LSCP said competence is about the skills and knowledge of an individual, with a focus on technical competence and interpersonal skills. It said that competence is dynamic, needs refreshing and must respond to new demands and consumer needs. LSCP said it would be useful to describe the competence required at different levels of seniority. CLC said consumers would expect that legal professionals would update their competencies when there is a relevant change in law, or when they move into a different practice area or stage in their career.

Nottingham Trent University referred to the process followed in Canada to develop a competence statement, which assessed the frequency of tasks and risk inherent in them should they not be completed by a competent legal professional.

Sharing a perspective from another sector, the CAA noted that while previously competencies for pilots were focused on technical skills, such as how well a particular flying manoeuvre can be completed, there is increasingly a move towards a model that assesses an individual's ability to make a decision (situational awareness).

Emotional competence was raised by several submitters as being important (LawCare, University of Sheffield). Only the CILEx Regulation competence framework currently expressly provides for emotional competence, but others recognise the need for 'soft skills', which stakeholders agreed were very important. LeO said that many of the complaints it deals with are about communication, client handling and complaints handling (soft skills). The University of Sheffield said that emotional competence should be explicitly acknowledged across all aspects of legal practice.

Representatives from the City of London Law Society shared the [O-Shaped lawyer](#) concept, which sets out that,

'O shaped lawyers are well-rounded people who combine technical competence with a more human, emotionally intelligent approach.'

The need for digital competence was raised by some stakeholders (ACSO, CILEx Regulation, HMCTS), with the general view that there should be an expectation of a reasonable degree of technical competence for all legal professionals.

2. Areas of increased risk for consumers

Stakeholders identified high risk practice areas where there is evidence of actual harm to consumers or an increased likelihood of harm to citizens in vulnerable circumstances. The sorts of concerns highlighted by stakeholders could often be backed up by datasets or research or were so frequent themselves that they amounted to substantial anecdotal evidence.

a) Immigration/asylum

This is the area of law with the most pervasive sense of concern from anecdotes and some evidence was provided to substantiate these concerns.

In 2016 the BSB published its [Immigration Thematic Review Report](#), which found key risks for immigration clients, including failure to provide a proper standard of service and inadequate training and preparation for practice

The SRA also published its [Asylum Report: The quality of legal service provided to asylum seekers](#) (2016), which explored issues of regulatory concern arising from the conduct, competence and behaviour of solicitors. This includes some solicitors lacking the skills to obtain and record sufficient, relevant information from asylum seekers or lacking knowledge about the law underpinning specifics of cases. The SRA said in its submission that it is considering sector-specific competence statements or requirements in areas such as immigration and advocacy.

According to LAA peer review data, the number of contracted providers for immigration/asylum scoring below three (a score of three or above is needed to meet their contractual obligations) across five quality thresholds was over 30% in 2017/18, up from 7% in 2010/11. This is in contrast with improvements measured in other areas of law such as housing and family. A score of three or above is required for providers to meet their contractual requirements

LCN said it has,

'concerns that others who have interacted with the sorts of clients that Law Centres take on are at times not meeting the same levels of competence as a Law Centre would, even in strongly regulated areas such as immigration'.

LCN provided the example of a consumer who came to a law centre having spent a large sum of money only to be told by the law centre that their case was without merit.

LeO said that although the number of complaints it receives about immigration and asylum is low compared to other areas of law, when things do go wrong, the consequences are serious. It said,

'we have seen people lose their homes, lose their jobs and being told to leave the UK, often separated from their families, through no fault of their own'.

LeO went on to say that immigration and asylum clients tend to be in situations of 'extreme vulnerability', which, when coupled with other factors such as potential language barriers and the urgency of the situation, mean there are greater quality risks in this area of the law. LeO suggests we '*may wish to focus on this area of law in particular when assuring ongoing competence.*'

b) Advocacy

This is the area of law where stakeholders referred to a sense of ongoing concern with the quality of some advocacy, with evidence dating back over 10 years. They also noted the potentially serious consequences when poor quality advice leads to, for example, a loss of liberty or further suffering for victims of crime when a conviction is not achieved.

A 2018 independent report, commissioned by the BSB and SRA, into the [Judicial perceptions of the quality of criminal advocacy](#) found that advocacy practitioners were considered to be competent generally, but standards were declining in relation to core skills such as case preparation and an advocate's ability to ask focused questions. The biggest barrier to high quality advocacy was said to be advocates taking on cases beyond their competence.

COIC referred to past research on the quality of criminal advocacy, including the Jeffrey (2014) and Smedley (2010) reports, which recognised this same barrier. COIC pointed to Smedley's remarks about the reductions in legal aid funding and their impact on the distribution of case-work and the quality of advocacy. Smedley found that in order to keep financially afloat, practitioners '*will take on work beyond their competence, rather than have no work at all.*' The 2014 Jeffrey report, [Independent criminal advocacy in England and Wales](#), also raised concerns with advocates taking on cases beyond their level of competence.

Transform Justice shared its 2019 report [Criminal defence in an age of austerity: Zealous advocate or cog in a machine?](#), which said,

'there is no hard evidence as to whether the standard of defence advice and advocacy is declining or improving. But the systemic barriers to achieving good advice and representation are getting higher.'

Transform Justice's research found that most lawyers agree 'lousy firms' exist and many defendants felt there were poor barristers practising. In terms of the consequences, it said,

'as with medical professionals, the results of poor, or simply mediocre, defence advice and advocacy make a huge difference. Defendants can end up entering the wrong plea, getting convicted when they were innocent and receiving a much more punitive sentence than their offence merited. Some lawyers also get the law wrong.'

Specifically on youth justice, the 2015 research commissioned by CILEx Regulation and the BSB ([The Youth Proceedings Advocacy Review: Final Report](#)), which found that the quality of advocacy was highly variable. The findings indicated that,

'effective advocacy is dependent on advocates' specialist knowledge of youth justice law and provisions; their capacity to communicate effectively and build relationships with children and young people; and their professionalism.'

The review recommended specialist training for those practising in youth court and increased remuneration for such work. The BSB has since developed specific Youth Proceedings competences that must be certified before renewal of barristers' practising certificate.

In its submission, Just for Kids Law said,

'we are regularly contacted by families and other professionals where solicitors have failed to advance potential, highly relevant, defences specific to children or have failed to instruct an expert to assess fitness to plead or effective participation in cases where a youth justice specialist would have immediately recognised the need to do so.'

c) Conveyancing

This is an area of law that was frequently cited as having known quality issues. So, while consumers using conveyancing services may not have the same inherent vulnerability as immigration, asylum, criminal and youth advocacy clients, they are subject to an increased risk of receiving poor quality legal services based on the evidence.

LeO said that conveyancing accounts for 25% of its work in terms of complaints. It noted that,

'it often sees conveyancing cases where poor service is not discovered until much later, when a property is resold. This causes huge problems with trying to rectify issues, and also in trying to pin down what was the published guidance/good practice at the time. It is also an area of law where there are frequent new developments, and it is of particular importance to ensure the service provider understands good practice at that time'

Conveyancing was responsible for over half of PII claims according to analysis completed by the SRA in 2016. The SRA also conducted a thematic review of conveyancing in 2019, which found that over 90% of firms received requisitions that were avoidable, although the majority of firms said that this was exacerbated by HMLR making inconsistent decisions. The report also noted that some firms failed to include all of the potentially applicable services and fees in their initial quotes to consumers.

HM Land Registry provided data about the number and type of requisitions it raises on applications to register land and property transactions lodged by legal professionals. It is estimated that sending and servicing these requisitions comes at a cost of between £2-3 million per year in HMLR staff time and cost, in addition to the time/cost implications for those lodging applications. Outstanding requisitions delay the completion of registration, which is the final legal step in completing and confirming transactions with land and property.

In terms of different types of requisitions, the two most common were restrictions (14.5%) and variations in names (12.5%). The latter is an example where requisitions are the result of avoidable errors made by legal professionals, because the register shows the names of the property owners and all documents lodged either need to match up with those or explain any discrepancy. Requisition rates by firms range from 8-50+%, with no one sector standing out. This suggests that there is no specific barrier to firms having appropriate measures in place to be able to lodge high-quality applications.

d) Risks from certain professionals

Some stakeholders said certain professionals potentially posed a greater risk. COIC said that there is a risk if a case is entrusted to a barrister who does not have knowledge and expertise to conduct it to the required standard. This risk could result in very serious consequences, for example, detriment to their civil or human rights, liberty or the welfare of their children.

SDT said there are things that are '*particularly important in terms of continuing competence*', including appropriate supervision of junior staff and recognition of the risks of solicitors practising in areas of law where they have no experience. CLC said that risks increase when a professional practices in an area with no experience or when they have a barrier to appropriate training such as access issues.

LawCare said that mental health issues can affect an individual's competence and judgement and that often their work environment contributes to this. This includes where a person is managing huge workloads, tight deadlines, clients' demands and billing targets.

e) Low risk practice areas

Some stakeholders, particularly those representing barristers, said that there was low risk in some areas of law, particularly where sophisticated consumers are instructing for services. This includes the commercial bar (COMBAR) and other types of non-direct access barrister work where an instructing solicitor is the client (Personal Injury Bar Association (PIBA)).

Others said that consumers are protected from harm by PII and compensation arrangements (CLC, SRA).

The FO said that it receives relatively few complaints a year, which it said indicates a high level of competence among notaries. The FCDO, which issues Apostilles to signatories including notaries and solicitors, shared common reasons for documents to be rejected and said that the majority of errors are administrative (rather than due to fraud). The majority of these errors could be avoided if due diligence was taken.

COIC said that, based on LeO data, it was evident there is little concern about service from barristers, which suggests there is no competence issue with barristers. The Bar Council said that the Bar Mutual Indemnity Fund (BMIF) data shows that barristers are not posing a competence risk, including evidence there is no increase in notifications with seniority; absolute levels of notifications are low; and there is no evidence of particular individuals as serial offenders.

We note these views, but it is important to be aware that there is a general lack of objective data available on the technical quality of legal services. While complaints and PII claims can be a useful proxy for competence, they represent an incomplete picture. In many instances, data about quality is not routinely collected or made publicly available.

The LSCP commented on this, 'given the lack of transparency in this market, the lack of 'hard' evidence does not necessarily imply that there is no issue to be addressed - "no evidence of disease is not the same as evidence of no disease"'.

3. Existing competence assurance tools used in the sector

This section explores the different methods for ongoing competence assurance that have already been adopted in the legal services sector. Some stakeholders offered reflections on the effectiveness, costs and benefits of different approaches.

Some stakeholders also commented that legal professionals demonstrate ongoing competence every day through their work (CILEx, COMBAR, PIBA).

COIC said that the current frameworks in the system should mitigate the risk of barristers acting beyond their competence. The Bar Council said that the profession [the Bar] is highly trusted with privileges and titles recognised, so barristers take their responsibilities seriously,

‘a combination of the high standards required on entry to the profession, combined thereafter with market forces, peer pressure and professional pride are in practice effective to maintain competence’.

In an Annex to the Bar Council’s submission, the Chancery Bar and Property Bar said that sophisticated consumers and market forces inherent in barristers’ work functioned as deterrents to incompetence.

The Junior Lawyers Division (JLD) of TLS said that incentives exist to remain competent (e.g. value of professional title, market forces). SLC said that consumers should be able to rely on the fact that regulators grant annual practising certificate fee applications as an indicator of competence without the need for further external assurances.

a) CPD

All legal regulators currently require some type of CPD.

Regulator	Approach to CPD
Association of Chartered Accountants (ACCA)	Most ACCA members complete 40 units of CPD annually, made up of 21 units of verifiable CPD and 19 units of non-verifiable CPD.
BSB	BSB does not prescribe a minimum number of hours that barristers who have been practicing for more than three years must complete; it takes an outcome-focused approach. BSB is planning to review its new practitioners programme, which currently has a minimum number of hours of CPD required for those within their first three years of practice.
CILEx Regulation	CILEx Regulation members are required to complete CPD as follows: associate members complete hours based CPD, and graduate members, fellows/practitioners/legal accounts executives and associate prosecutors complete outcome-based CPD. There are specific requirements for some practice areas such as advocacy where individuals must complete two outcomes focused on advocacy.
CLC	CLC professionals must complete a minimum number of hours each year. For Managers, it is 12 hours and for Employed Licence Holders, it is six hours CPD per year. For CLC professionals holding a conveyancing and probate licence, Managers must complete 16 hours and Employed Licence Holders eight hours.
CLSB	As per CLSB's new rules effective 1 January 2021, a Costs Lawyer must typically achieve a minimum of 12 CPD points in a CPD year. CPD points can be achieved by carrying out CPD activities, which are defined by CLSB. The new rules will increase flexibility, by removing current activity and points caps
FO	Notaries are required to complete six CPD points annually, of which three must be obtained through participation in an accredited activity. Notaries carrying out conveyancing and probate activities also need to complete CPD in these areas.
Institute of Chartered Accountants England and Wales (ICAEW)	ICAEW does not prescribe a minimum number of hours or points; it takes an outcome-based approach. It recommends that members take the 'RAID' approach to completing CPD (reflect, act, impact, declare).
IPReg	IPReg require registered patent and trade mark attorneys to complete a minimum of 16 CPD hours annually.
SRA	The SRA regime does not prescribe a minimum number of hours or activities that legal professionals must undertake annually; it takes an outcome-based approach. The SRA said it is planning a strategic review of its continuing competence regime in 2020/21.

Most of the regulators carry out some spot checking of legal professionals' compliance with CPD rules. The BSB, for example, focuses its spot checks on barristers at higher risk of non-compliance with CPD requirements, supplemented with a random sample of the profession. Risk scores are established with reference to a barrister's history of compliance, among other factors.

Some membership bodies and accreditation schemes in the sector prescribe CPD requirements. This includes APIL, which requires individuals to complete 16 hours of 'relevant' accredited CPD per annum to achieve and maintain their accreditation. They must complete a minimum of 8 hours in a certain area of practice e.g. brain injury to be recognised as a specialist.

STEP members must complete and record CPD activities to keep their membership. STEP noted that in Canada, where many of its members are chartered professional accountants, CPD is mandatory, including mandatory ethics modules.

A number of stakeholders commented on the limitations of current CPD models and the quality and relevance of CPD activities was questioned by many stakeholders in meetings. There was a view that CPD was only valuable when the training was of high quality and relevant to an individuals' day to day work. An example of high-quality training was said to be that provided to advocates on vulnerable witnesses (see Case study: Vulnerable witness training).

LSCP said CPD requirements need to be strengthened to match the needs of different practice areas. It also said that CPD alone cannot sufficiently test competence because there are no checks and balances on the quality of CPD activities.

JLD said that because CPD relies on subjective self-assessment, there is a risk that areas of weakness are not appropriately identified and addressed. COIC said there could be scope to consider if too much latitude is provided to permissible CPD activities and whether mandatory training is necessary for some professionals e.g. those who have had poor feedback on their advocacy.

Case study: Vulnerable witness training

The [Advocacy and The Vulnerable training](#) was cited as an example of the good quality training that is available to advocates. MoJ said relevant experts who work to support victims' rights regarded the training as high value in its [2018 Victims Strategy](#) and the BSB and SRA [commissioned Judicial Perceptions report on the quality of criminal advocacy report](#) (2018) attributed improvements in advocates' ability to deal with young and vulnerable witnesses to training in this area.

The national training programme was developed by members of a pan-sector working group (including judges, practitioners and academics) in response to concerns about the experience of victims of crime and vulnerable witnesses navigating the justice system. It is designed to ensure advocates understand the key principles behind the approach to and questioning of vulnerable witnesses. It is structured in three stages:

- compulsory online training and preparation of cross-examination questions
- face-to-face course, including role playing using the questions prepared in advance
- online resources to consolidate learning.

The training is delivered via the Inns of Court, Circuits, individual chambers, the Crown Prosecution Service (CPS), Solicitors' Association of Higher Courts Advocates and TLS. Over 3000 members of the Bar, Crown Prosecutors and solicitors have received the training.

b) The role of employers

Stakeholders said that employers play a key role in ensuring ongoing competence. For example, some firms have systems and processes in place to assure quality and support learning and development such as supervision, client feedback, 360 reviews, peer reviews, deal debriefs, appraisals, risk management frameworks and in-house training.

The SRA said that some firms have their own competence frameworks in place, which is accommodated by the SRA's approach. In the SRA's [2019 review of continuing competence](#), it found that the majority of firms had maintained or increased support for learning and development. It should be noted that per the SRA's competence statement, employers are required to keep those who work for them up to date and fit to practice.

JLD said the SRA's rules are effectively a baseline as,

'many solicitors in medium-to-large firms will additionally take part in annual appraisals or structured in-house training schemes (as opposed to sole practitioners, freelancers, some in-house practitioners or those in very small firms, who may not have the resources or structures to do the same).'

STEP said it has a partnership programme with employers where it sets quality standards to support employers' training for staff. ACSO said that flexible CPD schemes that put the onus on legal professionals and the firms they work for to identify their learning needs appeared logical.

Outside of the legal sector, in healthcare, the GMC told us that while it administers the revalidation framework nationally (see 4. Potential new approaches to ongoing competence, (f) Revalidation), locally the framework is owned by relevant healthcare organisations. Responsible officers provide support and oversee the doctors within organisations. The PSA said that the structure of employment is key to designing effective oversight.

In financial services, the FRC said that some CPD schemes place the onus on firms rather than individuals.

c) Observation

Observation is a key feature of ongoing competence assurance in other sectors such as education and aviation. Pilots, for example, are regularly examined in-flight and periodic simulator testing is required by the European Aviation Safety Agency.

It is less common in the legal services sector, but it has been adopted by the CPS (see the Case study: Assessment of CPS Advocates). It was also one of the key recommendations from Transform Justice, which suggested there should be observation of lawyers and accredited representatives advocating and consulting with clients in the custody suite, at court and in their offices.

Case study: Assessment of CPS advocates

Some stakeholders commented on the [ongoing assessments](#) that CPS advocates are required to undergo to ensure they remain competent. All in-house advocates are required to be assessed on two occasions annually, at least one of which should relate to a contested case (trial). These assessments are typically conducted by a line manager, but may be conducted by an external advocacy assessor. The assessments are set out in the Individual Quality Assurance Framework (IQA), which was introduced in 2014/15. The HMCPSI said in a [2018 report](#) that the IQA was a clear improvement on previous quality assurance regimes, although there was room for further improvement to ensure the IQA is nationally embedded and consistent. For external advocates, there is no formal monitoring required, although there are processes to refer advocates to the Circuit Advocate Liaison Committee for assessment.

d) Regulatory supervision

Some regulators commented on the supervisory work they conduct. BSB said it undertakes routine supervision of chambers, which provides an opportunity to understand how feedback is provided to chambers and then used. It also carries out thematic reviews to identify areas where targeted intervention is needed, such as in youth justice.

CLC conducts inspections and audits of premises on a three-yearly cycle, informed by other intelligence, such as complaints.

CILEx Regulation currently require advocates to revalidate their advocacy certificate every three years based on CPD and an employee statement. It said it would be willing to consider extending this to other professionals.

FO said that in the first two years of practice (or three if conducting conveyancing or probate), notaries will be supervised and reports on competence are prepared for the Master. The FO also has an inspections regime, which involves a senior notary annually auditing low and high-risk notaries (including those who conduct conveyancing and/or probate work).

e) Feedback

Feedback from different sources is captured in some parts of the sector. Some examples have already been noted elsewhere (such as deal debriefs and 360 feedback in firms), but other examples include feedback informally received through chambers and on judicial circuits.

The Property Bar (with COIC and COMBAR noting similar practices) said,

'solicitors who have strong relationships with particular Chambers routinely provide informal feedback on barristers' performance, often through the clerks. Senior barristers who lead a junior are also an important source of feedback, both directly to the junior and through the clerks. Formal mechanisms are more patchy but some Chambers have well-developed practice development programmes at which clerks and practice managers convey the messages which they have received from solicitors or other barristers.'

Western Circuit said local judges know senior members of circuit chambers well and will identify disappointing performance (that falls short) to heads of chambers. It also said there are regular meetings with the CPS to deal with issues of poor performance.

Midland Circuit said that all members of the circuit know each other and if one is not performing adequately, judges will usually identify the head of criminal or head of chambers to provide advice (informally). It provided an example where a legal professional was encouraged to have further training. Wales and Chester Circuit said that on a small circuit, particular skills (or lack thereof) become apparent quickly and judges will informally raise concerns about advocates.

f) Accreditation

Some stakeholders said that accreditation schemes provide proof of ongoing competence (TLS, STEP, APIL) and to give a signal of quality to consumers (including large consumers such as the LAA). The APIL approach is set out as a case study. TLS provided examples of its different accreditation schemes available to individuals (e.g. [Family Law](#)) and entities (e.g. [Lexcel](#)).

Each individual accreditation has eligibility requirements (requisite knowledge, skills and experience), which must be demonstrated through an application and assessment process. Some accreditations include mandatory training courses. Once accreditation has been achieved, it must be maintained through CPD that is relevant to the specific area of law the accreditation relates to. Individuals must go through a reaccreditation process every three years, which involves checking CPD and a review of their competence through case studies, case reports or an interview.

For entities, accreditation requires demonstrating compliance with standards. There are ongoing training requirements and regular assessments, including random audits for some accreditation schemes.

Case study: APIL

The [APIL accreditation scheme](#) was established in 1999 as a quality mark of competence and specialist expertise for legal professionals working in the person injury (PI) practice area. Individuals and firms can apply to be APIL-accredited and must be reaccredited every five years. For reaccreditation, practitioners, 'must provide evidence that the majority of their fee earning time is spent on PI cases, that they are keeping up to date through training, and that their professional work remains of the required standard. Feedback from clients, counsel and peers/supervisors is also taken into account.'

4. Potential new approaches to ongoing competence

a) Support for change

Some stakeholders were clear that they believe additional checks on competence are required. The LSCP said that,

‘initial education and training cannot offer a career-long guarantee of competence...Therefore it is vital that providers are subject to ongoing assessment in order to ensure their services are of high quality and standard.’

LCN said that,

‘something more rigorous than the current CPD regime might be needed to provide a safety net for those that cannot judge the quality of the advice they receive’.

Some were clear that there was no need for additional competence checks in the profession. The Bar Council said that there is no evidence of widespread dissatisfaction or systemic incompetence with barristers’ work that would justify intervention. PIBA said it,

‘opposes any additional layers of competency testing, monitoring, feed-back or any other proposals of any kind as being disproportionate considering the circumstances of personal injury practice generally, and the provision of legal services by PIBA’s members in particular’.

Others raised concerns about the costs of new approaches to assuring ongoing competence. The view of stakeholders in submissions and meetings was that trade-offs between costs, burdens and benefits would need to be carefully weighed (Access to Justice, Citizens Advice, CLSB, CITMA, Citizens Advice, TLS). LCN said that increased costs, such as from additional training requirements, could make it more difficult to attract legal professionals with the right skills. Several stakeholders said we needed to be most conscious of costs for the not-for-profit sector.

Making time for and access to learning and development was also perceived to be a barrier by some stakeholders. In the SRA’s [2019 review of continuing competence](#), it was noted that only half of respondents regularly made time for these activities. [CPD research from Victoria, Australia](#), found that the most commonly cited barriers to gaining access to CPD programmes were cost, location, relevance, time and pressure from employers.

Some stakeholders (BSB, Bar Council, COMBAR, PIBA and COIC) warned us against making comparisons with other sectors. These stakeholders, notably all associated with the Bar, said that the profession is unique because it is competitive, based on referrals and barristers have a primary duty to court.

Stakeholders said that a one size fits all approach should be avoided as there is a wide range of specialisms across the legal services sector and differing risk levels (CILEx Regulation, JLD, Chancery Bar). Some said that any intervention should be targeted (SRA, COIC).

CITMA raised concerns about additional burdens on the profession impacting on the competitiveness of legal professionals in England and Wales compared with those in other jurisdictions. There were concerns about the potential risks posed by the unregulated sector (STEP, Law Centres Network) and the impact of the additional burdens on regulated professionals that unregulated professionals would not bear (Sole Practitioners Group, CITMA, CILEx Regulation).

CILEx Regulation and CLC both said there could be challenges for new competence assurance approaches when a legal professional is regulated by one entity but employed in a firm regulated by another. TLS said we needed to be aware of the variable nature of employment and the challenges this could pose.

Many stakeholders offered views on different methods for assuring ongoing competence that could be explored for the legal services sector. The different options identified include some measures that are already adopted to some extent, as set out in the previous section (see 3. Existing competence assurance tools used in the sector).

b) Feedback

Stakeholders said that there was value in using feedback to inform an assessment of an individual's performance, and in fact, there is evidence that feedback is already gathered in some parts of the sector e.g., some firms and chambers collect feedback.

Many said that feedback should be gathered from multiple sources, as no one source of feedback should be definitive of an individual's performance. The view was that any model should be carefully designed to take account for this, as well as other important matters such as the independence and subjectivity of the person providing feedback.

i. Consumer feedback

CILEx Regulation said that client feedback should be captured in B2B relationships and STEP said there is a role for testimonials, both positive and negative, from clients. CIPA made a similar point, as did CLC.

LSCP emphasised the need to use feedback, including complaints, to improve the quality of legal services provided to consumers. LSCP said that gathering consumer feedback is very important and it should be incorporated into CPD practices and appraisals. Transform Justice also said feedback on quality should be gathered routinely.

The PSA said that some health and care regulators use patient feedback as a core part of their revalidation process (see 4. Potential new approaches to ongoing competence, (f) Revalidation).

The LSB is currently undertaking work on quality indicators and, following the publication of the CMA review of the sector, will be coordinating activity in this area across the legal regulators. As part of this work, we are considering initiatives to encourage consumers to provide feedback on legal services, in order to inform other consumers' choice of provider.³

ii. Judges' feedback

In the [judicial perceptions of the quality of criminal advocacy](#) (2018) report it was found that,

'the main and most explicit demand that our interviewees made of the regulators was that they should be more robust in responding to poor advocacy when alerted to problems by judges or if a new appraisal system were to be instituted.'

The BSB said it is exploring ways to collect feedback and suggested that barristers could be required to get feedback from judges as part of annual CPD reflective practice. The Bar Council said it would, '*encourage the judiciary to give as much informal feedback as it feels it properly can do*', while noting it does not think there is a role for the judiciary to provide formal feedback on the performance of barristers.

³ <https://www.legalservicesboard.org.uk/our-work/current-work/increasing-market-transparency-for-consumers>.

iii) Peers and colleague feedback

Transform Justice said that the best individuals to assess competence are peers, academics and judges. SLC members that responded in its submission showed some support for taking assurance from third party feedback.

CILEx Regulation said there could be reason to support an approach where third party feedback is incorporated into an assessment of ongoing competence. This could include client feedback when legal professionals are working in client-facing settings or peer review for those working in different environments.

The Bar Council said it would support encouraging chambers to organise practice reviews with clerks, encouraging clerks to pass feedback from solicitors to barristers (positive and negative) and working with the BSB to find ways to encourage the Bar to grasp and embrace the purpose of and benefits of self-reflection.

In other sectors, peer feedback is important to support ongoing competence. For example, this is part of the revalidation process for both the GMC and NMC (see 4. Potential new approaches to ongoing competence, (f) Revalidation). It is also used in other legal jurisdictions, including the Netherlands.

CASE STUDY: Annual quality assessments in the Netherlands

In the Netherlands, advocates are required to undergo an [annual quality assessment](#). Advocates can choose to take part in one of the following:

- structured peer discussion (8 hours)
- interview (8 hours)
- peer review (4 hours)

Reflective practice is central to this exercise as advocates discuss learning points from their experiences, successes and challenges faced in their work with peers or colleagues. Guidance is provided for what the discussion should cover, such as exploring alternatives for case handling in the examples shared as part of the review. If an advocate chooses to undertake a peer review, there will be a file review process in addition to the discussion, which will include at least five cases.

This mandatory quality assessment is additional to CPD, which is a points-based system and all legal professionals must complete 20 points each year. From 2021, legal professionals will also be asked to complete an annual voluntary self-assessment of their own practice, reflecting on the expertise and attitudes they need in their role.

c) Remediation

Some stakeholders commented on the potential benefits of a remedial approach to addressing competence concerns. Evidence was provided on the use of remedial tools, such as training and supervision, to respond to feedback about professionals' competence from other sectors.

The CAA said that a key principle underlying the safety culture in the aviation industry is pilots being obliged to report any safety issues, so that they can be shared for learning and to prevent safety failures. This is typically taken to be an opportunity for development and a pilot will likely receive additional training or supervisory support where necessary. In some

serious instances there will be repercussions, but more often the focus is on having insight of what went wrong and how to prevent it happening again.

In financial services, the FRC can impose conditions on practice where it has identified concerns about competence, including requiring training or increased monitoring. ICAEW and ACCA both said they can require professionals to attend training or put conditions on their practice if they identify concerns with their CPD records.

The Engineering Council can order a professional to undergo training or be put on a watchlist for monitoring if there are concerns about their CPD records.

In healthcare, remediation is a core focus in the fitness to practice models adopted by the medical regulators. For example, the GDC can recommend additional training or supervision for dental professionals, where necessary. GMC said issues are sometimes able to be addressed locally by senior staff who provide support and supervision to doctors. Social Work England, which carries out a quality assurance validation assessment of some CPD records, said that if it has concerns about an individual's engagement with CPD, it will provide advice to that person and they will automatically be included in the next year's validation assessment.

In the legal services sector, there is a limited focus on remediation currently. LeO said it would be good to have a facility where they could refer legal professionals for remediation, as they can do currently for misconduct.

In many of the examples from other sectors, there is a link between remedial action and information being gathered through audits of CPD records or monitoring visits. There is not a consistent approach to CPD auditing in the legal services sector currently, with stakeholders sharing a view in meetings that it is 'box-ticking' and compliance focused. TLS said that there should be random and risk-based checks of CPD records. It said,

'currently the SRA only looks at these records where complaints are made, or a competence issue is raised in another way. This system does not allow for early detection of potential competence issues and timely corrective action, which could avert more serious issues down the line.'

The BSB said it faces challenges in getting evidence of concerns about competence and suggested forging closer working relationships with others to improve this, including the LAA and CPS.

Transform Justice recommended better monitoring of CPD. CITMA said it would be interesting to explore a random form of light-touch 'revalidation', which could include, for example, auditing CPD records in more detail.

d) Specialist training

Some stakeholders said that legal professionals should be required to have specialist training to work in some practice areas. Just for Kids Law said there is an urgent need for legal professionals representing children to have specialist skills and knowledge. This will ensure that,

'they can do the best possible job for their young clients, and so young people themselves and their families can be confident that their rights and interests are properly protected.'

The LSCP referred to findings from the Equality and Human Rights Commission that lawyers do not consistently have the guidance and training they need to recognise impairments. They need to be able to recognise impairments, their impact, or how adjustments can be made [in the context of disabled people accessing the justice system]. EHRC recommends that disability awareness should be a professional requirement and a mandatory element of CPD for criminal lawyers. LSCP said should apply to other areas as well, such as family law, employment law, social security and housing law.

In meetings, some stakeholders said training should be mandatory in some areas; one example provided was mental health training being required for those dealing with litigants in person.

e) Assurance visits

Stakeholders said that assurance visits can be useful to assure ongoing competence and the following relevant examples from other sectors were provided:

- OISC conducts premises audits to assist advisers and organisations to remain fit and competent, ensure that they comply with OISC standards and guidance, and act in the best interests of their clients. [OISC said that](#),

‘premises audits are a key tool for achieving objectives; they provide the Commissioner with an opportunity to assess whether organisations are compliant with the Code of Standards and acting in line with the Guidance on Competence, and to provide advice on compliance matters.’

- ACCA conducts monitoring visits to assess the quality of audit work. A similar approach is adopted by other financial services regulators (ICAEW, FRC)
- LAA conducts different types of audits to enhance the standards of legal work carried out by its contractors, including oversight visits, which involve regular file reviews and process checks.

CASE STUDY: Office of the Public Guardian’s assurance visits

OPG conducts [regular assurance visits](#) of professional deputies (every three years) and panel deputies (every two years) to ensure that they are carrying out their duties properly. Visits can also be ordered if there are concerns about a deputy that have been raised by a client, family member or third party. Feedback will be gathered from clients/family members/third parties as part of the visit and will be provided to the deputy. The OPG will also check on policies and procedures that are in place and what training has been undertaken. If the OPG has concerns following an assurance visit, there are a number of steps it can take from remediation through to asking the Court of Protection to take action (including removal). In terms of remediation, it can direct that a deputy undergoes training or ask a deputy to carry out a specific task such as return their client’s money, which will be flagged for follow up in the next annual report (deputies must file a report each year).

f) Revalidation

The GMC and NMC provided information about revalidation that doctors, nurses and midwives must complete on a periodic basis to remain registered to practice.

The GMC said that doctors must take part in an annual appraisal process that demonstrates they meet prescribed standards. They must collect supporting information to reflect on and discuss during this appraisal, including evidence of CPD completion; complaints and compliments received on their practice; patient feedback; colleague feedback; evidence of learning from significant events; and evidence of quality improvement activity undertaken.

Doctors' appraisals are shared with a responsible officer every five years, so they can make a recommendation on whether that doctor should be revalidated to the GMC.

The NMC revalidation process, which is three-yearly, requires similar evidence including reflective discussions with an approved person, five pieces of feedback from different sources, CPD completion and support for the revalidation application from a confirmer (who should be a line manager, a person on the NMC register, another registered healthcare professional or another regulated professional).

The NMC emphasised that revalidation is about promoting good practice and embedding pride in the profession. The GMC said,

'the aim of revalidation is to, increase the quality of healthcare by encouraging local appraisal, continuing medical education and reflective practice, and supports doctors to develop their practice, as well as driving improvements in clinical governance. Another aim is the early identification and local resolution of concerns about doctors.'

Both the GMC and NMC said that as much as possible, revalidation relies on existing processes and information from an individual's everyday work to reduce the burden on their time. Independent reports commissioned by the GMC ([Pearson \(2017\)](#), [Umbrella \(2018\)](#)) identified that there had been some benefits from revalidation and that it has led to some doctors changing their clinical practice, professional behaviour or learning activities as a result. Similar changes in behaviour were observed in the report prepared by [Ipsos Mori \(2019\)](#) for the NMC. Some concerns about the burdens on professionals were identified and recommendations made on how best to address these.

More broadly, the PSA said that across the health and social care sector, ongoing competence systems have similar features, including a move away from purely numerical hours-based CPD, increased focus on peer review, individual reflection and feedback from peers and patients.

A recent development of note is the [Royal Institute of British Architects \(RIBA\) plans to regularly test architects' competence](#). RIBA said that under the new rules,

'all chartered architects will be re-accredited every five years in respect of mandatory competencies – with an initial focus on demonstrating a minimum level of health and safety knowledge, including fire safety.'

COIC said that we should not consider revalidation in the legal services sector. JLD said we should be conscious of the costs and burdens of new approaches such as revalidation.

Annex A: Submissions

All submissions can be found on [our website](#).

Association of Consumer Support Organisations
Association of Personal Injury Lawyers
Bar Council
Bar Standards Board
Chartered Institute of Legal Executives
CILEx Regulation
Chartered Institute of Patent Attorneys
Chartered Institute of Trade Mark Attorneys
Council for Licensed Conveyancers
Council of the Inns of Court
Commercial Bar Association
Faculty Office
General Medical Council
Institute of Chartered Accountants in England and Wales
Intellectual Property Regulation Board
Junior Lawyers Division of the Law Society
Just for Kids Law
Law Centres Network
LawCare
Legal Ombudsman
Legal Services Consumer Panel
Nottingham Trent University
Personal Injuries Bar Association
Professional Standards Authority
Solicitors Disciplinary Tribunal
Society of Licensed Conveyancers
Solicitors Regulation Authority
STEP
The Law Society
Transform Justice
University of Sheffield

Annex B: Meetings

Access to Justice
Accreditations, The Law Society
Association of Chartered Accountants
Bar Council
Bar Mutual Indemnity Fund
Bar Standards Board
Bar Tribunals and Adjudication Service
Chartered Institute of Legal Executives
CILEx Regulation
Chartered Institute of Patent Attorneys
Chartered Institute of Trade Mark Attorneys
Citizens Advice
Civil Aviation Authority
Cost Lawyer Standards Board
Council of Bars and Law Societies of Europe
Council for Licensed Conveyancers
Council of the Inns of Court
Criminal Bar Association
Engineering Council
Faculty Office
Financial Reporting Council
General Dental Council
General Medical Council
Her Majesty's Land Registry
Her Majesty's Courts and Tribunal Service
Institute of Chartered Accountants in England and Wales
Inns of Court College of Advocacy
Intellectual Property Office
Intellectual Property Regulation Board
Just for Kids Law
Law Centres Network
LawCare
Legal Aid Agency
Legal Ombudsman
Legal Services Consumer Panel
Legal Services Regulation Authority (Ireland)
Members of the profession (individuals)
Ministry of Justice
National Skills Academy Rail
Nursing & Midwifery Council
Office of Qualifications and Examinations Regulation
Office of the Immigration Services Commissioner
Office of the Public Guardian
Professional Rules and Regulation Committee, City of London Law Society
Social Work England
Sole Practitioners Group
Solicitors Disciplinary Tribunal
Society of Licensed Conveyancers
Solicitors Regulation Authority
The Law Society